

LEARNING FROM ABROAD? POLICY TRANSFER,  
THE EAST AFRICAN COMMUNITY, AND THE  
EUROPEAN UNION

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## ABSTRACT

This paper discusses the case of policy transfer from the European Union to the East African Community. The paper presents the case of policy transfer through emulation and copying of institutional design and architecture from the European Court of Justice (ECJ) by its East African equivalent- the East African Court of Justice (EACJ). Using, Dolowitz and Marsh's (2000) framework of policy transfer; the study finds that although transfer has taken place across a continuum of judicial mechanisms, several challenges –particular political will- impede the process of successful transfer. In addition, the paper finds that transfer components were also incomplete – particularly in relation to the direct effect mechanism. To reach these findings, the study benefited from a myriad of data sources. Secondary data sources and academic literature on regionalism and integration in both the European and East African contexts were extensively reviewed. In addition, six elite interviews were also conducted among technocrats involved in the EAC integration process. Based on the evidence adduced, the study draws conclusions and highlights implications that are relevant for policy and intellectual discourses on policy transfer, regionalism and integration.

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## ABBREVIATIONS

ASEAN- Association of Southeast Asian Nations

AU-African Union

CFI-Court of First Instance

COMESA-Common Market for East and South African States

EAC-East African Community

EACJ-East African Court of Justice

EALA-East African Legislative Assembly

EC-European Commission

ECJ-European Court of Justice

ECOWAS-Economic Community for West African States

ECSC-European Coal and Steel Community

EMFTA-Euro-Mediterranean Free Trade Area

EU-European Union

EURATOM-European Atomic Energy Community

FES- Fredrik Ebert Stiftung

MERCOSUR-Common Market of the South

NATO- North Atlantic Treaty Organization

SADC- Southern African Development Community

SEA-Single European Act

TEAC-Treaty Establishing the East African Community

TFEU- Treaty on the Functioning of the European Union

## INTRODUCTION

The proclivity towards regional integration in Africa is not entirely novel. Pan-African leaders such as Kwame Nkrumah championed the idea of a unified Africa as a panacea for the challenges of colonization in the early 1950s and 1960s (Bachmann and Sidaway, 2010; Lumumba, 2009). Likewise, with the rise of globalization, several African countries embarked on pursuing various form of regional integration in order to cushion themselves from the negative consequences of the earlier wave of globalization that was accompanied with structural adjustment programs. Thus, this period saw the formation of various regional blocs such as the Economic Community of West African States (ECOWAS), and the revival of the East African Community (EAC) in 1999. Most importantly, the founding objectives and the ensuing institutional architecture of the EAC were evidently modeled upon the European Union (EU) model and exhibit a striking resemblance to EU (Bachmann and Sidaway, 2010).

Thus, the question that arises is whether the EAC should borrow its policies, aspirations and architecture from the EU? To start with, both organizations are not only spatially apart but fundamentally different from several dynamics. The EU for example had to overcome decades of war and “benefited from special circumstances in its development” (Kirchner, 2006). In addition, temporarily, the EAC and EU are over six decades apart (Winters, 2010). Indeed, as Kirchner (2006) further observes, it would suffice to apply the EU experience in integration as a benchmark for the analysis of emerging regional integration policy and institutional architecture elsewhere rather than in judging successes or failures.

While various scholars have analyzed policy transfer within EU governance, policy transfer between the EU as a supranational organization alongside other similar institutions remains less analyzed. This paper therefore sets out to examine the case of policy transfer from the EU to the EAC through the application of Dolowitz and Marsh (2000) framework for policy transfer. From a case study on analysis of policy transfer between the European Court of Justice (ECJ) and the East African Court of Justice (EACJ), the paper finds significant instances of the voluntary transfer of policy goals, policy ideologies and institutional architecture. The paper also establishes political will and influence as the most significant challenge to successful policy transfer between the two institutions – particularly in the case study presented.

The study proceeds in the following manner: Chapter 1 presents a brief background and the study's research design. Chapter 2 discusses the Analytical Framework, which also form the theoretical underpinnings of the study. Chapter 3 discusses regionalism and regional integration in the European and East African context and offers an important historical analysis of integration in the two contexts. The chapter also discusses the limitations of policy transfer between the two institutions. Chapter 4 presents a detailed case study on policy transfer between the ECJ and the EACJ. Chapter 5 presents the study's conclusions, limitations and briefly discusses the study's implications both to the theory and study of policy transfer. The Chapter also recommends areas for further inquiry.



# CHAPTER 1: BACKGROUND AND RESEARCH DESIGN

## 1.1: Regional Integration: An Overview

Whereas the period preceding the Second World War was characterized by the proliferation of various types of multilateral organizations such as the United Nations, the era preceding the Cold War continues to be characterized with the pursuance by several states for the formation of regional groupings such as the European Union (EU), the African Union (AU), and the Association of Southeast Asian Nations (ASEAN). Indeed, the emergence of these groupings has seen them play prominent and influential roles within the realms of global governance. Although their influences, successes and impacts on global governance are varied, it is still accurate to assert that all regions of the world are currently experiencing one or more forms of regionalization, cooperation and integration.

Indeed, while acknowledging the inherent economic and political benefits derived from regional cooperation and integration, the global fascination with regional integration is more prominent among developing nations (Winters, 1997). In East Africa, earlier forms of cooperation date back to the pre-colonial period when communities freely interacted through a process of unrestricted long-distance trade where various goods were traded from the coastal ports of Kenya and Tanzania deep into the heart of present day Uganda (Lumumba, 2009). The colonial period - when Kenya, Uganda and Tanzania were all under British administration - witnessed various forms of 'administrative' integration within the financial, transportation and legal spheres. For example, in the pursuit of administrative efficiency, the colonial British Administration established the East African Court of Appeal in 1909 (Mullei, 2005) and East African Currency Board in 1920 (Mauri, 2007), among other regional institutions.

Nonetheless, despite these initial efforts at integration, the people of East Africa did not experience any form of self-determined integration until the post-independence period when the East African Community (EAC) was established in 1967 (Lumumba, 2009). Indeed, according to the Treaty establishing the 1967 EAC (The Treaty for East African Cooperation), the member states sought economic integration for purposes of deepening their political and socio-economic development. Thus, economically, the member states would benefit from the economies of scale and the principle of comparative advantage. Further, as the Treaty observes, integration would also make it possible for the member states to pool both financial and material resources towards the accomplishment of joint development projects that would otherwise be prohibitively expensive to execute. In addition, the Treaty envisaged that integration would give member states leverage in bargaining and negotiating crucial multilateral trade agreements with the rest of the world. Unfortunately, the EAC of 1967 only lasted a decade and collapsed in 1977 partly due to mistrust and differing ideological persuasions between the partners (Lumumba, 2009).

The EAC was to be revived in 1999 by Kenya, Uganda, and Tanzania through the Treaty Establishing the East African Community (TEAC). Following its revival, an ambitious fast-track program that would see all the countries merge as a political federation was agreed upon. Currently, the community operates as a common market and efforts at establishing a monetary union and merging into a political federation are proceeding apace. Various institutions such as the East African Legislative Assembly and the East Africa Court of Justice have also been established and are currently operational- albeit with mixed fortunes.

## 1.2: Statement of the Problem and Research Questions

The proliferation of regional integration initiatives is widely attributed to the strength derived from numbers and the motivations of shared historical pasts. Thus, many regions widely acknowledge integration and cooperation as an opportunity for pooling together to exploit and respond to the opportunities and challenges brought to the fore by the process of globalization (Keet, 2002; Lee 2002). In Africa alone, there are slightly over half-a-dozen existing regional integration and cooperation initiatives with some partner states registering overlapping (and often conflicting) membership across more than one regional (and economic) bloc.

However, most regional integration initiatives in Africa's remain a pale shadow of EU, which has widened and deepened its integration process and is consequently widely regarded as a model for regional integration (Farrell, 2009). Most importantly, a degree of prosperity exists within its members. Moreover, several countries –acknowledging the tantalizing opportunities that EU membership present- continue to await membership. Although the EU and EAC – as regional integration initiatives and regions –are different in many respects, the integration path and structural architecture adopted by the EAC is strikingly similar to that of the EU- with certain features *borrowed* from the EU polity. Nonetheless, the integration outcomes and institutional efficacy remain remarkably different.

The re-birth of the EAC in 1999 not only promised social, economic and political changes, but also heralded the beginning an ambitious attempt at economic, monetary and political unity – all to be achieved in a fast-tracked 15 year period. Undoubtedly, while the EAC has become influential regionally and globally, several integration outcomes remain unachieved and are in many aspects

light years away (FES, 2009). There are therefore still many challenges to be confronted, as well as lessons to be learnt.

Thus, deriving from the above, this study proceeded by seeking to answer the following specific research questions:

1. What form of policy transfer has taken place in the EAC integration process; relative to the European Union?
2. What specific aspects have been transferred?
3. What impediments (if any) lie in the process of successful policy transfer from the EU to the EAC?

### 1.3: Study methodology

The study utilized case study methodology in the analysis of regional integration and policy transfer between the EU and the EAC. According to Punch (1998:150), case study methodology is particularly appropriate when “the general objective is to develop as full an understanding of that case as possible”. Moreover, the method is recommended as it allows for the in-depth understanding of a case, in its natural setting while also discerning its complexities and context (Punch, 1998; Silverman, 2000). In addition, Ritchie and Lewis (2003:78) recommend case study methodology for its “holistic focus”.

The term case has been applied broadly by various scholars. As a consequence there is hardly any agreement on the constitutive elements of a case (Silverman, 2000). The term is therefore subject to a myriad of interpretations. For purposes of this study, the case will be the East African Community, as a distinct regional integration initiative among several others globally.

There are a variety of case study methodologies. This study employed intrinsic case study methodology. According to Stake (1994), this method is particularly appropriate when the goal of the researcher and purpose of inquiry is solely to better understand a particular case, without seeking to extend inquiry findings and generalizations forward to other similar cases. Intrinsic case study methodology was also chosen for this study as it permitted for a detailed examination of policy transfer and regional integration within the EAC by examining both the process of integration, and the policy transfer outcomes. The study also utilized historical and comparative analysis particularly in the explanation of the different integration paths experienced by the EU and EAC.

The study benefited from a myriad of data sources. The East African Community Resource Centre in Arusha provided invaluable secondary data. Elite interviews with officials and representatives of various organs of the EAC were also crucial sources. Elite interviews were particularly important in this study because respondents were experts and practitioners in the East African regional integration process and thus offered an enriching perspective to understanding regional integration and policy transfer within the EAC. In total, 6 elite interviews were conducted: four spread across different organs of the EAC, one with the Ministry in charge of the EAC in Nairobi, and one interview conducted with the EU delegation to the EAC at Arusha.

Secondary data was drawn from a variety of literature and publications in the area of regional integration, policy transfer and global governance. Secondary sources were reviewed in order to complement primary sources in undertaking comparative analysis in relation to policy transfer and regional integration, as well as in outlining the specific impediments to 'successful' policy transfer. In addition, observation in the form of informal participant observation and personal knowledge also contribute to this study.

## CHAPTER 2: ANALYTICAL FRAMEWORK

This chapter sets out an analytical framework upon which to analyze the process of policy transfer between the EU and EAC. The chapter defines policy transfer as a concept and outlines its variants as highlighted within public policy, international relations and political science scholarship. The chapter examines the process of policy transfer through highlighting Dolowitz and Marsh (2000) model of policy transfer as well as its further refinements therein.

### 2.1: The Concept of Policy Transfer

The concept of policy transfer is relatively new in the scholarship and practice of policy analysis. It lays emphasis on the exchange of ideas, policies and policy instruments between distinct polities, at a global level. According to Evans (2004:1), it involves a “process in which knowledge about institutions, policies or delivery systems at one sector or level of governance is used in the development of institutions, policies or delivery systems at another sector or level of governance”.

With globalization increasing the proclivity towards new institutional structures at both regional and global levels of governance, the significance of policy transfer has even become epochal (Dolowitz and Marsh, 2000). Indeed, as Evans (2004:8) observes, globalization heralded new frontiers for policy transfer through triggering various geopolitical changes, increasing economic and political integration, facilitating the rapid liberalization of markets, and significantly increasing advances in technology and global communication. As a consequence, various levels of statecraft have witnessed a ‘hollowing-out’. In the same vein, Dolowitz and Marsh (2000:6-7) reiterate that the relative proliferation of international organizations and institutions contributes to the increasing incidence of policy transfer, as various supranational and multilateral organizations continue to draw lessons and learn from the successes and failures of the other.

## 2.2: Variants of Policy Transfer and Policy Learning

While the study and analysis of policy and institutions in varying political contexts has been prominent within the realms of comparative politics for a while, the study of how ideas and ideologies travel between polities is a more recent endeavour (Bulmer et. al, 2007). There are thus various contrasting approaches of policy transfer that have been applied by public policy scholars. These include: policy diffusion (Eyestone, 1977), policy diffusion (Bulmer et al, 2007), and policy learning and lesson drawing (Rose, 2005).

### 2.2.1: *Policy Diffusion and Convergence*

According to Eyestone (1977), *policy diffusion* focuses on the processes and patterns through which innovations spread across political systems. Policy diffusion is based on the assumption that political systems (particularly in the North) are constantly faced with similar and common challenges. Therefore, in pursuit of responses to these challenges, political systems in the North are irrefutably more likely to gravitate towards common and similar policy innovations. Nonetheless, Bulmer et al. (2007) identify limitations to policy diffusion, specifically its relative lack of attention towards the mechanisms by which diffusion takes place. Indeed, Wilensky (1977) observes that at the international level, the diffusion of policy innovations culminates in *policy convergence* that manifests itself through marked similarities in the nature and types of institutions and policies developed or adopted by different political systems in the developed world.

In a more recent analysis of the process of policy convergence, Drezner (2005) attributes convergence to the process of globalization. He refers to globalization as “the cluster of technological, economic, and political innovations that reduce the barriers to economic, political and cultural exchange” (Drezner, 2005:841).

### 2.2.2: *Policy Learning and Lesson Drawing*

*Policy learning* (also widely referred to as *lesson-drawing*) is predominantly concerned with examining the process through which policy travels from one polity to another. More succinctly, as Rose (2005) observes, policy learning entails a rational attempt by decision-makers to take up a 'foreign' policy innovation (in light of what happened elsewhere) while striving to suit the policy innovation to local or domestic conditions or circumstances. In addition, Rose notes that policy learning seeks to answer three distinct questions. First, it seeks to examine the origin of policy. Secondly, policy learning focuses on highlighting the motivations behind the adoption of 'foreign' policy. Thirdly, policy learning investigates the role of actors (assumed to be acting rationally) and evidence in the entire process. In relation to the motivations behind the adoption of a 'foreign' policy innovation, Rose (2005) observes that policy actors resort to learning as a rational attempt to change the status quo arising from a deep sense of dissatisfaction, or as a result of possible coercion (such as through the threat of the imposition of various sanctions and 'positive pressure').

However, Stone (2000) criticizes lesson-drawing proponents for their assumption that lesson drawing proceeds through a rational attempt by policy-makers to change policy, as well as for wrongly concluding that lesson-drawing occurs voluntarily. Stone observes that, for most developing countries - particularly in market liberalization policy processes - lesson-drawing proceeded involuntarily and irrationally; especially because various policy prescriptions were imposed as 'solutions' by international financial institutions (Stone, 2000).

Bulmer et al (2007) note two factors behind the rapid increase in the practice of policy transfer. First, they note that the relative growth in transnational institutional architecture (of which the European Union) is an excellent (but certainly not a perfect example) for transfer have placed more impetus and provided opportunity for other political systems to both learn and transfer. Secondly,



technological advancements have made global communication instantaneous, “bringing a greater awareness of alternative policy responses” (Bulmer et al, 2007:24). Therefore, as states are confronted by similar global economic and political challenges, they have the ability and choice – to some reasonable extent – to benefit from the utilization of information and policy responses applied in other political systems and settings.

Thus far, the concepts of policy diffusion, convergence, lesson-drawing and transfer have been discussed. Although used interchangeably within the public policy literature (Knill, 2005), two crucial distinctions should be acknowledged. First, analytically, policy convergence entails an analysis of policy *effects*, whilst lesson-drawing and policy transfer involve the analysis of the policy *process* (Bulmer et al, 2007). Second, while “convergence and diffusion literature assumes an ineluctable process of policy approximation, policy transfer is more agnostic as to the effects of the process” (Bulmer et al (2007: 14-5).

### 2.3: Dolowitz and Marsh (2000) Model

Dolowitz and Marsh’s (2000) policy transfer analysis addresses the shortcomings inherent in both diffusion and lesson-drawing approaches by not a priori privileging rationality and deliberation in the process through which policy travels (Bulmer et al, 2007). Dolowitz and Marsh (2000:3) define policy transfer as “the process by which knowledge of policies, administrative arrangements, institutions and ideas in one political system (past or present) is used in development of policies, administrative arrangements, institutions and ideas in another political system”. Implicit in the definition by Dolowitz and Marsh (2003) is the facts that although policy-makers may indeed act rationally and voluntarily, policy adjustments may possibly also emerge as a result of insufficient observation, normative pressures, as well as the utilization of coercion to force policy adjustments.

Dolowitz and Marsh's (2000) model of policy transfer commences with the description of transfer as either voluntary or coercive. Thus, they observe that transfer may be perfectly voluntary (just as noted by Rose (2005) in lesson-drawing), or may be imposed on a state by outside forces due to relative power asymmetries that may originate from imperial aspirations and related dynamics. Their conceptualization of transfer as 'perfectly voluntary' is informed by the fact that policy-makers resort to transfer as a rational attempt to respond to a real or perceived problem, or overwhelming desires to change the status quo. Nonetheless, various scholars of the policy process contend that the process of policy transfer does not always proceed rationally. To the contrary, it proceeds through a process of 'bounded rationality' where the role of policy actors and their perceptions significantly influence transfer decisions (Knoepfel et al, 2007). In the same vein, Dolowitz and Marsh (2000) note that states may be compelled to adopt specific policies due to their obligations as members within a given organization - a situation they aptly refer to as 'obligated transfer'.

Dolowitz and Marsh (2000) model of policy transfer is based on the inquiry of four distinct questions. Their first question entails the understanding of *what* is transferred? Towards this end, transfer parameters may entail possible transfer of policy goals (Dolowitz, 1997), ideas (Dolowitz, 1998), institutions (i.e. law, procedures, organs and bodies) (Dolowitz and Marsh, 2000; Dolowitz, 2001; Stone 2000). In addition, the spectrum of policy transfer can serve dual purposes. Emulation will involve the adoption of positive policy lessons, while policies can be turned down due to their real or perceived failure in different political systems (Dolowitz and Marsh, 2000).

The second question in their model of analysis entails an inquiry into *who* is involved in the process of policy transfer? Bulmer et al (2007) note that policy transfer often involves two different types of actors, borrowers and lenders, and that these seldom change. In the same regard, Dolowitz and Marsh (2000:3) identify nine broad categories of actors who are involved in the process of policy

transfer: elected politicians; political parties; governmental bureaucrats; mobilized and organized interest groups; policy entrepreneurs; business; policy think tanks; supra-national government institutions; and non-governmental institutions. An important contribution here is the fact that policy transfer is not exclusively a responsibility of governmental actors, but involves a myriad of other policy actors and interested segments of society.

The third question posed by Dolowitz and Marsh (2000) entails an inquiry into *what motivates* the process of policy transfer? They identify two forms of motivations: context-specific and policy-specific. Context, they note, will influence the character of transfer. For example, transfer is likely to be voluntary if pursued during times of relative political stability and economic prosperity. However, transfer pursued during political or economic crises are likely to be coercive or conditional.

The fourth question posed by Dolowitz and Marsh (2000) relates to the understanding of policy *outcomes*. They identify four possible variants: emulation, synthesis, influence and abortive. *Emulation* involves the copying of a policy model from one jurisdiction and applying it, with contextual differences in mind, in a different jurisdiction. Emulation represents the strongest form of policy transfer. *Synthesis* on the other hand, involves the inclusion of two or more aspects of different policy models into a given jurisdiction. In the same vein, *influence* represents a weaker form of transfer where an external policy model serves only as an inspiration, but institutional architecture is follow dependent on domestic factors and forces. The *abortive* variant represents unsuccessful policy transfer as characterised by the blockage of the transfer process by veto wielding actors.

In summation, it is critical to observe that policy transfer is not a one-off event but a long and protracted process that also involves 'learning-by-doing' especially when policy is implemented and subjected to constant review.

## CHAPTER 3: REGIONALISM AND INTEGRATION IN THE EUROPEAN AND EAST AFRICAN CONTEXTS

Since 1958, the EU has grown in leaps and bounds, going beyond primary focus on continental Europe to being a key global actor in world affairs. Today, every facet of world politics is influenced to one extent or another by the EU. Indeed, as Soderbaum and Stalgren (2010:19) argue, due to its character of 'presence', attributed to the EU's relative size (in terms of demography, economics and dogmatic orders) profound imprints of the EU have been engraved on the world arena. Thus, from a global perspective, the EU is widely viewed and recognized not only as a supporter of regional integration but also as a 'model' often worth emulating or learning from (Schulz and Lombaerde 2010). This chapter therefore discusses regionalism and integration within the European and East African contexts, highlights the institutional architecture between the EU and EAC, and notes the limitations of the EU as an 'appropriate' model of regional integration – relative to the EAC.

### 3.1: Conceptual Clarifications: Regionalism and Integration

To clearly understand regionalism and integration between the European and East African context, the specific concepts of 'regionalism' and 'integration' need to be delimited. Deutsch (1989:273) conceives of integration as "as the attainment within a territory of a sense of community and of institutions and practices strong enough and widespread enough to assure for a long time change among its population." Haas (1971:3) on the other hand, defines integration "as the tendency towards the voluntary creation of larger political units, each of which self-consciously eschews the use of force in the relations between the participating units and groups." Thus, from the above definitions, it can be concluded that integration entails the convergence of two or more political

entities in pursuance of a shared (or common) mutual benefit. There are therefore various forms of integration: Economic (e.g. the Common Market for East and Southern African States- COMESA), Political (e.g. the African Union-AU), and Security (e.g. the North Atlantic Treaty Organization – NATO).

On the other hand, the concept of ‘regionalism’ is used in the description of relations between an entity (whether a single state or regional body) with another (Kirchner, 2006). As Ogbeidi (2010:479) observes, regionalism is “a foreign policy tool that defines international interests of a country in terms of geographic areas”. In addition, in the realm of international politics, regionalism entails not only the amalgamation of entities into regions, but the subsequent transfer and sharing of authority (and sovereignty) between the states and the regions (Ogbeidi, 2010).

## 3.2: Regionalism and integration in the East African and European context

### *3.2.1: Integration and Regionalism in the East African Context*

The proclivity towards regional integration in Africa can be traced back to the 1950s and the 1960s following the spread of various pan-African ideologies advanced by leaders such as Kwame Nkrumah of Ghana and Mwalimu Nyerere of Tanzania – who both advocated and promoted various forms of regionalism and integration through the promotion of African unity and the creation of a United States of Africa (Griggs, 2003). Nonetheless, as Bachmann and Sidaway (2010) note, despite several attempts at integration in Africa, the process proceeds hesitantly. Continentally, the African Union (AU) has continued to register mixed results in effectively responding to the continents’ socio-economic and political challenges; regionally, a host of other regional integration processes such as the East African Community (EAC), the South African Development Community

(SADC), and the Economic Community for West African States (ECOWAS) proceed slowly and with uncertainty.

The pursuance of regional integration within the East African nations is not entirely novel. Earlier forms of integration can be traced back to the pre-colonial period when communities freely interacted through a process of unrestricted long-distance trade where various goods were traded from the coastal ports of Kenya and Tanzania deep into the heart of present day Uganda (Lumumba, 2009). In addition, the colonial period - when Kenya, Uganda and Tanzania were all under British administration - witnessed various forms of 'administrative' integration within the financial, transportation and legal spheres.

However, despite these initial efforts at integration, the people of these nations did not experience any form of official integration until the post-independence period when the East African Community (EAC) was established in 1967 (Lumumba, 2009). According to the 1967 Treaty establishing the EAC, the partner states pursued economic integration for purposes of deepening their political and socio-economic development. For instance, economically, the member states would benefit from the economies of scale as each state would only export to partner states that which they were able to produce at a lower cost –relative to the rest of the partners. Further, as the Treaty observes, integration would also make it possible for the member states to pool both financial and material resources towards the accomplishment of development projects that would hitherto be prohibitively expensive to execute. In addition, the treaty envisaged that integration

would give member states leverage in bargaining and negotiating crucial multilateral trade agreements.

Unfortunately, the EAC of 1967 only lasted a decade and collapsed in 1977 mainly due to the heterogeneity of political, ideological and constitutional dimensions. From an ideological point, Tanzania had deep-rooted socialist policies while Kenya and Uganda were persuasively capitalist. Nonetheless, the EAC was revived again in 1999 by the original founding countries of the former EAC (Kenya, Uganda and Tanzania) through the Treaty Establishing the East African Community (TEAC) of 1999. Rwanda and Burundi later joined the Community in 2004. Table 1 (below) denotes an ambitious EAC fast-track program that would culminate in integration into a political federation. Currently, the community operates as a common market and efforts at merging into a political federation are proceeding apace. Various organs of the new EAC such as the East Africa Court of Justice (EACJ), and the East African Legislative Assembly (EALA) are currently operation- albeit with mixed results. (The EACJ is analyzed in greater detail in Chapter 3).



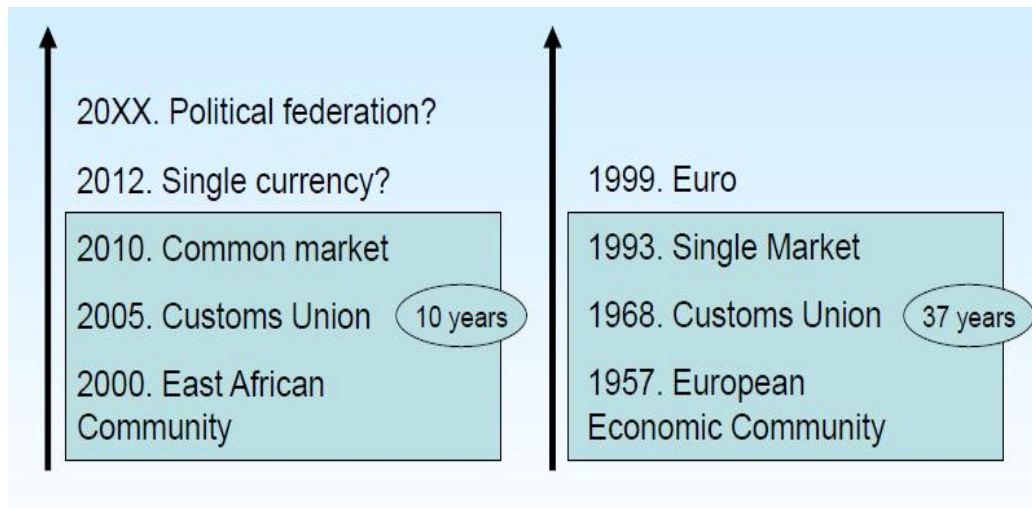
Table 1: EAC Integration Fast-Track Process

YEAR	MILESTONE	OBSERVATIONS
2005-2010	Establishment of the East African Customs Union	Established in 2005
2010- Onwards	Establishment of the East African Common Market	<p>Protocol for the Establishment of the East African Common Market signed in 2009, and ratified in May 2010.</p> <p>July 2010 – East African Common Market comes into force.</p> <p>However, slow institutional and legislative reforms at state level continue to hamper the full enforcement of the Common Market principles.</p>
2012 - Onwards	Establishment of the East African Monetary Union	Negotiations Ongoing
2012- Onwards	Establishment of the East African Political Federation	Negotiations Ongoing

Source: Own Adaptation

As envisaged in the fast-tracked integration process, the East African Community has made significant progress in so far as the attainment of a common market is concerned. Indeed, from a comparative perspective, whilst it took the EU approximately 37 years to establish a single market, the East African Community has taken only 10 years to achieve a Common Market. Nonetheless, EAC markets still remain in their embryonic stages. Moreover, in spite of the creation of an EAC Common Market, there are still several non tariff barriers that act as bottlenecks to the free flow of investment, capital, labour and other production factors.

Figure 1: Establishing a Common Market - The EU and EAC in Perspective



### 3.2.2: Integration and Regionalism in the European Context

It would not be wrong to argue that the European Union has indeed achieved a deepened level of integration that is so far unrivalled. Indeed, throughout its integration history, the Union has continued to seek even deeper integration. This was even more apparent during the mid 1980s when Treaty amendment – to further integration goals – was a defining feature of EU agenda. Consequently, the EU that was established in 1993 has evolved to encompass a wide variety of policy areas with the Union increasingly expanding its areas of competence, and integration projects widening significantly.

Thus, compared to other integration initiatives elsewhere, the EU embodies all the characteristics of a 'perfect' union. Indeed, others have even referred to the EU as an emerging 'superstate' (Monar and Wessels, 2001:78-88). Nonetheless, for those supporting a political union, the EU remains a "fluid organization than its name suggests" (Cini et al, 2010:46). Noteworthy, however, is the EU

governance structure characterized by a convergence of supranational integration and intergovernmental cooperation that defines European regionalism (Kirchner, 2006).

Although subsequent Treaty revision within the EU has expanded the Union's competence, this coupled with its enlargement, has undoubtedly brought to the fore various challenges- particularly those brought by the increasing complexity of its structures and procedures (Bache and George, 2006). As the negotiations of the 2004 Constitutional Treaty, its subsequent rejection and replacement by the 2007 Lisbon Treaty attest, there are marked differences in opinion and ideology in so far as EU partner states seek to respond to the challenges brought about by enlargement and EU competency expansion. As Wiener and Diez (2004:119) aptly note, EU partner states are far away from deciding what the union's "*finalite politique*" will look like.

Thus, although since establishment the Union "remains a complex, indeed messy, mix of supranationalism, intergovernmentalism and differentiated forms of integration" (Cini et al, 2010:46), the EU remains "*Sui Generis*" and will continue to provide valuable lessons for emerging regional integration initiatives elsewhere (Winters, 2010:18).

### *3.3.3: The European Union as a Model of Regional Integration and the Limits of Emulation and Comparative Integration*

As various scholars have observed, the relative success with which the European Union (EU) has succeeded in significantly deepening the level of integration among its members has undoubtedly presented it as an attractive role model and benchmark (Lombaerde and Schulz, 2009) for emulation and copying in other regional integration processes elsewhere. Consequently, as

Wunderlich and Bailey (2011) observe, the EU has keenly been looked upon - by both academics and policy practitioners- somewhat as a near-perfect example of the manner in which regional integration processes can proceed and develop, as well as how the architecture of effective regional institutions may be designed or ultimately built. Moreover, an analysis of the objectives of integration between the EAC and the EU reveals a striking similarity with economic and political considerations being the driving forces of integration. However, although both the EU and the EAC have not realized significant political integration, significant economic integration has been attained by the EU (Wiener and Diez, 2004).

Indeed, a critical observation of the ensuing institutional architecture of proliferating regional integration initiatives such as the East African Community highlights a close resemblance to the European Union. Table 2 (below) gives an overview of the institutional architecture between the EU and the EAC.

Table 2: Comparative Overview of EAC and EU Institutional Architecture

Role and Function of Institution	East African Community (EAC)	European Union (EU)
Strategic and Political Leadership/Authority	The Summit of the Heads of State and Governments – also known as ‘The Summit’	The European Council
Initiation, Coordination and Formulation of Policies	Council of Ministers – Comprising Ministers in Charge of Regional Cooperation from the Partner States in coordination with the EAC Secretariat	European Commission
Executive Secretariat	The EAC Secretariat, Headed by Secretary General appointed by the Summit.	The EU Commission, Headed by a President appointed by the European Council
Legislative Authority	The East African Legislative Assembly (EALA)	The European Parliament (EP)
Judicial Mechanism	The East African Court of Justice (EACJ)	The European Court of Justice (ECJ)

Source: Own Adaptation

The European Union is therefore regularly regarded as a model to be emulated by ensuing regional integration initiatives – in the short term as a panacea to the challenges and problems experienced in a specific region or in the long term as the ultimate goal of regional integration. As Lee (2003) notes, this is particularly the motivation behind regional integration efforts in Africa and in Latin America. In the same breadth, as Lim (2004) observes, the European Union’s model of integration is also regarded as an “anti-model” - a model of deepened integration that countries and other regions of the world (such as in Asia) do not want to emulate or wish to avoid altogether. Reference to the European Union model of integration has also been made in order to highlight the inherent or perceived limitations and the narrow approaches of integration pursued by various regions, as well as to highlight the (over) ambitious goals and grand-visions of integration sought by various regional integration groupings in Africa and Latin America (Bilal, 2005). In either case therefore, the

European Union model of integration is a dominant reference point informing and influencing regional integration efforts globally.

However, as a global player, the European Union not only presents a model of regional integration to be emulated; it is also an influential actor supporting and promoting regional integration efforts (Keukeleire and Mac Naughton, 2008). The European Union has therefore actively supported such initiatives through pursuance of trade negotiations such as the Economic Partnership Agreements (EPAs) with several regional groupings in Africa, the Caribbean and in the Pacific; through conditional and unconditional development assistance, as well as through the pursuance of political dialogue with specific regional groupings. For instance, over the past decade the European Union has commenced various formal political and economic cooperation agreements such as the ASEAN-EU Programme for Regional Integration Support (APRIS I 2003-2006); the Support Programme for Central-American Regional Integration 2002-2006; the cooperation between the EU and the Secretariat of the Andean Community (1992-2007); the cooperation between the EU and MERCOSUR; the EU-CEMAC cooperation with the East African Community (2002-); and the Euro-Mediterranean Free Trade Area (EMFTA) (2004-2007).

Despite the EU providing a reference point for regional integration worldwide, there are various limitations to the extent to which it may be utilized as a reference point for regional integration-particularly in relation to the East African integration experience. Notably, both regional integration processes are not only spatially apart but fundamentally different from several dynamics. For instance, as Kirchner (2006:12) observes, the EU had to overcome decades of war and “benefited from special circumstances in its development” through for example: opportunities presented by the

end of the cold war, guarantees and nurture provided by the United States, as well as the highly industrialized state of most of its economies (Kirchner, 2006). This is a stark contrast to the scenario prevalent with the East African region- a region dominated by several latent conflicts, weak economies and prevalent poverty. In temporal terms, the EAC and EU are over six decades apart.

In summation, the utilization of the EU as a model for other regional integration environments ought to take cognizance of these limitations and the special circumstances that specific regional integration initiatives find themselves in. Most importantly, the EU experience of regional integration can best be used in the analysis of ensuing regional integration policy and institutional architecture - rather apply the EU experience to subjectively judge the relative successes and failures of specific regional integration initiatives.

## CHAPTER 4: CASE STUDY- POLICY TRANSFER BETWEEN THE EUROPEAN COURT OF JUSTICE (ECJ) AND THE EAST AFRICAN COURT OF JUSTICE (EACJ)

This chapter discusses the case of policy transfer between the European Court of Justice (ECJ) and the East African Court of Justice (EACJ). The chapter sets off by presenting a brief historical analysis of the evolution of the ECJ and the EACJ before highlighting the emulated institutional and doctrinal features of the ECJ that are evident in the EACJ. The chapter then proceeds to discuss the nature of policy transfer occurring and in addition highlights the challenges to successful policy transfer between the two institutions. In concluding, the chapter notes that aside from the emulated institutional design and architecture, the ECJ's other significant contribution to the EACJ – as well as other similar International Courts – is the embedded approach to international law.

### 4.1: The European Court of Justice (ECJ)

The ECJ was established in 1951 as a component of the Treaty establishing the European Coal and Steel Community (ECSC). At its formation, its role was to ensure that the application and interpretation of the treaty was within the provisions of the law. However, as the process of European integration deepened, the ECJ also saw its role expand. However, it was not until 1958 when the Treaties of Rome that established the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM) extended the mandate of the ECJ to serve the three communities, that the ECJ emerged as a truly supranational court with compulsory jurisdiction over all areas falling within the scope of the three Treaties (Kapsis, 2010). Further, in 1986 the Single European Act (SEA) amended the Treaties and established the Court of First Instance (CFI) that ultimately began its work in 1989. Over the years, the Maastricht Treaty of 1992, the Treaty of



Amsterdam, and the Treaty of Nice that entered into force in 2003 have significantly extended the ECJ's powers beyond those envisaged in the 1951 ECSC. Moreover, the ratification of the Lisbon Treaty promises to further expand the powers of the ECJ to a new "Area of Freedom Security and Justice" (Halter, 2004:189).

Although various scholars have noted the ECJ's efficacy as a supranational court, a critical analysis of the court during the 1950s and 1960s paints a different picture. Despite its broad legal mandate as provided in the Treaty establishing the ECSC, the Court mainly concerned itself with substantive and procedural issues (Alter, 2010), often avoiding the politically sensitive issues that would "place powerful governments in a difficult position" (Bache and George, 2006:327). Moreover, as Bache and George (2006) further observe, with its legitimacy significantly hinged upon the reaction of member states, a 'safe' position for the Court to take at that time was to avoid these politically sensitive rulings (that often elicited nationalist emotions and raised questions on state sovereignty), as non-enforcement and non-compliance to its rulings by member states would significantly have eroded the Courts' much needed legitimacy at that point in time. It is however not clear whether these actions of the Court were pursued as a matter of strategy, policy or was simply accidental.

Whilst it has been observed that the ECJ of the 1950s and the 1960s was somewhat 'ineffective' and faced several challenges, its authority expanded through the provisions of successive Treaties; and most importantly through its own creativity through the use of a 'teleological' interpretation of the Treaties -, meaning, "the Court reading the text – and the gaps in the text – of the Treaty in such a way as to further what it determines to be the underlying and evolving aims of Community

enterprise as a whole” (Craig and De Burca 2007:274 as cited in Kapsis, 2010: 178). Although the Court has faced criticism over rulings made through the teleological interpretation of Treaties, such rulings have found acceptance with national governments and judiciaries who often implement these rulings (Kapsis, 2010). Undoubtedly, as various scholars have observed, the Court has significantly contributed not only to the deepening of the Union (Cygan, 2011; Kirchner, 2006; Soderbaum, 2011), but to transforming internal law and legal orders as well (Alter, 2010; 2011).

## 4.2: The East African Court of Justice (EACJ)

The East African Court of Justice was established by the Treaty establishing the East African Community and has been operational since 2001. The Court is composed of six judges who are all appointed by the Summit of the Heads of State. According to Article 27 of the Treaty establishing the EAC, the Court has jurisdiction over interpretation and application of the Treaty. Despite being in operation for ten years now, the Court has not had many matters brought before it. Indeed, in the first four years of its operations, the Court did not have a single matter before it. A scenario similar to the ECJ at formation. According to officials of the Court, this was partly attributed to the fact that judiciaries in the partner states, as well as legal residents of the East African region, hardly knew of the jurisdiction of the Court, and the procedures through which they could bring a matter before it<sup>1</sup>. Thus, should litigation rates (since litigation partly denotes the level in which a Court is deemed as valuable) be used as a measure of the Court’s efficacy, the Court has been largely ineffective.

Nonetheless, a 2006 ruling of the Court was widely regarded as “most significant” and “revolutionary” by the Court’s officials as well as a representative from the Ministry in Charge of the

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<sup>1</sup> Interview at the EACJ Registry section, May 12<sup>th</sup> 2011.

EAC in Kenya<sup>2</sup>. In that case (*Prof. P. Anyang' Nyongo et al vs. Attorney General of the Republic of Kenya et al*), the applicants sought to prevent nine Kenyan representatives to the East African Legislative Assembly (EALA) from being sworn in as Members of the EALA as the Kenyan process of electing the said representatives was inconsistent with the TEAC. In its preliminary ruling the EACJ accepted the applicants' pleas, subsequently not only blocking the Kenyan representatives from assuming office, but also causing the EALA to suspend its sittings until the matter was fully determined. The ruling produced a lot of political heat with various political leaders remarking that the Court had intervened in what was otherwise a purely political issue (East African, 2006).

What followed was a show of political might and total disregard of the doctrine of separation of powers; since in a hastily convened Extra-Ordinary Summit of the Heads of State, the Summit swiftly responded by amending the TEAC in order to extend the grounds through which a judge of the EACJ could be removed – a gesture ostensibly meant to cow the judges. Nonetheless, in its final ruling the EACJ not only upheld its ruling but after a case brought forward by the East African Law Society to challenge the amendment of the TEAC (*The East African Law Society vs. the Attorney General of Kenya et al*) also ruled that the Treaty amendment by the Summit infringed the Treaty itself. Most importantly, in its ruling (in both cases), the judges relied heavily and mentioned similar judgements and precedence set by the ECJ.

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<sup>2</sup> Interviews: Ministry of EAC, Nairobi-Kenya 7<sup>th</sup> May 2011, and EACJ Arusha, Tanzania 13<sup>th</sup> May 2011.

### 4.3: Policy Transfer between the Courts

Table 3 (below) highlights cases of policy transfer and emulation between the ECJ and EACJ. Although various institutional and doctrinal features are strikingly similar, various variations abound. For instance, although both Courts have a mechanism for preliminary reference, Articles 33 and 34 of the TEAC places limitations on national courts through providing that national courts can only seek preliminary references in matters where the national courts deem that a response by the EACJ – to the questions brought before it by the national court – would aid the national court in delivering its judgement. However, unlike the ECJ, rulings of the EACJ lack a direct effect mechanism. Indeed, without the direct effect mechanism that has given meaning to the ECJ's preliminary reference procedure, the EACJ procedure remains all but ineffective. Nonetheless, consistent with the ECJ, the EACJ rulings have precedence over those of national courts.

Table 3: Policy Transfer Parameters -The ECJ and EACJ

Policy Transfer Parameter	ECJ	EACJ
Overall Mandate/Function	Ensure that the Law is observed in the interpretation and application of the Treaties establishing the European Communities	Interpretation and application of the Treaty establishing the EAC provided that the Court's jurisdiction to interpret does not include the application of any such interpretation to jurisdiction conferred by the Treaty on organs of Partner States (Article 27 TEAC).
Composition	27 Judges – 1 from each member state	6 Judges – 2 from each of the three founding member state
	Court of First Instance (Operational Since 1989)	Court of First Instance (Operational Since 2006)
Jurisdiction and Judicial Procedures	Direct Actions (Article 226-228 EC and Article 232)  References for Preliminary Ruling	References for Preliminary Ruling (Article 29 TEAC, Article 33 TEAC and Article 34 TEAC)

	(Article 234)	
	Administrative Review Powers	Administrative Review Powers
	Constitutional Review Powers	Constitutional Review Powers
Non-Compliance Mechanism	European Commission can forward a non-compliance issue to the ECJ.	In case of non-compliance, the Summit of the Heads of States directs the Secretary General to bring a matter before the EACJ

Source: Own adaptation.

Likewise, although both Courts have explicit non-compliance mechanisms, with the EC responsible for forwarding non-compliance issues to the ECJ; within the EACJ, Article 29 of the TEAC mandates the Secretary General of the EAC to initially present a non-compliance issue to the Summit of the Heads of State. Consequently, should the Summit of the Heads of State not be able to resolve the matter, the Secretary General shall be directed to bring the matter before the Court. Moreover, unlike the ECJ whose non-compliance mechanism provides for specific remedial action, the EACJ mechanism fails to outline any. Thus, an important observation to note is the recourse to political solutions firstly within the EAC, before a judicial solution is sought. Indeed, interviews with various EACJ officials noted that not a single non-compliance issue has been brought before it- although they noted several complaints of non-compliance (particularly in adherence to the Common Market Protocol) have been brought to the attention of the Summit of the Heads of State. Noteworthy, a similar provision in Article 259 of Treaty for the Establishment of the European Union (TFEU) has only been used in a handful of cases since the 1950s (Kapsis, 2010).

#### 4.4: Explaining Policy Transfer

The foregoing section has highlighted that several institutional and ideological features of the ECJ have been copied by the EACJ. However, so far it is not yet clear why the architects of the East African integration process chose to copy and emulate experiences from the European Court of Justice. Alter (2011) aptly observes that instances of legal emulation are not new and uncommon, rather it is common practice within the legal fraternity to look beyond borders whenever an institutional challenge for which a solution is sought arises. In such cases therefore, understanding how other legal systems have responded to such challenges provides a strong basis for institutional emulation and copying; ultimately resulting in remarkably similar institutional architecture and formal organization of legal systems for specific issue areas. Indeed, interviews with various officials of the EACJ confirmed that drafters of the Treaty establishing the EAC made direct reference to the ECJ in a bid to designing an appropriate and effective judicial mechanism for the EAC<sup>3</sup>.

In addition, another official of the EACJ pointed to the influence of the European Commission during the negotiations towards the formation of the EAC, as well as during the setting up of its organs as greatly contributing to the emulation of the framework of the ECJ. According to the official, the EC has since inception of the Community offered unconditional technical support and financial aid to the EACJ. EC Technical support has so far included the secondment of technical staff by the EC to the EAC Secretariat and its organs - such as the EACJ, and the training of EACJ judges in specific legal subjects (both locally and in Europe). Financially, the EC has contributed to the EACJ operational budget each year since its inception.

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<sup>3</sup> Interview, EACJ Outreach Section, 14<sup>th</sup> May 2011.

In the same vein, an official of the EAC Secretariat noted that the drafters of the Treaty establishing the EAC – while envisaging the eventual development of a common market regime within the community – explicitly saw the ECJ experience as a more perfect alternative (for the common market) to the World Trade Organization judicial model (that they felt was best suited for Free Trade Areas)<sup>4</sup>. Moreover, the official further noted that the ECJ model was emulated since the efficacy of the Common Market involved secondary implementing laws for which national governments will be responsible for. The adoption of the ECJ model, the Secretariat official further opined, was also as a result of extensive persuasion by organized regional groupings such as the East African Business Council- who while facing corruption-ridden Courts in their respective countries-, openly lobbied their respective national governments to avoid the shortcomings and pitfalls experienced in domestic courts through the adoption of the ECJ typology at regional level.

A common theme from all respondents interviewed towards the understanding of policy transfer between the ECJ and the EACJ was their assertion to the effect that cases of emulation were informed not by regard to the foundations of the ECJ as being legally authoritative; rather the ECJ (and its successes in Europe) provided a critical benchmark for the design of the EACJ. Thus, although the EACJ largely borrowed from the experiences of the ECJ, its eventual doctrines were adapted in order to respond and fit with local needs.

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<sup>4</sup> Interview, EAC Secretariat, 13<sup>th</sup> May 2011.

## 4.5: Transferring Success? The Challenges to Successful Policy Transfer within the EACJ

Although the EACJ may have emulated the institutional design and some doctrines of the ECJ, the Court has not been as successful as its European counterpart. For instance, within the first four years of its inception the Court heard no cases since its jurisdiction was limited to the interpretation of the Treaty establishing the EAC (Nsekela, 2009). Likewise, unlike the ECJ which established its own human rights jurisdiction, the EACJ lacks jurisdiction over human rights issues. Its arbitration jurisdiction –available to regional businesses and governments-, remains untested to date. Ironically, regional business conglomerates such as the East African Breweries Limited (EABL) as well as the member states have resorted to utilizing international arbitration services in London and Paris despite the Court offering arbitration free-of- charge in a case where a member state is concerned. As an official of the Court noted, this scenario manifests due to the ignorance of East African law within the region-particularly amongst the judicial community.

In a study of the spread of European Style international courts, Alter (2011) notes that although there are more than eleven cases of emulation of the ECJ, most of the resultant institutions remain largely ineffective (as measured through their litigation patterns). The inefficacy, Alter notes, emanates from various sources. First, the large number of secondary legislations that together with the lack (or little) support given by national judiciaries often hampers the process of litigation. Secondly, many common market regimes are very weak – or dominated by one member state making judicial reference less likely. Thirdly, the political will to implementing regional legislations mirrors the lack of political will towards pursuing deepened integration particularly in Africa.



Moreover, unlike the ECJ, many emulations of the ECJ lack a larger social purpose and only exist for integration purposes (Alter 2010, Alter and Helfer, 2010).

In addition, temporal considerations can also explain the failure of successful policy transfer between the two Courts. As Alter (2011) further observes, the ECJ spent the earlier decades of its inception creating a culture where community law reigned supreme in national legal orders. However, this is not the case with the EACJ, where supremacy is simply assumed through the notion of direct effect. Moreover, as Alter (2011) further observes, a common misconception within most of the proliferating ECJ models is the tendency by member states to view community law as being distinct from both domestic and traditional international law.

## 4.6: The Case for Policy Learning

The experience of the ECJ offers the EACJ several policy lessons worth noting. Firstly, through analyzing the historical evolution of the ECJ, the EACJ can emulate the ever increasing involvement of the ECJ in deepening regional integration in the EU. Secondly, through the experiences of the ECJ, the EACJ can also learn and avoid the pitfalls through which sovereignty concerns of the 1950s and 1960s hindered the effective functioning of the ECJ. By avoiding – or devising mitigation and response strategies – the EACJ can be insulated from experiencing these pitfalls. The EACJ must learn both positive and negative lessons from the experiences of the ECJ – as it is certainly finding itself in the same political environment that the ECJ faced in its formative years.

Most importantly, the EACJ must exploit the opportunities of litigation that it may face in the future in order to utilize its legal interpretative authority in such a way as to overcome political blockages.

Indeed, as Vauchez (2008a) observes of the ECJ's seizure of litigation opportunities to diminish state control, the EACJ contribute to the establishment of a strong East African legal by emulating the creativity of the ECJ judges.

Likewise, an important lesson worth learning from the ECJ appertains to the advocacy and reform movement that also contributed to the success of European law and respect for the ECJ. With a credible movement of reform-minded intellectuals, government officials, lawyers and national judges- the ECJ benefited from the nurture and contribution of a wide array of stakeholders (Vauchez, 2008b). Such a group is yet to emerge within the EAC. Although groups such as the East African Law Society (that brings together all bar associations from the region) continue to get involved with the EACJ, more critical involvement is necessary.

#### 4.7: Conclusion

In conclusion, while this section has highlighted the case of institutional emulation between the ECJ and the EACJ, the most important contribution of the ECJ should not only be seen through the prism of the ensuing institutional architecture. Rather, an important contribution worth acknowledging as Alter (2011:17) observes:

...is the larger legal contribution to international courts and international law [is] its creation through practice of a portable model of an effective embedded approach to international law, where international rules are part of national legal orders, and where national and international judges dialogue about the application of these rules in concrete cases.

In addition, although the EACJ has been widely inspired and largely emulated the ECJ, it is impossible to predict whether the EACJ will take the revolutionary direction that the ECJ has over

the years taken. Nonetheless, through the two judgements made by the EACJ in 2006, the Court has (despite ensuing political pressure) shown a commitment to the rule of law and made a significant contribution to the creation of a supranational community bound by the law as well as a distinct EA legal order. However, there are still several challenges to overcome, and opportunities to exploit.

## CHAPTER 5: CONCLUSIONS, IMPLICATIONS AND RECOMMENDATIONS

The main concern of this study has been to identify the case of policy transfer between the European Union and the East African Community, the scope and dimensions of policy transfer, as well as the obstacles to successful policy transfer. By explaining this, the study hopes to contribute to the understanding of the phenomena of policy transfer, particularly in the realms of regional integration. This section therefore draws some conclusions in relation to the research questions posed, as well as the implications of the case study findings on the broader phenomenon of policy transfer.

### 5.1: Explaining Policy Transfer

The case study of the EACJ provides compelling evidence on policy transfer from three dimensions: transfer of institutions and institutional architecture (generally between the EU and EAC as highlighted in Chapter 3), policy goals (integration goals), as well as policy design and content (as evidenced within the analysis of the ECJ and EACJ in Chapter 4). It can also be concluded from the case study that the degree of policy transfer involved aspects of copying, emulation and inspiration. However, although there is *prima facie* evidence to show that the process of policy transfer was voluntary, it was not possible to ascertain the role played by external agents such as technical experts seconded by the EU to the EAC Secretariat and the EACJ. With the role played by these external agents unclear, it is hard to ascertain whether all transfer elements were transferred voluntarily or through indirect coercive pressure.

## 5.2: Obstacles to Successful Policy Transfer

The case study of the EACJ has highlighted cases of incomplete policy transfer as well as obstacles in cases where policy transfer was complete. For instance, although both reference for preliminary rulings and non-compliance mechanisms have been successfully transferred to the EACJ, policy transfer was incomplete as important aspects of direct actions are missing within the EACJ. In terms of non compliance, the EACJ also fails to enshrine explicit remedial action for non-compliance. In this case, therefore, policy transfer was incomplete. A major obstacle noted for both completed and incomplete policy transfer is the lack of political will to widen the powers of the EACJ. Indeed, in the most observed rulings of the EACJ discussed in the case study, an overriding obstacle to the Court emanated from the political organ of the EAC – the Summit of the Heads of State and Governments who sought to amend the TEAC in a gesture that can be interpreted to signify an erosion of the EACJ independence.

## 5.3: Limitations of the Study and Recommendations for Further Research

The explicit explanation of why policy transfer takes place requires excellent and often unfettered access to key informants involved in both formal and informal agenda-setting and decisionmaking. Nonetheless, such access is often difficult and hardly comes by. This was even more difficult given the time frame available for this study. An important consideration in future research on policy transfer should consider the utilization of multi-level analysis as well as the generation of process-oriented case studies within policy implementation perspectives.

In conclusion, there is a serious limitation in inferring general conclusions on policy transfer from the EU to EAC from one case study. Thus, more research will be necessary particularly in developing a broader range of case studies taking into considering policy transfer in varying policy environments.

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