

**AN ANALYSIS OF THE EFFICACY OF THE EAC PROTOCOL ON PEACE AND
SECURITY: A CASE FOR INSTITUTIONAL REFORMS**

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DEDICATION

To my mother – for her ceaseless prayers, sacrifices and support.

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DECLARATION

I, REMMY MUNENE WANJAU, do hereby declare that this research is my original work and that to the best of my knowledge and belief, it has not been previously, in its entirety or in part, been submitted to any other university for a degree or diploma. Other works cited or referred to are accordingly acknowledged.

Signed: *mwanjau*

Date: 13 July 2021

This dissertation has been submitted for examination with my approval as University Supervisor.

Signed: *Mabuti Mubwa*

Mr. James Mabuti

(For Ms. Patricia Ouma)

ABSTRACT

Presence of peace and security are very important for the socio-economic and political development of any region. In a bid to ensure that peace and security are effectively maintained and promoted in the East African region, the EAC Protocol on Peace and Security was established. However, one of its major setbacks is that it contains weak institutions that are incomprehensive in nature. Unfortunately, such an aspect has the potential of hindering its effective implementation. Thus, this study analyses the efficacy of the EAC Protocol in preventing and managing security threats in the East African region from an institutional perspective. It achieves this by discussing the legal and institutional frameworks of the EAC Protocol and then assessing the inadequacies that exist in the latter.

This study adopts a doctrinal research methodology that involves discussing relevant legal instruments, as well as books, journal articles, reports and online sources, as it makes its analysis. Further, it conducts a comparative study by assessing the legal and institutional frameworks of the ECOWAS Protocol and also uses two case studies. From the analysis that is made, it is established that the EAC Protocol is largely ineffective because it has an incomprehensive institutional framework that hinders its effective implementation.

In a bid to address the foregoing, this study recommends that the EAC Protocol should be amended so as to revamp the features of its institutional framework – through enhancing its established institutional structures, incorporating relevant institutions and roles, and establishing an effective peace and security fund.

LIST OF ACRONYMS

| | |
|--------|---|
| APSA | African Union Peace and Security Architecture |
| ASF | Africa Standby Force |
| AU | African Union |
| EAC | East African Community |
| EACJ | East African Court of Justice |
| EALA | East African Legislative Assembly |
| EASF | East African Standby Force |
| ESF | ECOWAS Standby Force |
| ECOMOG | ECOWAS Cease-fire Monitoring Group |
| ECOWAS | Economic Community of West African States |
| MSC | Mediation and Security Council |
| PSC | Peace and Security Council |
| RSPS | Regional Strategy on Peace and Security |
| UN | United Nations |

LIST OF CASES

1. *Prosecutor v Félicien Kabuga*, ICTR Case No. 98-44B (2011).
2. *Prosecutor v Félicien Kabuga*, MICT Case No. 13-38 (2020).
3. *RCCB 303* (2015), Constitutional Court of Burundi.
4. *The East African Civil Society Organisations Forum v Attorney General of the Republic of Burundi and 2 others* (2019), First Instance Division Court.
5. *The Prosecutor v Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, ICC Case No. 01/09-02/11 (2011).
6. *The Prosecutor v William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang*, ICC Case No. 01/09-01/11 (2011).
7. *Uganda v Hussein Hassan Agade & 12 Others* (2010), High Court of Uganda.

LIST OF LEGAL INSTRUMENTS

1. *Arusha Peace and Reconciliation Agreement* (1999).
2. *Constitution of Burundi* (2005).
3. *East African Community Conflict Management Act* (2012).
4. *East African Community Protocol on Peace and Security* (2013).
5. *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).
6. *Protocol Relating to the Establishment of the Peace and Security Council of the African Union* (2002).
7. *Regional Strategy on Peace and Security* (2006).
8. *Revised ECOWAS Treaty* (1993).
9. *Treaty for the Establishment of the East African Community* (1999).

CHAPTER ONE: INTRODUCTION

1.1. Background

The terms “peace” and “security” from a regional perspective are defined as the presence of a safe and secure environment in a particular area,¹ such as the East African region. East Africa has a regional intergovernmental organisation of six (6) partner states known as the East African Community (the EAC) that was established in 1999.²

Currently, the EAC consists of six countries – Kenya, Uganda, Tanzania, Rwanda, Burundi and South Sudan – and its headquarters is in Arusha, Tanzania.³ It is structured into seven main organs, namely, the Summit, which consists of the heads of state and government of the six partner states;⁴ the EAC Council;⁵ the East African Legislative Assembly (EALA); the East African Court of Justice (EACJ); the Co-ordinating Committee; Sectoral Committees; and the Secretariat.⁶

The EAC has four integration pillars – the establishment of a customs union, common market, monetary union and political federation.⁷ Falling under the integration pillar of “political federation”,⁸ peace and security are fundamental features that help in the creation of a conducive atmosphere upon which integration in the East African region can be fostered properly.⁹

Underscoring the significance of these two concepts in regional integration, one of the main objectives of the EAC under the Treaty for the Establishment of the East African Community (the EAC Treaty) is to ensure the “promotion of peace, security, and stability” within the EAC

¹ Fast L, ‘Peace and security’, in Marquardt M (ed) *Human resources and their development*, 2nd ed, EOLSS Publishers, 2009, 202.

² Article 2, *Treaty for the Establishment of the East African Community* (1999).

³ See –<<https://www.eac.int/eac-partner-states>> on 19 March 2020.

⁴ Article 10, *Treaty for the Establishment of the East African Community* (1999). Currently, the Summit consists of Uhuru Kenyatta, the President of Kenya; Yoweri Museveni, the President of Uganda; John Magufuli, the President of the United Republic of Tanzania; Paul Kagame, the President of Rwanda; Évariste Ndayishimiye, the President of Burundi; and Salva Kiir Mayardit, the President of South Sudan.

⁵ Article 13, *Treaty for the Establishment of the East African Community* (1999). The EAC Council consists of the minister responsible for East African Community affairs of each EAC partner state; other ministers of the partner states as each EAC partner state may determine; and the Attorney General of each EAC partner state.

⁶ Article 9, *Treaty for the Establishment of the East African Community* (1999).

⁷ See –<<https://www.eac.int/integration-pillars>> on 19 March 2020.

⁸ This is a unified political authority capable of coordinating policies as well as ensuring sustainable political growth and development in the Region. See EAC Secretariat, *Towards political federation in the East African Community: Achievements and challenges*, 2014, 9.

⁹ See –<<https://www.eac.int/security>> on 19 March 2020.

partner states.¹⁰ Moreover, the EAC Treaty also recognises the need for peace and security in fostering socio-economic development within the East African partner states.¹¹

Unfortunately, despite peace and security being very important attributes of regional integration, several security threats have bedevilled the EAC ever since it was formed – post-election violence, acts of terrorism, cattle rustling, proliferation of illicit small arms and light weapons, transnational and cross border crimes, among other security challenges.¹²

Based on the foregoing, the EAC Council – in consultation with the Summit – established an East African Community Protocol on Peace and Security (the EAC Protocol) in 2013.¹³ However, one of its major flaws is that it has a weak and incomprehensive institutional framework. This framework generally consists of a regional institutional mechanism,¹⁴ an early warning system¹⁵ and institutional arrangements that are to be determined by the EAC Council,¹⁶ all of which are aimed at ensuring the effective implementation of the EAC Protocol.¹⁷

It is against this backdrop that this study analyses the efficacy of the EAC Protocol from an institutional perspective, and ultimately proposes features of a more efficient, robust and comprehensive institutional framework, with a view to ensure its effective implementation.

1.2. Statement of the Problem

Efforts in promoting peace and security in the East African region ought to be very effective and efficient. To ensure this, the EAC Protocol ought to encompass a strong and elaborate institutional framework that will sufficiently prevent and manage conflicts and security threats in East Africa.

However, the existing EAC Protocol has a weak and incomprehensive institutional framework that cannot effectively prevent and manage security threats in the East African region.

¹⁰ Article 5 (3) (f), *Treaty for the Establishment of the East African Community* (1999).

¹¹ Article 124, *Treaty for the Establishment of the East African Community* (1999).

¹² EAC Secretariat and German International Cooperation, *Promotion of peace and security in the East African Community*, 2014, 1.

¹³ See the *East African Community Protocol on Peace and Security* (2013).

¹⁴ See the Preamble, *East African Community Protocol on Peace and Security* (2013).

¹⁵ Article 2 (4), *East African Community Protocol on Peace and Security* (2013).

¹⁶ Article 15, *East African Community Protocol on Peace and Security* (2013).

¹⁷ Preamble, *East African Community Protocol on Peace and Security* (2013).

In order to effectively deal with the foregoing problem, this study proposes characteristics of an institutional framework that will not only make the framework robust, but also comprehensive and effective in preventing and managing security threats in East Africa.

1.3. Justification of the Study

Peace and security are vital to the establishment of a conducive environment upon which regional integration can be enhanced in all ambits.¹⁸ Further, these two concepts, are essential to the socio-economic development within the EAC, and are considered to be crucial to the achievement of the EAC objectives.¹⁹

Without these two aspects, the other integration pillars of the EAC – Common Market, Customs Union and Monetary Union – will not thrive. Further, the economies of the different partner states will not thrive due to closure of businesses, inflation of goods, and low tourism activities, amongst other reasons. Moreover, presence of peace and security in East Africa is important, specifically for a stable political federation, because it is only a peaceful and secure East Africa that will harness the objectives and aims of a political federation.²⁰

Core to the efficacy of any law or policy regarding peace and security, is the existence of robust and efficient institutions that will ensure the effective implementation of such laws and policies. It is for this reason that it is imperative to analyse and propose characteristics of an institutional framework that will enhance the implementation of the EAC Protocol, with a view to efficiently prevent and manage the constant security threats that occur in the East African region.

The study benefits the respective governments of the EAC partner states, because they will get viable ideas on how to enhance peace and security in their respective countries. Moreover, this study provides an opportunity for EALA and the national legislatures of the EAC partner states to get tenable ideas on how to amend the existing peace and security laws in the EAC and their individual countries respectively.

Further, scholars and researchers interested in areas concerning peace and security in the East African region also gain immensely from this study, because they get relevant material to add to their work as they embark on their research. Additionally, private sector entities in the EAC partner states also benefit from this study because their businesses will thrive in a peaceful and

¹⁸ See –<<https://www.eac.int/security>> on 19 March 2020.

¹⁹ Article 124, *Treaty for the Establishment of the East African Community* (1999).

²⁰ EAC Secretariat, *Towards political federation in the East African Community*,25.

secure environment. Lastly, this study benefits citizens and tourists of the EAC partner states because they will live with minimal fear as they conduct their daily affairs and visit the different countries of the EAC respectively.

1.4. Overall Objective and Secondary Objectives of the Study

1.4.1. Overall Objective

To analyse the effectiveness of the EAC Protocol in preventing and managing security threats within the East African region.

1.4.2. Secondary Objectives

1. To analyse the nature of the legal and institutional framework of the EAC Protocol.
2. To identify the inadequacies that exist in the institutional framework of the EAC Protocol.
3. To propose features of a robust and comprehensive institutional framework that will effectively deal with the prevailing security threats in the East African region.

1.5. Research Questions

1. To what extent is the EAC Protocol effective in preventing and managing security threats within the East African region?
2. What is the nature of the legal and institutional framework of the EAC Protocol?
3. What inadequacies exist in the institutional framework of the EAC Protocol?
4. What do features of a robust and comprehensive institutional framework that will effectively deal with the prevailing security threats in the East African region entail?

1.6 Hypothesis

In light of the mentioned objectives and research questions, this study hypothesises that the EAC Protocol is ineffective in preventing and managing security threats in the East African region because it lacks a robust and comprehensive institutional framework that will ensure its proper and effective implementation.

1.7. Research Methodology

This study uses a doctrinal research methodology. This approach involves the review of relevant legal sources relating to peace and security in the East African region such as the EAC Treaty and the EAC Protocol. This study also utilises books, chapters in books, journal articles, reports, online resources, amongst other sources, that are pertinent to peace and security matters.

This study further conducts a comparative study by critically analysing the legal and institutional framework of the existing ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security (the ECOWAS Protocol),²¹ with a view to assess the appropriate characteristics of a robust and comprehensive institutional framework.

Moreover, ECOWAS, just like the EAC, is an African sub-regional body that recognises the importance of “maintenance of regional peace, stability and security” in promoting regional integration.²² Further, “peaceful settlement of disputes among member states, active co-operation between neighbouring countries and promotion of a peaceful environment” is one of the main principles that guide how both the EAC and ECOWAS operate.²³

Lastly, two cases studies are also utilised. The first case study is based on the Burundi security crisis that was related to the 2015 Burundi general election. It is discussed so as to demonstrate how a weak and incomprehensive institutional framework renders the EAC Protocol ineffective. The second case study focuses on the violence that occurred in the Gambia after the announcement of the 2016 presidential election results and how the institutions in the ECOWAS Protocol managed the situation. Unlike the first case study, the second case study shows how the institutions incorporated in the ECOWAS Protocol make it effective in managing conflicts and security threats in the West African region.

1.8. Scope and Limitations of the Study

The scope of this study generally covers research on the areas of peace and security in the East African region through analysing the EAC Protocol’s legal and institutional framework. The legal and institutional frameworks of the ECOWAS Protocol are also analysed through a comparative study. Additionally, the post-election violence that occurred in Burundi and the Gambia in 2015 and 2016 respectively is discussed through case studies.

The main limitation of this study is that since the EAC Protocol was established, there have been very few scholars in the East African region who have researched on matters dealing with its efficacy in preventing and managing security threats in the East African region.

²¹ See generally the *ECOWAS Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

²² Article 4(e), *Revised ECOWAS Treaty* (1993).

²³ Article 4(f), *Revised ECOWAS Treaty* (1993).

1.9. Literature Review

The core objective of the EAC Protocol is to “promote peace, security, and stability within the Community and good neighbourliness” among the EAC partner states.²⁴ In a bid to fulfil the aforementioned objective, the EAC partner states, pursuant to provisions of the EAC Protocol, are required to cooperate in preventing, managing and resolving conflicts in the EAC region; preventing genocide; combating terrorism; and combating and suppressing piracy.²⁵ They are also mandated to join efforts in conducting peace support operations; reducing disaster risks, managing crisis situations and responding effectively; managing refugees; controlling the spread of “illicit small arms and light weapons”; and “combating transnational and cross border crimes”.²⁶

With regard to the institutional framework, the Preamble to the EAC Protocol states that the EAC partner states are required to “establish a regional mechanism for the effective implementation of decisions made in areas of peace and security” in the EAC region.²⁷ Moreover, the EAC Protocol requires all the EAC partner states to develop “common measures and strategies” for its proper implementation.²⁸

It further requires the signatory states to “establish an early warning mechanism to facilitate the anticipation, preparedness and early responses to prevent, contain and manage” security threats in the mentioned areas of cooperation.²⁹ The EAC Council is also mandated to establish “institutional arrangements” for the effective implementation of the EAC Protocol.³⁰

According to the EAC Secretariat, the adoption of the EAC Protocol was a major achievement with regard to the EAC realising its aim of becoming a political federation because it created a binding legal framework that would promote and enhance “peace, security and stability” in East Africa.³¹ It further contends that the EAC Protocol is beneficial because it led to an updated Regional Strategy on Peace and Security (RSPS) that included modern security threats in the East African region.³² It also notes that an institutional framework – which will ensure

²⁴ Article 3, *East African Community Protocol on Peace and Security* (2013).

²⁵ Article 2-3, *East African Community Protocol on Peace and Security* (2013).

²⁶ Article 2-3, *East African Community Protocol on Peace and Security* (2013).

²⁷ Preamble, *East African Community Protocol on Peace and Security* (2013).

²⁸ Article 2 (2), *East African Community Protocol on Peace and Security* (2013).

²⁹ Article 2 (4), *East African Community Protocol on Peace and Security* (2013).

³⁰ Article 15, *East African Community Protocol on Peace and Security* (2013).

³¹ EAC Secretariat, *Towards Political Federation in the East African Community*, 27.

³² EAC Secretariat, *Towards Political Federation in the East African Community*, 26. Such security threats include: genocide and genocide ideology piracy, maritime security and safety, human trafficking, environmental crimes (including wildlife and forest crimes), cybercrime; money laundering and motor vehicle theft

the effective implementation of the EAC Protocol and “all matters related to peace and security” in the East African region – is to be provided in accordance with the provisions of the EAC Protocol.³³

Further, Manyolo avers that it was after EAC partner states acknowledged the importance of peace and security in socio-economic growth and development in the East African region, that they decided to establish the EAC Protocol.³⁴ He also posits that had the EAC Protocol been in place when the 1994 Rwandan genocide occurred, it would have been easier to prevent the genocide from taking place, pursuant to one of its principles and objectives – cooperating in the prevention of genocide within the EAC.³⁵ He, however, notes that the EAC Protocol’s implementation has proved to be a challenge since it was only Uganda and Rwanda that had ratified it.³⁶

Moreover, Anjalo and her counterparts opine that the EAC Protocol strengthened the security situation in the East African region as it identified regional security issues and sought avenues to deal with security threats and conflict.³⁷ They also state that the creation of the EAC Protocol enhances peace and security in the region as its legal and institutional framework is aimed at implementing the RSPS.³⁸ In the same vein, Akoth affirms how significant the EAC Protocol is while stating that its adoption will greatly reduce conflicts and security threats within the region.³⁹

Additionally, according to Bigirimana, one of the main goals of establishing the EAC Protocol was to make it an all-inclusive legal instrument that would guide the cooperation of peace and security matters in the East African region. She contends that the EAC Protocol is meant to be an instrument of reference that shows which specific peace and security institution carries out what specific functions in case conflicts and security threats arise among, or within EAC partner states.⁴⁰ She further states that despite the EAC Protocol being such an important legal

³³ EAC Secretariat, *Towards Political Federation in the East African Community*, 27.

³⁴ Manyolo J, ‘Operationalization of regional protocols: The case of East African Community protocol on peace and security’, Unpublished MA Thesis, University of Nairobi, Nairobi, 21.

³⁵ Manyolo J, ‘Operationalization of regional protocols’, 21. See also Articles 2 and 5, *EAC Protocol on Peace and Security* (2013).

³⁶ Manyolo J, ‘Operationalization of regional protocols’, 39.

³⁷ Anjalo R, Okoth P and Kimokoti S, ‘Nature of security cooperation and regional integration within the jurisdiction of the East African Community’ 9 (27) *Journal of Education and Practice*, 2018, 61.

³⁸ Anjalo R *et al*, ‘Nature of security cooperation and regional integration within the jurisdiction of the East African Community’, 64.

³⁹ Akoth M, ‘The role of regional integration in promoting peace and security: A case of East African Community’, Unpublished MA Thesis, University of Nairobi, Nairobi, 2015, 60.

⁴⁰ Bigirimana D, ‘The EAC peace and security legal and institutional framework’, Published LLM Thesis, University of Dar es Salaam, Dar es Salaam, 2013, 24.

instrument with regard to peace and security matters, there is no funding mechanism provided in it that will ensure its proper implementation.⁴¹

Most of the aforementioned scholars and authors extensively discuss the intended benefits of the EAC's Protocol legal and institutional framework with regard to peace and security in the East African region. Conversely, it is only Manyolo and Bigirimana who discuss challenges that affect the EAC Protocol's efficacy – absence of ratification by all the signatory states and lack of a peace and security fund respectively.

However, none of the authors address how the EAC Protocol's effective implementation can be hindered due to a weak, incomprehensive and inefficient institutional framework. In order to address the foregoing, this study analyses the inadequacies that exist in the current institutional framework of the EAC Protocol and recommends features that will make the framework robust, comprehensive and more efficient.

1.10. Summary of Overall Results and Conclusions

The EAC Protocol is generally ineffective in preventing and managing security threats in the East African region as it cannot be properly and effectively implemented, due to its weak and incomprehensive institutional framework. With a view to remedy the foregoing situation, features that will make the institutional framework robust, comprehensive and more efficient have been suggested.

1.11. Chapter Breakdown

This study is divided into five chapters. Chapter one covers the introduction of the study. Chapter two focuses on the theoretical framework that the study utilises. This is done by discussing the theories of neo-liberalism, constructivism and new regionalism respectively. Chapter three – the crux of the study – discusses the nature of the current legal and institutional framework of the EAC Protocol. It also analyses the inadequacies that currently exist in its institutional framework. Chapter four focuses on the comparative study; it entails an analysis of the legal and institutional framework in the ECOWAS Protocol. Lastly, chapter five discusses an overview of the study's findings, by answering the research questions, and also provides the necessary recommendations.

⁴¹ Bigirimana D, 'The EAC peace and security legal and institutional framework', 28.

CHAPTER TWO: THEORETICAL FRAMEWORK

2.1 Introduction

This chapter discusses the theories that shall be utilised in the study as the research questions are answered – neo-liberalism, constructivism, and new regionalism. In each of the three theories, the main concepts and characteristics of the theories are first described. Afterwards, there is a discussion on how each of the theories are relevant to peace and security matters in the East African region, from the perspective of the EAC Protocol and its institutional framework.

2.2. Theories

2.2.1. Neo-liberalism

Neo-liberalists advance the concept that when countries cooperate in any form, national security should not be undermined.⁴² Those who favour this theory “believe in collective security” and are of the view that states can properly ensure the “preservation of joint interests” through international and regional organizations and institutions.⁴³ They focus on the important position of regional interstate institutions and regional organizations for “managing interdependencies and common goals on a regional basis”.⁴⁴

In a bid not to undermine regional security, the EAC established the EAC Protocol that will exclusively deal with peace and security in the East African region. Further, one of the major joint interests, interdependencies and common goals of the East African countries that constitute the EAC is the maintenance – and promotion – of peace, security and stability in the region. This is established through the EAC Treaty, where one of the core objectives is “ensuring the promotion of peace, security, and stability” within the EAC partner states.⁴⁵

Some of the institutions that this theory envisions to facilitate and ensure joint interests and common goals – such as promotion of peace and security – are regional peace and security institutions. These institutions, once established and accorded the monetary and political support that is required, will ensure the effective implementation of the peace and security laws, such as the EAC Protocol. Once the foregoing is achieved, the joint interest and common

⁴² Sakyi D and Opoku E, ‘Regionalism and Economic Integration in Africa: A Conceptual and Theoretical Perspective’ The African Capacity Building Foundation, Occasional Paper Number 22, 2014, 7.

⁴³ Bayeh E, ‘Theories on the role of international organizations in maintaining peace and security’ 1 (7) *International Journal of Multidisciplinary Research and Development*, 2014, 348.

⁴⁴ Sakyi D and Opoku E, ‘Regionalism and Economic Integration in Africa’, 8.

⁴⁵ Article 5 (3) (f), *Treaty for the Establishment of the East African Community* (1999).

goal of maintaining and promoting “peace, security and stability” in the EAC shall be established.

2.2.2. Constructivism

This theory is based on three main concepts. The imperative nature of “normative as well as material structures” (such as institutions), the role of regional bodies in shaping countries’ identities, and on the mutually constructive relationship between regional blocs and the constituent countries.⁴⁶ Constructivists argue that regional institutions and organisations make countries cooperate regionally, regardless of whether their individual interests are attained or not⁴⁷

They are in favour of creation of effective regional institutions and organisations, believing that such bodies are crucial in not only regulating state behaviour, but also in modifying the identities, actions and interests of states.⁴⁸ Finnemore, a renowned scholar who is pro-constructivism, believes that countries belonging to a certain regional bloc adapt appropriate regional norms to inform their domestic laws, policies and institutional structures.⁴⁹

Based on the above, and dealing with peace and security in an East African context, important norms that aim at preventing security threats have been established and codified into law at the regional level through the establishment of the EAC Protocol. At the core of such norms should be institutions that have roles that can effectively enhance peace, prevent and manage prevailing security threats in the East African region, in a bid to implement the norms.

Further, establishing appropriate East African peace and security institutions that have effective roles will foster a mutually constructive relationship between the EAC as a sub-regional bloc and its partner states. This is because such institutions will steadily intervene if there are any security threats, with the aim of restoring peace and foster regional integration.

Moreover, EAC partner states – guided by the enforcement of a revamped EAC Protocol through an effective institutional framework – will also get an opportunity to more proactive and gain more interest in formulating peace and security laws, policies and institutional structures at a national level.

⁴⁶ Reus-Smit C, ‘Constructivism’ in Burchill S, and Linklater A (eds) *Theories of international relations*, 3rd ed, Palgrave Macmillan Publishers, London, 2005, 188.

⁴⁷ Bayeh E, ‘Theories on the role of international organizations in maintaining peace and security’, 347.

⁴⁸ Bayeh E, ‘Theories on the role of international organizations in maintaining peace and security’, 347.

⁴⁹ Bayeh E, ‘Theories on the role of international organizations in maintaining peace and security’, 347.

2.2.3. New Regionalism

This theory is a phenomenon that emerged after the cold war, influenced by global structural transformation cutting across systemic, regional and national boundaries. New regionalism is hinged on the idea of a region changing from “relative heterogeneity to increased homogeneity” in socio-cultural, economic, political and security matters, with the aim of fostering regional integration.⁵⁰ This essentially means that countries in a particular region who rely on this theory end up cooperating more in issues dealing with socio-cultural, economic, political and security affairs. In demonstrating a clear departure from the “principles of non-intervention and non-interference in the internal affairs of member states” of a certain region, the proponents of this theory advocate for regional institutions and organisations to be proactively involved in conflict resolution initiatives in a particular region.⁵¹

The East African region – through the creation of the EAC Protocol and other regional peace and security laws⁵² – has been seen to deal with peace and security in a regional and unified manner, rather than in a distinct way through its constituent countries. Further, the institutional framework provided and envisioned in the EAC Protocol also embodies the call for regional institutions to be proactively involved in conflict resolution initiatives. Hinged upon this theory, this study will analyse how the EAC – through the incorporation of a robust and comprehensive peace and security institutional framework in the EAC Protocol – can effectively promote and maintain peace and security in the East African region.

2.3. Conclusion

This chapter has discussed the theoretical framework that the study will rely on. Through analysing the theories of neo-liberalism, constructivism and new regionalism respectively, it has been established that the EAC Protocol – if implemented through effective peace and security institutions – has the potential of playing a very essential role when it comes to promoting and maintaining peace and security in the East African region.

⁵⁰ Adar K, ‘New regionalism and regional reconstruction: The case of the East African Community’ Africa Institute of South Africa, 2005, 30.

⁵¹ Adar K, ‘New regionalism and regional reconstruction’, 30.

⁵² Examples include the *Regional Strategy on Peace and Security* (2006) and the *East African Community Conflict Management Act* (2012).

CHAPTER THREE: LEGAL AND INSTITUTIONAL FRAMEWORK OF THE EAC PROTOCOL ON PEACE AND SECURITY

3.1. Introduction

The terms “peace” and “security” are often used together in common parlance as one phrase. The phrase implies a synergy, a complementary state that is present when conflict – or physical violence at large – are absent in a particular society or country.⁵³ Unfortunately, neither the EAC Treaty nor the EAC Protocol define what either peace or security is. Nevertheless, for the sake of clarity, how the two individual terms have been defined by different scholars shall be discussed.

In the modern connotation, the term “peace” has two aspects – negative and positive.⁵⁴ While the former refers to the absence war or of physical violence, the latter denotes the presence of favourable conditions for not only economic and political equality but also for social justice.⁵⁵ As opposed to negative peace that only recognises harmony, positive peace acknowledges and challenges the structural and institutional conditions in society that may prevent the ability of individuals or certain factions of the society to achieve their aspirations.⁵⁶ However, for the purpose of conducting this study, the author shall refer to negative peace – the absence of violence.

Although the term “security” has generally been referred to mean safety – freedom from danger or harm – there is no consensus on how to define it.⁵⁷ Many scholars have claimed that security, like most concepts, does not have an agreed definition because the concept is dependent on a particular context – its meaning changes in accordance with the different perceptions and discourses of various threats.⁵⁸

Originally, the concept of security was used in philosophy to refer to the safety of the human being.⁵⁹ During the world wars, its definition mutated to mean national security of different

⁵³ Fast L, ‘Peace and security’, 202.

⁵⁴ Galtung J, ‘Violence, peace, and peace research’, 6 (3) *Journal of Peace Research*, 1969, 170. See also Dower N, *An introduction to global citizenship*, Edinburgh University Press, Edinburgh, 2003, 69.

⁵⁵ Soltani, R and Moradi, M, ‘The Evolution of the concept of international peace and security in light of UN Security Council practice (end of the cold war-until now)’, 7 (1) *Open Journal of Political Science*, 2017, 134. See also Grewal B, ‘John Galtung: Positive and negative peace’, 2003, 1.

⁵⁶ Fast L, ‘Peace and security’, 203.

⁵⁷ Baldwin D, ‘The Concept of security’, 23 (1) *Review of International Studies*, 1997, 10. Herington J, ‘The Concept of security’, 2012, 9.

⁵⁸ Jore S, ‘The Conceptual and scientific demarcation of security in contrast to safety’, 4 (1) *European Journal of Security Research*, 2019, 159.

⁵⁹ Jore S, ‘The Conceptual and scientific demarcation of security in contrast to safety’, 159.

states.⁶⁰ Later on, different meanings emerged based on different contexts – environmental security, economic security, ontological security, health security, regional security and international security.⁶¹ This study, however, shall discuss regional security, with a particular focus on the East African region.

Unfortunately, various security threats and challenges in the East African region have hindered the satisfactory achievement of peace and security. The causes of these security issues have been attributed to be a combination of “political, economic and social” factors.⁶² Moreover, the types of conflicts in the EAC manifest themselves in two main ways: intrastate and interstate conflicts.⁶³

Interstate security threats in the EAC region are mainly witnessed through acts of terrorism,⁶⁴ include “proliferation of illicit small arms and light weapons”, “transnational and cross-border crimes”, such as illegal human and drug trafficking, smuggling of goods and influx of refugees.⁶⁵ On the other hand, intrastate activities include acts of genocide,⁶⁶ pervasive episodes of post-election violence that occurs in some EAC countries,⁶⁷ especially after

⁶⁰ Baldwin D, ‘The Concept of security’, 10.

⁶¹ Dower N, ‘*An introduction to global citizenship*’, 70. See also Herington J, ‘The Concept of security’, 9 -10.

⁶² Chikwanha A, ‘The anatomy of conflicts in the East African Community’, Conference Organised by the Institute for Security Studies, 2007, 1.

⁶³ Mumma-Martinon C, ‘Efforts towards conflict prevention in the Eastern African region: The Role of regional economic communities and regional mechanisms’ International Peace Support Training Centre Nairobi, Series Number One and Occasional Paper Number One, 2010, 3. See also Akoth M, ‘The role of regional integration in promoting peace and security’, 2.

⁶⁴ Such acts led to the landmark Ugandan case of *Uganda v Hussein Hassan Agade & 12 Others* (2010) High Court of Uganda. In this case, the thirteen accused were charged with terrorism for discharging explosives in three different places in Kampala, Uganda on the night of the 2010 FIFA World Cup final. This was the first major terrorist case under Uganda’s anti-terrorism law of 2002. Eight of the 13 men on trial were convicted, while the other five were acquitted due to lack of insufficient evidence.

⁶⁵ Manyolo J, ‘Operationalization of regional protocols’, 21. See also Mumma-Martinon C, ‘Efforts towards conflict prevention in the Eastern African region’, 3. See further Chikwanha A, ‘The anatomy of conflicts in the East African Community’, 6 - 8.

⁶⁶ The most notable act of genocide in the EAC was the 1994 Rwandan genocide. This first led to the case of *Prosecutor v Félicien Kabuga* ICTR Case No. 98-44B (2011) in the International Criminal Tribunal for Rwanda (ICTR). After the ICTR was closed on 31 December 2015, the case was transferred to the International Residual Mechanism for Criminal Tribunals (MICT), under *Prosecutor v Félicien Kabuga* MICT Case No. 13-38 (2020). Félicien Kabuga is currently charged with genocide, complicity in genocide, direct and public incitement to commit genocide, attempt to commit genocide, conspiracy to commit genocide, and persecution and extermination as crimes against humanity, committed in Rwanda in 1994.

⁶⁷ Six prominent Kenyan politicians were charged at the ICC due to the post-election violence that occurred in Kenya between 2007-2008. This resulted in two cases. The first case was the case of *The Prosecutor v Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali* ICC Case No. 01/09-02/11 (2011). The three accused people were charged with five counts of crimes against humanity in the context of the 2007-2008 post-election violence in Kenya. However, they were all acquitted due to insufficient evidence. The second case was the case of *The Prosecutor v William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang* ICC Case No. 01/09-01/11 (2011). The three accused were charged with three counts of crimes against humanity in the context of the 2007-2008 post-election violence in Kenya. They were, however, also all acquitted due to insufficient evidence.

contentious general elections are held,⁶⁸ violent inter-ethnic tensions, cattle rustling amongst communities from the same country and emergence of insurgents within a particular country.⁶⁹

This section of the study analyses the legal and institutional framework of the EAC Protocol and then identifies the loopholes and deficiencies that exist in the established institutional framework. Ultimately, based on what is discussed in the foregoing parts, a succinct conclusion is offered.

3.2. The EAC Protocol on Peace and Security Legal and Institutional Framework

The Treaty permits the partner states to create protocols – which form an integral part of the Treaty – “as may be necessary in each area of co-operation”, including the areas of “peace and security”.⁷⁰ The protocols, amongst other things, have an aim of providing objectives and scope of co-operation and integration in the relevant areas, as well as outlining the institutional mechanisms for the implementation of the protocols.⁷¹ It is against this backdrop that the EAC Protocol was formulated by the then EAC Council, on behalf of their respective countries.

The EAC Protocol – which was established on 15th February 2013 – is meant to be the overarching legal instrument that outlines measures on how to best deal with peace and security in the East African region.⁷² Article 20 of The EAC Protocol provides that it shall come into force only when the EAC partner states have ratified its contents and deposited the ratification instruments with the Secretary General.⁷³ This means that if all the signatories have not ratified the Protocol in their respective countries, its provisions cannot be implemented. Reiterating on the importance of ratification, the Committee on Regional Affairs and Conflict Resolution indicated that the enforcement of the EAC Protocol can only be possible once its ratification is completed by all the EAC partner states.⁷⁴

Unfortunately, some of the EAC partner states have delayed in fulfilling that requirement. By January 2014, one year after the five participating EAC partner states (Kenya, Uganda, Tanzania, Rwanda and Burundi) signed the EAC Protocol, only Rwanda and Uganda had

⁶⁸ See -<<https://www.csis.org/blogs/smart-global-health/post-election-violence-kenya-and-its-aftermath>> on 22 October 2020.

⁶⁹ Akoth M, ‘The role of regional integration in promoting peace and security: A case of East African Community’, 2.

⁷⁰ Article 151 (1) and (4), *Treaty for the Establishment of the East African Community* (1999).

⁷¹ Article 151 (1), *Treaty for the Establishment of the East African Community* (1999).

⁷² Article 2, *East African Community Protocol on Peace and Security* (2013).

⁷³ Article 20, *East African Community Protocol on Peace and Security* (2013).

⁷⁴ See -<<https://www.trademarkea.com/news/regional-mps-weigh-in-on-ratification-of-eac-peace-and-security-protocol/>> on 29 October 2020.

ratified it.⁷⁵ In November 2018, Burundi then ratified it.⁷⁶ Therefore, currently, Kenya and Tanzania have not yet ratified the EAC Protocol, meaning it cannot be enforced.

Its Preamble reiterates the fact that “close co-operation, mutual understanding and collaboration in matters of peace and security” are of “mutual benefit” of the EAC partner states.⁷⁷ It further recognises that “peace, security and strong political relations” are important factors in establishing an appropriate environment for regional integration.⁷⁸

With an overarching objective of “promoting peace, security, and stability within the Community, and good neighbourliness among the partner states”, the EAC Protocol focuses on how to best prevent and manage both interstate and intrastate security threats in the EAC. This has been done through outlining measures and strategies that ought to prevent genocide, combat terrorism, reduce risk of disasters occurring (and manage them efficiently if they do), control “proliferation of illicit small arms and light weapons”, combat “transnational and cross border crimes” (including drug and human trafficking), amongst other measures.⁷⁹

In order to effectively deal with the various categories that have been listed above, the EAC Protocol establishes an “early warning mechanism” to “facilitate the anticipation, preparedness and early responses to prevent, contain and manage” conflict and security threats in the areas of cooperation.⁸⁰

Additionally, the EAC Protocol, with an aim to effectively deal with disasters, states that EAC partner states are required to “develop mechanisms to provide mutual assistance in disaster management and crisis response”, and develop an “early warning and response system for common disasters” within the East African region.⁸¹

Apart from the early warning mechanism (which has been explicitly mentioned in the EAC Protocol), all other institutional arrangements have been mentioned in a generic way. For instance, the Preamble of the EAC Protocol states that the EAC partner states aim to “establish

⁷⁵See –<<https://www.eala.org/index.php/media/view/peace-and-security-key-for-realizing-integration-zziwa-remarks>> on 29 October 2020.

⁷⁶ See –<<https://regionweek.com/burundi-parliament-ratification-of-the-eac-protocol-on-peace-and-security/>> on 29 October 2020.

⁷⁷ Preamble, *East African Community Protocol on Peace and Security* (2013).

⁷⁸ Preamble, *East African Community Protocol on Peace and Security* (2013).

⁷⁹ Article 1, *East African Community Protocol on Peace and Security* (2013).

⁸⁰ Article 2 (4), *East African Community Protocol on Peace and Security* (2013).

⁸¹ Article 9, *East African Community Protocol on Peace and Security* (2013).

a regional mechanism for the effective implementation of decisions made in areas of peace and security” within the EAC region.⁸²

Moreover, the EAC Protocol provides that partner states ought to “develop common measures and strategies” for its effective implementation.⁸³ Further, it mandates EAC partner states to develop an EAC “conflict prevention, management and resolution mechanism”. Additionally, the EAC, pursuant to the provisions of the EAC Protocol, and in consultation with the UN’s Security Council and AU’s Peace and Security Council (PSC), can offer to mediate in disputes between two or more EAC partner states or with foreign countries.⁸⁴

The EAC Protocol also provides that, in order to “undertake joint operations in controlling and preventing transnational and cross-border crimes,”⁸⁵ the EAC partner states should “develop appropriate mechanisms, policies, measures, strategies and programmes to combat cross-border crimes”, which include the “establishment of regional databases on cross-border crimes; the enhancement of technical capacity for criminal intelligence; the establishment of cross border and inter-state communication”, amongst other measures.⁸⁶ Finally, it is provided the EAC Council ought to establish suitable “institutional arrangements” for the implementation of the EAC Protocol.⁸⁷

3.3. Inadequacies of the EAC Protocol on Peace and Security Institutional Framework

3.3.1. Weak and Incomprehensive Institutional Structures

The early warning system is established in a very incomprehensive manner. It is unclear how exactly the early warning and response system will operate. It is also uncertain what precise mechanisms will be used to detect and respond to the disasters efficiently. Further, the EAC Protocol lacks necessary institutions and mechanisms that ought to be incorporated in the early warning system so as to effectively deal with data collection, analysis and sharing in a timely manner. This, essentially, makes the early warning mechanism weak.

Moreover, the “regional mechanism” that is envisioned by the EAC Protocol’s Preamble in order to ensure effective implementation of peace and security measures is incomprehensive

⁸² Preamble, *East African Community Protocol on Peace and Security* (2013).

⁸³ Article 2 (2), *East African Community Protocol on Peace and Security* (2013).

⁸⁴ Article 4, *East African Community Protocol on Peace and Security* (2013).

⁸⁵ Examples of transnational and cross-border crimes that are mentioned are: the theft of motor vehicles; the smuggling of goods; illicit drug trafficking; human trafficking; illegal migration; trade in counterfeit goods; intellectual property piracy; and any other transnational and cross – border crimes.

⁸⁶ Article 12 (2), *East African Community Protocol on Peace and Security* (2013).

⁸⁷ Article 15, *East African Community Protocol on Peace and Security* (2013).

because its operation mechanisms and specific roles have not been provided. Further, the scope provided when the EAC Protocol states “common measures and strategies are to be developed” is too broad. It is unclear which precise institutions will be developed to “ensure the effective implementation” of the EAC Protocol as envisioned. All these factors render the established institutions and mechanisms weak.

Due to this, it cannot be ascertained whether the mentioned ‘measures, strategies and programmes’ will be comprehensive enough to indeed mitigate security threats in the EAC region. Additionally, it is unclear what specific institutions will control – and prevent – the mentioned cross-border crimes in order to ensure the ‘appropriate mechanisms, measures and strategies’ are implemented effectively.

Regarding the mediation services that the Protocol mandates the EAC to carry out when necessary, it is not mentioned which specific EAC organ and peace and security institution will spearhead – and coordinate – the mediation sessions, when they occur. Moreover, the details of which other institutions will be involved in the sessions, and how the sessions will be conducted are not offered in the EAC Protocol.

Additionally, the necessary qualifications and characteristics of the mediators in the established institutions, once created, have not been outlined. Such a situation creates ambiguity and uncertainty as to what type of personnel will be in the mediation institutional mechanism. This might prove to be problematic when some of the individuals who become mediators have questionable characters which then hinder the efficacy of the mediation institutional mechanism.

Moreover, the term “institutional arrangements”, with regard to what the EAC Council is supposed to establish, is very vague and incomprehensive. It is not exactly known what specific framework of ‘institutional arrangements’ is being referred to. Further, the specific functions and roles of the institutions that will be created, and the characteristics of the people that will constitute the various institutions are not known. Additionally, the funding mechanism of the desired institutions is not included in the EAC Protocol. All the factors mentioned above make the institutional framework in the EAC Protocol quite weak and incomprehensive.

3.3.2. Exclusion of Important Established Peace and Security Institutions

3.3.2.1. The Summit

Another inadequacy that lies in the institutional framework is the omission of the Summit as one of the main decision-making organs in the EAC Protocol. The inclusion of the Summit in

the EAC's Protocol institutional framework will not only ensure that a mutually constructive relationship is present among the EAC states when it comes to peace and security matters, but will also help the EAC in ensuring its joint objective and interest of promoting peace and security is achieved.

The Summit is also vital with regard to peace and security matters as it is tasked by the EAC Treaty to not only review “the state of peace, security and good governance” within the EAC, but also “the progress achieved towards the establishment of a Political Federation of the EAC partner states”.⁸⁸ Further, swift and coordinated executive power is necessary when it comes to decisions involving peace and security matters, which are considered to be quite imperative, sensitive and close to state functions.

Moreover, if the Summit is directly involved in making peace and security decisions, it will show that the EAC heads of state and government are committed – and exhibit the necessary political will – to ensure that peace and security are maintained and promoted in the East African region.

3.3.2.2. The Panel of Eminent Persons

Another loophole of the institutional framework of the EAC Protocol is that, despite it being envisioned as the overarching peace and security legal instrument in the Region, it has not incorporated the Panel of Eminent Persons (the Panel), which has been established pursuant to the EAC Conflict Management Act.⁸⁹ The Panel is mandated to be responsible for “prevention, management and resolution of conflicts” in EAC.⁹⁰ Some of its functions include “identifying potential sources of conflicts, providing for pre-emptive mechanisms to address conflict situations”. It is also charged with “developing capacity for mediation and negotiation to forestall and diffuse conflicts, proposing modalities for intervention and stabilisation of conflict situations, and providing appropriate mechanisms for conflict management in the region”, amongst others.⁹¹

To qualify to serve as a member of the Panel, one must be a citizen of an EAC partner state; they must have made an “outstanding contribution to the cause of peace, security and development” in the EAC or internationally; they should not be holding an office of emolument in an organ or institution of the EAC, or an elective post, at the time of being considered; and

⁸⁸ Article 11, *Treaty for the Establishment of the East African Community* (1999).

⁸⁹ Section 4 (1), *East African Community Conflict Management Act* (2012).

⁹⁰ Section 4 (2), *East African Community Conflict Management Act* (2012).

⁹¹ Section 5, *East African Community Conflict Management Act* (2012).

ought to have an interest and proven experience in the affairs of the EAC.⁹² However, details of how this institution will be funded are not offered.

3.3.2.3. The East African Standby Force

In the same vein, the East African Standby Force (EASF) – courtesy of AU’s African Peace and Security Architecture (APSA) – has also not been included in the EAC Protocol. The EASF is part of the Africa Standby Force (ASF), an institution created by the “Protocol Relating to the Establishment of the Peace and Security Council of the African Union” (the AU Protocol).⁹³ The ASF was created so as to “enable AU’s Peace and Security Council (PSC) efficiently perform its responsibilities with respect to the deployment of peace support missions and intervention”. It is composed of “standby multidisciplinary contingents with civilian and military components in their countries of origin”, who ought to be ready for “rapid deployment” at an appropriate notice.⁹⁴

The ASF is organized into five regional standby forces – the southern,⁹⁵ central,⁹⁶ western,⁹⁷ northern⁹⁸ and eastern standby forces.⁹⁹ The five standby forces, which are the operational arm of APSA, are each made up of “up to 6,500 military, police and civilian personnel, and are intended to be flexible, mobile and capable of deployment”.¹⁰⁰

Regarding the eastern frontier, the countries that constitute the EASF are “Burundi, Comoros, Djibouti, Eritrea, Ethiopia, Kenya, Sudan, South Sudan, Rwanda, Seychelles, Somalia, and Uganda”.¹⁰¹ Its functions include observing and monitoring peace-keeping missions in the East Africa region, and intervening in one of the states mentioned above in case of grave

⁹² Section 6(5), *East African Community Conflict Management Act* (2012).

⁹³ Article 13, *Protocol Relating to the Establishment of the Peace and Security Council of the African Union* (2002).

⁹⁴ Article 13 (1), *Protocol Relating to the Establishment of the Peace and Security Council of the African Union* (2002).

⁹⁵ The Southern Africa Standby Force (SASF) consists of Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe, Angola, Madagascar and Mauritius.

⁹⁶ The Central African Standby Force (CASF) is composed of Burundi, Cameroon, Central African Republic, Chad, Equatorial Guinea, Sao Tome Principe and the Democratic Republic of Congo.

⁹⁷ The Western Africa Standby Force, which is known as the ECOWAS Standby Force (ESF), consists of Benin, Burkina Faso, Cape Verde, Côte d’Ivoire, Gambia, Ghana, Guinea-Bissau, Liberia, Sierra Leone, Mali, Niger, Nigeria, and Senegal.

⁹⁸ The Northern Africa Standby force, which is known as the North African Regional Capability (NARC), is composed of Algeria, Egypt, Libya, Mauritania, Tunisia and Western Sahara.

⁹⁹ Vines A, ‘A decade of African Peace and Security Architecture’, The Royal Institute of International Affairs, 2013, 97. See also Bah A, Choge-Nyangoro E, Dersso S, Mofya B and Murithi T, *The African Peace and Security Architecture: A Handbook*, FES Publishers, Addis Ababa, 2014, 50.

¹⁰⁰ Vines A, ‘A decade of African Peace and Security Architecture’, 97.

¹⁰¹ Bah A *et al*, *The African peace and security architecture*, 50.

circumstances or at the request of a one of the states in the grouping in order to restore peace and security.¹⁰²

It also makes use of “preventive deployment” so as to prevent a security threat from occurring, an ongoing security threat from escalating or spreading to neighbouring countries in the greater East African region, and the re-emergence of a security threat after parties to a conflict have reached an agreement.¹⁰³ Further, it is involved in “post-conflict disarmament” and demobilization in the mentioned countries.¹⁰⁴

It is imperative to note, however, that despite not being members of the EAC, Comoros, Djibouti, Eritrea, Ethiopia, Sudan, Seychelles and Somalia, are part of EASF, while Tanzania, which is a partner state of EAC is not part of EASF. With such a structure in place, the EASF does not dedicate its entire efforts – and fully utilise the resources at its disposal – towards advancing peace-keeping missions and maintaining security in the EAC.

3.3.3. Lack of Relevant Roles in the Institutional Framework

The EAC Protocol’s institutional framework does not incorporate specific institutions that have the roles of effectively implementing all the provisions of the EAC Protocol, authorising all forms of intervention and deployment of peace-keeping and military missions, and approving the responsibilities and terms of reference for such missions.

Other important roles that have not been included in the EAC Protocol are roles that ensure all technical and administrative issues are examined, all logistical requirements for peace-keeping operations, including the EASF operations, are assessed, and the mandate of the various peace and security missions are formulated respectively. Roles that deal with appointing the heads and deputies of such missions, together with determining their composition, have also not been featured in the institutional framework.

Further, there is also no specified hierarchical structure that will guide the established – and envisioned – institutions on how to coordinate properly and effectively as they prevent and manage security threats in the East African region.

¹⁰² Article 13 (3), *Protocol Relating to the Establishment of the Peace and Security Council of the African Union* (2002).

¹⁰³ Article 13 (3), *Protocol Relating to the Establishment of the Peace and Security Council of the African Union* (2002).

¹⁰⁴ Article 13 (3), *Protocol Relating to the Establishment of the Peace and Security Council of the African Union* (2002).

3.4. Case Study: The Burundi Security Crisis

This section analyses how the EAC Protocol could not have helped in mitigating the Burundi crisis, even if it could have been enforced by the time the crisis was beginning. This is due to its inefficacy caused by the weak and incomprehensive institutional framework it encompasses.

This Burundi crisis – which lasted for about three years – commenced on 25 April 2015, when the then ruling party, the “National Council for the Defence of Democracy and Forces for the Defence of Democracy” (CNDD-FDD), announced that its party leader, the then President of Burundi, Pierre Nkurunziza, would run for a third term.¹⁰⁵ On the same day the announcement was made, riots that lasted for months broke out across the streets of Bujumbura, the capital city of Burundi.¹⁰⁶ The demonstrations led to “heightened violence, brutal repression by security forces (and the CNDD-FDD’s youth militia)”, as well as a failed coup attempt in May 2015.¹⁰⁷

Further, it was alleged that Nkurunziza’s candidacy was in blatant violation of the “Arusha Peace and Reconciliation Agreement” (the Arusha Agreement)¹⁰⁸ and the 2005 Burundi Constitution,¹⁰⁹ which both provided for a two-term limit for the presidency. In May 2015, the Burundi Constitutional Court held that Nkurunziza could run for a third term.¹¹⁰ It re-affirmed that under the 2005 Constitution of Burundi, presidents could only be elected to two terms in office, but also held that Nkurunziza’s first term did not count as he was appointed by the Parliament of Burundi.¹¹¹ As was anticipated, the judgement led to renewed protests in Bujumbura and other parts of Burundi.¹¹² By 2017, more than 400,000 Burundians had fled the

¹⁰⁵ Institute for Security Studies, *The East African Community takes on the Burundi crisis*, August 2016, 1.

¹⁰⁶ Raleigh C, Kishi R, McKnight J and Moody J, *Burundi crisis year one*, May 2016, 2.

¹⁰⁷ Institute for Security Studies, *The East African Community takes on the Burundi crisis*, August 2016, 1.

¹⁰⁸ See the *Arusha Peace and Reconciliation Agreement (2000)*. The Arusha Agreement was signed in August 2000 (and henceforth became binding to Burundi) after protracted negotiations facilitated by former Presidents Julius Nyerere of Tanzania and Nelson Mandela of South Africa. It ended 12 years of civil war and cycles of massacres, including genocide, dating back to Burundi’s independence in 1960. See also Nantulya P, ‘Burundi, the forgotten crisis, still burns’ Africa Center for Strategic Studies, 24 September 2019 – <https://africacenter.org/spotlight/burundi-the-forgotten-crisis-still-burns/> on 26 October 2020.

¹⁰⁹ Article 96, *Constitution of Burundi (2005)*.

¹¹⁰ *RCCB 303 (2015)*, Constitutional Court of Burundi.

¹¹¹ *RCCB 303 (2015)*, Constitutional Court of Burundi. See also ‘Burundi court backs President Nkurunziza on third-term’, BBC, 5 May 2015 – <https://www.bbc.com/news/world-africa-32588658> on 26 October 2020.

¹¹² ‘Burundi court backs President Nkurunziza on third-term’, BBC, 5 May 2015 – <https://www.bbc.com/news/world-africa-32588658> on 26 October 2020.

country to the neighbouring countries due to heightened violence.¹¹³ Four years later, the EACJ delivered a similar decision to that of the Burundi Constitutional Court.¹¹⁴

The EAC, in an attempt to put an end to the violence and crisis in Burundi, became directly involved in peace-keeping missions.¹¹⁵ It dispatched a high-level crisis observer mission for the forthcoming elections, and when the crisis erupted, the observer mission increased its initiatives to try to deal with it, albeit to no avail, partly due to lack of supportive institutional structures.¹¹⁶ Based on the foregoing, the observer mission proposed that the Summit should meet and discuss the prevalent challenges.

After meeting twice, the Summit's main recommendation was a postponement of the Burundian presidential and parliamentary elections by at least 45 days,¹¹⁷ a recommendation that was not strictly adhered to. One of the major weaknesses of the Summit's decision was its vagueness over how to implement the recommendations as no clear peace and security institutions were decided upon to ensure the same.¹¹⁸

3.5. Conclusion

Evidently, the East African region is facing quite a number of security threats and challenges. For such threats to be mitigated efficiently, an effective peace and security legal and institutional framework ought to be in place – especially with regard to the EAC Protocol on Peace and Security. This is in light of it being the main instrument that develops strategies and measures that are meant to properly detect, prevent and manage security threats.

Unfortunately, as has been discussed at length in the preceding section, the Protocol has numerous defects when it comes to its institutional arrangements. The language used there is rather vague – details of the institutional mechanisms outlined are not provided, and there is lack of a comprehensive institutional framework that can effectively deal with the security

¹¹³ 'Burundi: Event of 2017' Human Rights Watch –<<https://www.hrw.org/world-report/2018/country-chapters/burundi>> on 26 October 2020. In August 2019, a United Nations Commission of Inquiry established by the Human Rights Council in 2016, reported that serious human rights violations, including crimes against humanity, had occurred in Burundi since April 2015. Such violations included cases of summary execution, disappearance (including enforced disappearance), arbitrary arrest and detention, torture and other cruel, inhuman or degrading treatment, sexual violence, and violations of civil liberties such as the freedoms of expression, association, assembly and movement.

¹¹⁴ *The East African Civil Society Organisations Forum v Attorney General of the Republic of Burundi and 2 others* (2019), First Instance Division Court.

¹¹⁵ Institute for Security Studies, *The East African Community takes on the Burundi crisis*, August 2016, 1-2.

¹¹⁶ Institute for Security Studies, *The East African Community takes on the Burundi crisis*, August 2016, 3-4.

¹¹⁷ Wilen N, 'The Rationales behind the EAC members' response to the Burundi crisis' 17 (1) *Georgetown Journal of International Affairs*, 2016, 71.

¹¹⁸ Institute for Security Studies, *The East African Community takes on the Burundi crisis*, August 2016, 7.

challenges that occur in the EAC. The foregoing presents a problem when it comes to implementing the Protocol, because it is such institutions that are essentially meant to ensure its effective implementation.

As has been established above, one of the major hindrances of the efficient resolution of the Burundi crisis was the lack of an effective institutional framework that could readily deal with the violence that broke out. However, even if the EAC Protocol had been enforced by then, it would not have alleviated the situation because its institutional framework – as has been established in the preceding sections – is very weak and incomprehensive in nature. Due to this, it is imperative to enhance the institutional framework that exists in the EAC Protocol.

CHAPTER FOUR: AN ANALYSIS OF THE LEGAL AND INSTITUTIONAL FRAMEWORK OF THE ECOWAS PROTOCOL

4.1. Introduction

In 1999, the member states of ECOWAS,¹¹⁹ while “reaffirming their commitment to the principles” that are contained in the AU (then OAU) and UN Charters, established the ECOWAS Protocol.¹²⁰ The principles provided in the Protocol include, among others, that “socio-economic development, and the security of people and States, are inextricably linked; promotion and reinforcement of the free movement of persons, the right of residence and establishment”. Further, “promotion and consolidation of a democratic government”, as well as “democratic institutions”, in each member state of ECOWAS; together with the “protection of fundamental human rights and freedoms”, and “the rules of international humanitarian laws” have also been mentioned as key principles of the ECOWAS Protocol. The “equality of sovereign states, territorial integrity and political independence of member states of ECOWAS” have also been highlighted as important principles of the ECOWAS Protocol.¹²¹

On the other hand, the ECOWAS Protocol mandates ECOWAS member states to cooperate in amongst others, “preventing, managing and resolving intrastate and inter-state security threats; strengthening cooperation in the areas of conflict prevention and management of security threats”. They are also required to “establish early-warning systems, peace-keeping operations, and control cross-border crime, international terrorism and proliferation of small arms and mines”.¹²²

In the same vein, the states should also cooperate in “maintaining peace, security and stability within ECOWAS; establishing institutions and formulating policies that would allow for the organisation and coordination of humanitarian relief missions; and promoting close

¹¹⁹ At the time the ECOWAS Protocol was being established in 1999, the 16 members of the Economic Community of West African States (ECOWAS) were: Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, the Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

¹²⁰ Article 1, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹²¹ Article 2, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹²² See Articles 3a and 3d, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

cooperation between member states in the areas of preventive diplomacy and peace-keeping”.¹²³

Through an in-depth analysis of the ECOWAS Protocol and use of the Gambian conflict, this section goes ahead to discuss the institutional framework of peace and security that exists in the ECOWAS Protocol. This is with a view to compare the institutions in that Protocol and the ones that exist in the EAC Protocol, and further draw important lessons that the EAC can learn from ECOWAS, with regard to having a robust and comprehensive institutional framework. This study makes use of the ECOWAS Protocol because its institutional framework, unlike the framework in the EAC, is quite robust and comprehensive – it has specific institutions that have specific roles in combating security challenges.

4.2. The Institutional Framework of the ECOWAS Protocol

4.2.1. The Authority

The Authority consists of Heads of State and Government of ECOWAS member states. Permitted to meet as often as necessary, the Authority is ECOWAS Protocol’s highest decision-making body.¹²⁴ It is mandated to act on all matters “concerning conflict prevention, management and resolution, peace-keeping, security, humanitarian support, peace-building, control of cross-border crime, proliferation of small arms”, as well as all other matters covered by the provisions of the ECOWAS Protocol.¹²⁵

However, the Authority, through an express provision in the ECOWAS Protocol, has delegated the power of making “appropriate decisions” for the implementation of the provisions of the ECOWAS Protocol to the Mediation and Security Council.¹²⁶

On the other hand, the Summit, which is the equivalent of the ECOWAS Authority in EAC, is not expressly mentioned in the EAC Protocol as a decision-making organ. Due to this, it is unclear which institution is the highest decision-making body regarding EAC peace and security matters, what its specific functions are, and the extent of its authority.

¹²³ See Articles 3e and 3g, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹²⁴ Article 6, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹²⁵ Article 6, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹²⁶ Article 7, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

4.2.2. Mediation and Security Council

Unlike in the EAC Protocol, a Mediation and Security Council (MSC) has been established by the ECOWAS Protocol.¹²⁷ The MSC consists of “representatives from nine member states, each of whom serves a renewable term of two years”. Representatives from seven states are elected by the Authority, while the other two members are the chairman and the immediate past chairman of the Authority at a particular time, each of whom has an automatic right to membership of the MSC.¹²⁸

Perceived as the most authoritative institutional body enshrined in the ECOWAS Protocol,¹²⁹ the MSC is mandated to “make decisions on issues of peace and security in the sub-region on behalf of the Authority”. It is also charged with implementing all the provisions of the ECOWAS Protocol.¹³⁰ Apart from that, it “authorises all forms of intervention and decides particularly on the deployment of political and military missions; and approves the mandates and terms of reference for such missions”.¹³¹

The ECOWAS Protocol has also established three institutions – the Defence and Security Commission, the Council of Elders, and the ECOWAS Cease-fire Monitoring Group (ECOMOG) – to assist the MSC in performing its functions.¹³²

4.2.3. Defence and Security Commission

The Defence and Security Commission (the Commission) comprises “Chiefs of Defence Staff (or their equivalents) from the member states of ECOWAS; officers responsible for Internal Affairs and Security and experts of the Ministry of Foreign Affairs”. Moreover, depending on the agenda, heads of the departments of “Immigration, Customs, Drug/Narcotic Agencies, Border Guards, and the Civil Protection Force” may be requested to join the Commission.¹³³

¹²⁷ Article 4, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹²⁸ Article 9, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹²⁹ Swedish Defence Research Agency, Elowson C and MacDermott J, *ECOWAS Capabilities in Peace and Security*, 2010, 29.

¹³⁰ See Articles 10a and 10b, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹³¹ See Articles 10c and 10d, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹³² Article 17, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹³³ Article 18, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

Required to meet “once every quarter and when necessary”, the ECOWAS Protocol provides that the Commission ought to “examine all technical and administrative issues and assess logistical requirements for peace-keeping operations”. It also assists the MSC in “formulating the mandate of the Peace-keeping Force, defining the terms of reference for the Force, appointing the Force Commander, and determining the composition of the Contingents”. Further, it is required to “examine reports from the Observation and Monitoring Centre and make appropriate recommendations” to the MSC.¹³⁴

Unfortunately, such an impactful institution as the Commission, despite its vital role in peace-keeping and conflict management, has not been explicitly envisioned in the EAC Protocol.

4.2.4. Council of Elders

The Executive Secretary of ECOWAS (the ECOWAS Secretary) is mandated to compile a list of eminent personalities annually. They, on behalf of ECOWAS, are supposed to use their “good offices and experience” to play the role of “mediators, conciliators and facilitators”.¹³⁵ The list consists of eminent persons from various segments of “society, including women, political, traditional and religious leaders”. Once it has been compiled, the list is approved by the MSC – and the Authority – for it be implemented.¹³⁶

The personalities are requested by the ECOWAS Secretary, or the MSC, “whenever the need arises”, to deal with a given security threat. When that happens, the ECOWAS Secretary is then required to “assemble eminent personalities from the approved list” who will constitute a “Council of Elders” (the Council).¹³⁷ The functions and composition of the Council are determined by the ECOWAS Secretary, based on the missions that will be carried out. Further, members of a particular Council who are elected to deal with a certain security threat are required to make recommendations on how to peacefully resolve the security threat to the ECOWAS Secretary.¹³⁸

¹³⁴ Article 19, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹³⁵ Article 20, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹³⁶ Article 20, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹³⁷ Article 20, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹³⁸ Article 20, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

4.2.5. ECOWAS Cease-fire Monitoring Group (ECOMOG)

ECOMOG is an institution that consists of “several stand-by multi-purpose modules (civilian and military) in their countries of origin”, who ought to always be ready for “immediate deployment”.¹³⁹ ECOMOG is charged, among others, with the functions of “observing and monitoring the peace and security missions; peace-keeping and restoration of peace”. It is also mandated with “providing humanitarian intervention in support of humanitarian disaster; enforcement of sanctions (including issuing embargos); preventive deployment; peace-building, disarmament and demobilisation; policing activities (including the control of fraud and organised crime); and any other operations as may be mandated by the MSC”.¹⁴⁰

4.2.6. ECOWAS Standby Force

One of the five regional standby forces of the ASF,¹⁴¹ the ECOWAS Standby Force (ESF) is an integral component of APSA, and plays a critical function in enabling the PPSC to fulfil its mandate in the West African Region.¹⁴² This ESF has similar functions to that of ECOMOG, which include, among others, “observing and monitoring the peace and security missions; peace-building, and providing humanitarian intervention in support of humanitarian disaster”.¹⁴³ The countries included in the ESF faction consist of member States of ECOWAS – “Benin, Burkina Faso, Cape Verde, Côte d’Ivoire, Gambia, Ghana, Guinea-Bissau, Liberia, Sierra Leone, Mali, Niger, Nigeria, and Senegal”.¹⁴⁴

4.2.7. ECOWAS Early Warning System

Unlike the EAC, ECOWAS has a comprehensive Early Warning System – a regional peace and security observation system established by the ECOWAS Protocol for the purposes of prompt and appropriate conflict prevention.¹⁴⁵ It consists of the “Observation and Monitoring Centre” (the Centre), which is located at the ECOWAS Secretariat, and observation and

¹³⁹ Article 21, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹⁴⁰ Article 22, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹⁴¹ Article 13, *Protocol Relating to the Establishment of the Peace and Security Council of the African Union* (2002).

¹⁴² Bah A *et al*, *The African peace and security architecture*, 50.

¹⁴³ Bah A *et al*, *The African peace and security architecture*, 50.

¹⁴⁴ Bah A *et al*, *The African peace and security architecture*, 50.

¹⁴⁵ See Chapter 4, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

monitoring zones, which are located within the headquarters of the different zones of the ECOWAS region.¹⁴⁶

4.2.7.1. Observation and Monitoring Centre

The Centre is the institution that is responsible for “data collection and analysis and preparation of reports for the use of the Executive Secretariat”. It collaborates with the UN, the AU, research centres and all other relevant international regional and sub-regional organisations in order to properly fulfil its mandate.¹⁴⁷

4.2.7.2 Observation and Monitoring Zones

Pursuant to the provisions of the ECOWAS Protocol, four peace and security zones were established.¹⁴⁸ Member states have been divided into zones on the basis of “proximity, ease of communication and efficiency”. Each zone is identified by a number and has a zonal headquarters.¹⁴⁹ Whenever necessary, the zoning provided in the ECOWAS Protocol may be changed by the ECOWAS Authority, which consists of heads of state and government.¹⁵⁰

All the zonal headquarters have offices, and work under the authority of the ECOWAS Secretary, through the office of the Deputy Executive Secretary. The zonal headquarters “process the data collected, and prepare a report”, which they then send to the Observation and Monitoring Centre. In order to enhance efficiency in communication, each of the zonal headquarters is “directly linked by appropriate communication means to the Observation and Monitoring Centre”.¹⁵¹

4.3. The ECOWAS Peace and Security Fund

To ensure the effective implementation of the institutional framework mentioned above, the ECOWAS Secretary is required to make a provision in its annual budget, for funds to finance

¹⁴⁶ See Chapter 4, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹⁴⁷ Article 23, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹⁴⁸ Article 24, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹⁴⁹ Zone one consists of Cape Verde, the Gambia, Guinea-Bissau, Mauritania and Senegal, with its headquarters based in Banjul. Zone two comprises Burkina Faso, Cote d’Ivoire, Mali and Niger, with its headquarters based in Ouagadougou. Zone three is made up of Ghana, Guinea, Liberia and Sierra Leone, with its headquarters based in Monrovia. The last zone – zone four – is constituted of Benin, Nigeria and Togo, with its headquarters based in Cotonou.

¹⁵⁰ Article 24, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹⁵¹ Article 24, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

activities of the ECOWAS Protocol.¹⁵² Funds for operations are to be acquired through making special requests for the same to the AU, UN, “other international agencies, and voluntary contributions and grants from bilateral and multilateral sources”.¹⁵³ ECOWAS member states are also required to establish a “special fund” to deal with detected proceeds of crime. The fund is to be used for “preventive and criminal justice response”.¹⁵⁴ Such measures, unfortunately, have not been incorporated in the EAC Protocol.

4.4. Case Study: How the Various Institutions in the ECOWAS Protocol Dealt with the 2016 Gambian Conflict

The West African region, just like the East African region, is faced with various security threats. However, due to the robust and comprehensive institutional framework that has been incorporated in the ECOWAS Protocol, peace and security matters have been handled more effectively in the region. This is seen through the case study of how the different institutions in the ECOWAS Protocol dealt with the security threat that occurred in the Gambia in 2016.

The 2016 conflict in the Gambia emerged in December, after the results of the presidential election that had taken place on 1st December 2016, were announced. The results indicated that the then President, Yahya Jammeh, had been defeated by his main competitor, Adama Barrow. When the results were announced, President Jammeh first conceded defeat. This was widely encouraged by the international community as they applauded him for the same.¹⁵⁵ Unfortunately, a few days later, President, Jammeh changed his stance by announcing that he no longer accepted the results of the presidential election. This led to widespread violence and chaos in the Gambia.¹⁵⁶

ECOWAS Protocol’s institutional framework was instrumental in resolving the violence that had occurred in the Gambia. A section of the ECOWAS Authority, which comprised of presidents from “Nigeria, Ghana, Senegal, Liberia, Guinea, and Sierra Leone”, held talks with President Yahya so as to convince him to accept the election results.¹⁵⁷

¹⁵² Article 36, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹⁵³ Article 36, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹⁵⁴ Article 46, *Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security* (1999).

¹⁵⁵ See –<<https://www.bbc.com/news/world-africa-38183906>> on 22 September 2020.

¹⁵⁶ See –<<https://www.bbc.com/news/world-africa-38271480>> on 22 September 2020.

¹⁵⁷ Terwase I, Adesina O, Puldu G, Abudul-Talib A, ‘The role of ECOWAS on peace and conflict resolution in Nigeria and Gambia’, 12 (3) *International Journal of Management & Social Sciences* 3, 2018, 58.

Further, as the discussions were on-going, and upon heeding the advice of the ECOWAS Authority and the MSC, Adama Barrow fled to Senegal. It was there that he was officially sworn in to office as the Gambia's next president. On the other hand, ESF members, under the guidance of the Defence and Security Commission, were strategically placed in various parts of the Gambia, so as to quell any violence that had occurred.¹⁵⁸

Moreover, it was after the Authority, in conjunction with a select panel of ECOWAS-based eminent personalities and Council of Elders, held successful discussions with President Jammeh, that he agreed to accept the election results and step down as the President of the Gambia. That eventually ended the heightened violence that had been witnessed in the Gambia since the election results were announced. Afterwards, the newly-elected president, Adama Barrow, returned to the Gambia from Senegal.¹⁵⁹

4.5. Conclusion

When compared to the institutional framework that exists in the EAC, the framework in the ECOWAS Protocol is quite comprehensive and elaborate. This has been established by keenly discussing all the institutions that have been incorporated in the latter protocol. Not only does it have a specific overarching institution that is in charge of peace and security missions in ECOWAS, but also enshrines other relevant institutions that are vital in peace-building and conflict management.

Further, an analysis of how effective it has been to operationalise various functions of some of the mentioned institutions in the ECOWAS Protocol has also been done through assessing how the institutions efficiently handled the 2016 Gambian post-election violence. If the aforementioned ECOWAS Protocol's peace and security institutions could not have intervened in a timely manner like they did, the post-election violence – and the heightened political tension – in the Gambia could have been prolonged further.

¹⁵⁸ Nte T, 'ECOWAS standby force and democratic consolidation in Gambia cleansing the sit-tight syndrome of west African leaders', 8 (2) *International Journal of Social Sciences and Humanities Review* 2, 2018, 413.

¹⁵⁹ Terwase I *et al*, 'The role of ECOWAS on peace and conflict resolution in Nigeria and Gambia', 58.

CHAPTER FIVE: CONCLUSION AND RECOMMENDATIONS

5.1. Introduction

This Chapter – the last one of this study – starts by briefly discussing the findings that have been made in the study. This is done by answering the first three research questions. Thereafter, various recommendations – based on the aforementioned findings – are proposed. This, effectively, answers the last research question – which seeks to find out the features of a robust and comprehensive institutional framework that will effectively deal with the prevailing security threats in the East African region.

5.2. Findings

5.2.1. To what extent is the EAC Protocol effective?

The EAC Protocol is effective to a very small and limited extent as it has a very weak and incomprehensive institutional framework. Therefore, once it is fully ratified – and ultimately enforced – it will be hard to effectively and properly implement it.

5.2.2. What is the nature of the legal and institutional framework of the EAC Protocol?

The legal framework of the EAC Protocol is hinged on ensuring major security threats like conflicts, genocide, terrorism, piracy, cattle rustling and transnational and cross border crimes are prevented, and when they occur, managed and combated effectively. On the other hand, the EAC Protocol's institutional framework generally consists of an early warning system, an anticipated regional mechanism, and institutional arrangements that are to be established by the EAC Council.

5.2.3. What are the inadequacies of the institutional framework of the EAC Protocol?

The institutional framework is generally weak and incomprehensive. The established early warning system, envisioned regional mechanism and institutional arrangements hardly have any roles or features specified. Further, the framework does not include already established institutions that are relevant in the maintenance and promotion of peace and security in the East Africa region – the Summit, Panel of Eminent Persons and the EASF. The framework also does not provide various critical roles for various institutions that are pertinent in mitigating security threats in the EAC. Moreover, apart from the characteristics of the members who will constitute the envisioned institutions not being provided, a funding mechanism that will ensure the institutions operate efficiently has also not been provided.

5.3. Recommendations

The current EAC Protocol ought to be amended so as to include the following features in its institutional framework:

5.3.1. Enhancement of the Early Warning System Established in the EAC Protocol

The characteristics of the early warning system in the EAC Protocol need to be revamped. It ought to be an East African regional peace and security observation and monitoring system mandated to ensure prompt and appropriate conflict prevention and management. Further, it should consist of one main observation centre, which is located at the EAC headquarters in Arusha, and various smaller observation centres, which should be located in the capital cities of the six EAC partner states – Nairobi, the capital of Kenya; Kampala the capital of Uganda; Dodoma, the capital of Uganda; Kigali, the capital of Rwanda; Bujumbura, the capital of Burundi; and Juba, the capital of South Sudan.

The main observation centre ought to be the institution that will be responsible for data collection, analysis and preparation of reports for the other peace and security institutions. The centre should also collaborate with ECOWAS, the AU, the UN, other observation centres and all other relevant international, regional and sub-regional organisations in order to properly fulfil its mandate.

The smaller centres, on the other hand, should be created so as to enhance the communication channels and efficiency with regard to peace and security matters in the six EAC countries. Each headquarter of the small centre needs to be provided with an office, and should be placed under the authority of the main centre. The smaller centres ought to be in charge of collecting and processing peace and security data collected from the different EAC countries, and prepare reports, which they should send to the main centre.

5.3.2. Incorporation of Established Peace and Security Institutions into the EAC Protocol

Since the EAC Protocol is meant to be the main peace and security legal instrument in the East African region, the Summit, Panel of Eminent Persons and the EASF, together with their respective roles and composition features, should be directly included in the institutional framework of the EAC Protocol.

5.3.3. Incorporation of Relevant Roles into EAC Protocol's Institutional Framework

Further, roles that deal with implementing all the provisions of the EAC Protocol, authorising all forms of intervention and deployment of peace-keeping and military missions, and

approving the responsibilities and terms of reference for such missions, need to be incorporated into the EAC Protocol's institutional framework:

Other important roles that ought to be included in the framework are roles that will ensure all technical and administrative issues will be examined, all logistical requirements for peace-keeping operations, including the EASF operations are assessed, and the mandate of the various peace and security missions are formulated respectively. Roles that deal with appointing the heads and deputies of such missions, together with determining their composition, need to be featured as well.

There also needs to be a clear operation structure so that the different institutions that will be incorporated into the EAC Protocol know how to coordinate properly.

5.3.4. Incorporation of Characteristics of Members of the Various Institutions into the EAC Protocol

Certain qualifications and characteristics for the members of the different institutions ought to be included so as to ensure the institutions function as optimally as possible, and to avoid ambiguity in the recruitment process. Such characteristics include, but are not limited to being a citizen of an EAC partner state; inclusivity and fair representation of all EAC partner states in the various institutions; having high integrity standards; having several years' experience of peace and security matters that is compounded with a proven track record; and making outstanding contributions to the cause of peace and security in the EAC previously.

5.3.5. Establishment of a Peace and Security Fund in the EAC Protocol

There also needs to be a peace and security fund established in the EAC Protocol. Managed by highly reputable representatives from the East African region, this fund ought to have enough money to always ensure that the various peace and security institutions fulfil their respective mandates effectively. So as to actualise the foregoing, all the six EAC partner states ought to contribute an agreed amount annually to the fund. The EAC, when required, can also request for monetary support from the AU, the UN and other regional and international organisations that are focused on maintaining peace and security.

5.3.6. Indication of a Ratification Period in the EAC Protocol

A specific ratification time frame for Kenya and Tanzania ought to be indicated in the EAC Protocol, so that it can become operational as soon as is reasonably possible.

5.4. Conclusion

It has been established that the institutional framework that exists in the EAC Protocol is not only vague but also incomprehensive in nature. Due to this factor, it has been seen that implementation challenges will be inevitable once the EAC Protocol has been fully ratified by all the EAC partner states.

With a view to remedy the foregoing, it has been recommended that there should be a revamped early warning system in place; the Summit, the Panel of the Wise and the EASF, together with their various roles, and other vital roles should be incorporated into the EAC Protocol. Further, characteristics of the members of the envisioned institutions also need to be established, as well as a peace and security fund. Lastly, it has been proposed that a specific ratification period is required for Kenya and Tanzania so as to enforce the contents of the EAC Protocol as soon as is reasonably possible.

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