

## **The Union and the Zanzibar Statehood Question**

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### **Abstract**

*The union between Tanganyika and Zanzibar and the statehood of the latter have been matters of serious contestation between the “attentive public” from Zanzibar and Mainland Tanzania. The case of S.M.Z v. Machano Khamis Ali and 17 Others in Zanzibar, who were charged for treason under section 26 of the Penal Decree (cap.13) of Zanzibar, set the debate in motion. The Court of Appeal of Tanzania justified the jurisdiction of the High Court of Zanzibar over treason cases but in the process the statehood and sovereignty of Zanzibar were denounced. The Court of Appeal’s verdict on the statehood of Zanzibar is disputed by Shioji (2006) who reached a conclusion that in the current form of the union, Zanzibar is a state and is sovereign. In this article, a “realpolitik” perspective of statehood and sovereignty in international politics is advanced to provide a critique to Shioji’s position.*

### **Introduction**

The two-tier governments’ structure of the Union between Tanganyika and Zanzibar has been a matter of a serious controversy among politicians and analysts from both sides. Although there is a section of the Zanzibar population who would prefer to secede from the Union (Maalim, 2006), the majority of those who express discontent regarding the Union are mostly pointing to its structure than the legitimacy of the Union itself. For example, the Civic United Front (CUF), which was accused many times by Chama Cha Mapinduzi-Zanzibar of having an intention to break the Union (Mbunda, 2010: 63), has often denied these accusations emphasizing instead that their main concern is the structure rather than the Union itself (Hamad, 2006: 127,142). Even the traditional critics of the Union, like Wolfgang Dourado are essentially not disputing the legitimacy of the Union, but are uncomfortable with the two-government structure (Dourado, 2006: 107).

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After the President of Tanganyika, Julius Nyerere and the President of the Revolutionary Government of Zanzibar, Abeid Karume had deliberated, agreed and signed the Articles of Union on 22 April, 1964, this structure came into operation on 26 April 1964 after the Union Agreement was consented to, and ratified by the respective authorities in Tanganyika and Zanzibar. Although Dourado (2006) and Shivji (1990) argue that no evidence indicates Zanzibar had ratified the Union Agreement, these fears were laid to rest by the Nyalali Commission, which established that the Revolutionary Council had met and ratified the Articles of Union (Tume ya Nyalali, 1991). Legal-political analysts, political activists and politicians are uncomfortable with the form of the union for many reasons. For some, the two-tier government structure presents a conceptual problem as to whether it is a federal, quasi-federal or a unitary structure (Kabudi, 1986; Mushi, 2006). As such, it has made Tanganyika to assume and enjoy the union status different from that enjoyed by Zanzibar (Othman, 2006: 55; Shivji, 2008). Consequently, there have been complaints regarding material gains such as loans, grants and aid, which are typically union matters but are managed by the ministry of finance, 'presumably' of Tanganyika and not a definite Union ministry. In general terms complaints associated with this structure ranges from loss of material gains to demands for full internal autonomy and international recognition (Kabudi, 1986; Mushi, 2006; Maduhu, 2004). It is not the preoccupation of this article to pinpoint and discuss these complaints, but to join the debate on the statehood and sovereignty of Zanzibar in the current structure of the union.

### **Imperatives for the Union**

The Union between Tanganyika and Zanzibar will record 50 years on 26 April 2014. It has been lauded by many as a unique initiative in Africa, but also for its prolonged existence. But, why would formerly sovereign states make a prime concession like that of surrendering their sovereign rights to be in a political union? This question is probably the most difficult one given the fact that politicians love privileges and powers associated with sovereign rights, such as the 21 gun salute Heads of State get when officially visiting other States. Many scholars have attempted to hypothesize the rationale for political unions, and many theoretical models have been created to that end. Baregu (2002), for example, has formulated a model on the imperatives for integration, which we are going to use in our analysis. Baregu (2002) discusses four typologies of imperatives that push member states to integrate namely *affection, gain, threat* and *power*. Imperatives in this context are defined by Baregu as issues or desires that create the impetus for the members to integrate.

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Baregu categorizes two perpetual domains as they might give rise to integration. That is to say the impulses may belong to a domain of *choice* or they may rightly fit into the sphere of *necessity*. *Affection* and *gains* fit into the domain of choice while *threat* and *power* belong to the domain of necessity. Necessity and choice are dialectically opposed such that, the more necessity exerts itself the less the choices one can make. The imperatives are usually expressed in the preambles of the treaties establishing the unions as both the underlying compulsion for the integration and as visions. Baregu opines that the more integration is driven by necessity of imperatives the greater the possibility of effectiveness and sustainability and vice versa.

The imperative of *affection* is based on emotions. In some preambles of integration schemes, it is stated that countries come together because of their commonalities and some links of affection. Prominent in this category are integrations whose member states share a common language, history etc. The imperative of *Gain* presupposes that states come together in integration for some material gains. Trade is one of the main sources of material gains, and it has pushed many countries to come together especially in Regional Economic Integrations (RECs). The imperative of *threat* pushes states to come together as a collective self-help mechanism, where states feel safer together than in isolation. According to Baregu (Ibid), the pursuit for mutual security and defence is conceivably the strongest impetus for political unions. The threat in this context can be either internal to the integration scheme or external. For example, the push to establish the North Atlantic Treaty Organization (NATO) was largely due to the perception that the Soviet Union posed a mammoth threat to the West. The imperative of *Power* can be understood from the perspective of a regional hegemony which forces the other states within the region into integration. The most essential feature in this type of integration is that the regional hegemony is prepared to cover the costs of the integration.

Of the four imperatives, two have been used explicitly or implicitly to explain the union between Tanganyika and Zanzibar. The first is a formal one which is in a pre-amble of the Articles of Union. It states that, "Whereas the Government of the Republic of Tanganyika and of the Peoples' Republic of Zanzibar, being mindful of the long association of the peoples of these lands and of their ties of kinship and amity, and being desirous of furthering that association and strengthening of these ties and of furthering the unity of African peoples, have met and considered the union of the Republic of Tanganyika with the Peoples' Republic of Zanzibar". This preamble, as in Baregu's formulation, is based on the imperative of affection. Aboud Jumbe, the Second President of the

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Revolutionary Government of Zanzibar aptly confirms this emotive imperative. According to Jumbe (1994: i) the peoples of the two erstwhile Republics (Tanganyika and Zanzibar) are unified by blood and family ties, as well as historical and social interactions for many years and this unification has survived the taste of time despite being shaken by numerous external conquest by the Portuguese, Arabs and the British.

However, there is an intense debate on this rationale of affection as to whether or not it was the main push for the union. To many analysts of the Union between Tanganyika and Zanzibar, the perception of threat seems to be the main impulse for the union. These analysts think that it was for the survival of the Revolutionary Government of Zanzibar, which came out of a bloody revolution. Joining the union was a security measure for President Karume and his Council of 14 inasmuch as they had little hope of surviving a counter-revolution on their own (Bakari, 2001; Maalim, 2006: 127). Others, however, think that it was Nyerere who was worried about Zanzibar's closeness to Tanganyika. The fear that turbulence in the Isles could have spilled over to the Mainland pushed President Nyerere to persuade President Karume to unite their two countries (Kabudi, 1986).

However, it is also argued that external threats could be a major push for the union between Tanganyika and Zanzibar. According to Othman (2006: 45-50) the threat of the spread of communism was imminent in the Isles and Nyerere as well as Western powers namely United States of America, Britain and West Germany thought it could be curbed by uniting Tanganyika and Zanzibar. This, according to Othman (Ibid), describes the hurried and secret nature of the way the union was reached. Othman (2006) and Shivji (2008) are quick to deny the argument of Pan-Africanism as the bedrock of the union between Tanganyika and Zanzibar. It is more of 'pragmatism' or 'convenience' that brought about the union and rightly so, rather than a Pan-African agenda. I would agree with the historical emotive impetus, given that Zanzibaris and Tanganyikas had been interacting since time immemorial. The impetus of threat also seems to hold water, and it might have been a propelling force that kept the union intact for half a century. The most important question is, are such imperatives relevant to hold the union together for its sustenance?

Baregu (2002) is of the opinion that emotive imperatives, particularly common history and common language, are weak in terms of holding an integration together. I would like to add that the emotive impetuses are not only weak but easily forgotten and, as in the case of Somalia and Somaliland, they could not

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prevent separatism. However, I would like to differ with Baregu (2002) on his argument that the imperatives of necessity, such as threat and power, are the strongest. The threats (both internal and external) that pushed Tanganyika and Zanzibar to unite in the 1960s might not be a strong factor today. For example, with the advent of democratic principles, the likelihood of a counter revolution in Zanzibar, which was feared by President Karume in 1964, is very minimal. And if the Cold War, which was configured along Washington- Moscow divide had a strong bearing on the formation and longevity of the Union as Othman (2006) and Shivji (2008) would have us believe, that threat is over as the old foes are cooperating on security issues. Notably, both Russia and United States of America are members of the Organization for Security and Cooperation in Europe (OSCE) a mechanism established in 1973 at Helsinki to help them deal with issues of security and cooperation.

Material gains seem to be the main imperative both for new integrations that are being created in modern politics or the sustenance of old ones. The proliferation of regional economic integrations, for example, is largely driven by economic cooperation including trade. It is no wonder, therefore that the major part of what is referred to as the 'hitches' of the union between Tanganyika and Zanzibar is largely economic such as aid benefits (Maduhu, 2004). This was notably the case from 1980s, where some of the ministers in the Jumbe cabinet, namely Juma Duni, Assistant Minister of Planning and Muhammad Mzale, Assistant Minister of Education stated candidly in the colloquium to venerate the 20 years anniversary of the Revolution that the worsening of the economy in Zanzibar is partly due to the union (Shivji, 2008: 203). Many other demands presented by Zanzibaris who are critical of the Union are merely geared towards an enhanced control of their economy and ability to secure aid on their own.

#### **Articles of the Union: Did they envisage a Union of Three Governments?**

It is important to note that debating the union between Tanganyika and Zanzibar was initially considered a taboo. Mushi (2006: 35) seems to suggest that in the first two decades of its existence, matters of the Union were handled in high secrecy with little or no debate allowed. Even when the debate was allowed particularly in the 1980s, it was limited only to certain areas. One area, which was presumably a taboo to be discussed, was the Articles of Union. This is evidenced by President Aboud Jumbe's statement that Chama Cha Mapinduzi National Executive Committee (CCM-NEC) had been insisting on discussing the union sketchily without touching the Articles of Union, which he thought were central to the debate inasmuch as they constituted the birth

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certificate of the Union (Shivji, 2008: 216; Kabudi, 1986: 340). This is to suggest that the Government of the United Republic of Tanzania, especially under Mwalimu Nyerere was not interested in allowing the debate and Mushi (op. cit) believes that this tendency made people unaware of the critical issues regarding the Union.

The debate was allowed in 1983/84 when the CCM-NEC decided to solicit views from its members in both parts of the union on the constitutional amendment. However, the deliberations turned out to be unpalatable to some politicians. Although people had the freedom to discuss diverse matters of the Union, the most important area was the legality and rationale of the two-government structure. The liberty to discuss the constitutional amendments resulted in what is described as the 'polluted political climate in Zanzibar', which was also considered a serious crisis by the Union leadership (Kabudi, op.cit; Shivji, 2008). The debate led to, among other things, people ridiculing the union in Zanzibar which eventually led to the forced resignation of Aboud Jumbe, who was the President and Chairman of the Revolutionary Council of Zanzibar, Vice-President of the United Republic and Vice-Chairman of the party in 1984. This also included the resignation of his Chief Minister, Brigadier Ramadhani Haji Faki, Minister for Land, Housing and Construction Aboud Talib and Lt. Col. Hafidh Suleiman, -Minister of State in Zanzibar, President's Office.

In his own words, Seif Shariff Hamad, who was Zanzibar's Chief Minister from 1984 to 1988, admits that he was sacked from that very senior position in the Isles and removed from the party with 6 others after they had demanded a referendum on the union (Hamad, 2006: 128). Not only Zanzibaris who were vocal about the two-government structure, but also in 1993, a group of 55 Members of the Union Parliament (commonly known as the G55), who were largely Mainlanders gave a notice of their intent to move a motion in Parliament demanding the Government of the United Republic of Tanzania to table a bill that would amend the Constitution so as to create the Government of Tanganyika (Nyerere, 1995a). This intention, however, could not materialize partly because of the unwavering opposition from Mwalimu Nyerere, who was then as a retired President, who viewed the move as a process that would ultimately lead to the breakup of the Union (Nyerere, 1995a; Nyerere, 1995b).

The two-tier government structure has however been food for thought among scholars in the general analysis of political integrations, statehood and sovereignty. The main focus has been the interpretation of the Articles of

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Union, considered to be the fundamental law from which both the legitimacy of the union and all other laws are derived (Shivji, 1990). Mwalimu Nyerere had once noted that for lawyers the interpretation of the Articles of Union is always construed in a  $1+1 = 3$  (Kabudi, 1986). Wolfgang Dourado, who was Karume's Attorney General when the two Presidents signed the Agreement of the Union, is one of those lawyers singled out by Nyerere. Dourado is of the view that the Articles of Union envisaged to create a federal structure with three jurisdictions (Dourado, 2006: 81). He holds that the two sovereign states had united to create a Government that will have jurisdiction over the whole territory, which is the United Republic in respect of the 11 matters listed on article (IV). However, two other governments were to be created that would have jurisdiction over non-union matters with respect to both Zanzibar and Tanganyika. Dourado is further arguing that, the Constitution of Tanganyika, which was amended to reign over the Tanganyika territory, while also providing a separate government for Zanzibar, was merely adopted as an interim measure but not as the final structure of the two-tier government. This line of thinking is also shared by Kabudi (1986) who is of the opinion that Zanzibaris' demand for the Union of three governments, and even the Mainlanders' claim for the restoration of Tanganyika are justifiable by the Articles of Union. It is emphasized in some literature that although Abeid Karume did not care much about the legality of State matters, he had thought of the Union with three Governments (Dourado, 2006: 90).

Reading through the Articles of Union, it is difficult to understand this position of  $1+1=3$  as held by our learned brothers, on the basis of the Union Agreement. I would argue that adopting the constitution of Tanganyika, as an interim measure was only desirable insomuch as, of the two erstwhile sovereign states, Tanganyika had a constitution and Zanzibar had suspended its constitution after the Revolution and was governed by Decrees. However, it is important to emphasize that, although the initial Union Agreement identified three jurisdictions, the Articles of Union did not specify that three governments should be created. Instead, the drafters of these Articles might have had a two-tier structure in mind. This is very clearly stated by Othman (2006: 55) who is of the view that "Articles of Union provided for the existence of two governments: One for the whole United Republic for all union matters and for non-union matters in Tanganyika... and one for Zanzibar in all matters that are non-union".

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### **The Rationale of the Two Government Structure**

Structures of political unions are understood to constitute different forms of unions. Two forms are dominant in many parts, namely federalism and unitary political unions. While unitary structures are a rarity, federalism is mostly preferred inasmuch as it is considered as a tool to mitigate conflicts. Funk (2010) argues, for example, that states adopt federalism with the view to accommodate multiple cultural or lingual identities. By definition, a federal state is a “polity where at least two levels of government exist and through which are joined elements of both shared-rule and self-rule” (Funk, 2010: 3). Federal arrangements, however, differ in two aspects whether it is symmetrical or asymmetrical. While the former refers to a political system where the component units enjoy the same status in terms of autonomy and power, the latter implies that there are diversities among member states regarding autonomy and power (Funk, 2010: 12). If we take this definition of federalism in our analysis, the Union between Tanganyika and Zanzibar qualifies to be a federal state, but in the form of asymmetrical federalism. Some have referred to it as quasi-federation.

States choose to adopt symmetrical or asymmetrical federalism depending on the existing pre-conditions. These conditions can be disparities on the bases of territory, economy and demography (Ibid). However, some political cultures and traditions, including the political history of a certain region, can stand as a key determinant of the form of federalism to be adopted. In the Tanzania’s context, Mwalimu Julius Nyerere, one of the architects of the Union, was quick to state that they had avoided acting like fools by simply copying from existing forms of the union as they existed elsewhere (Nyerere, 1995a: 35). Nyerere argues instead that they were guided by their objective situation that helped them to craft a more appropriate structure (Ibid).

Consequently, Nyerere underlines three important factors that define the ‘objective situation’ of the two countries that pushed them to adopt a two-tier structure of the Union. According to Nyerere (1995a: 34) this form of the union was adopted because of “the small size of Zanzibar relative to that of Tanganyika”. That is to say, while Zanzibar has a total area of 2,650 Square kilometres, Tanganyika has 942,580 Square Kilometres. Nyerere continues to argue that in 1964 when the Union Agreement was reached, “Zanzibar had 300,000 people while Tanganyika had 12 million people” (Ibid). According to Nyerere, a union with one government, which Sheik Abeid Karume is believed to have preferred, would have given an impression that Tanganyika had swallowed up Zanzibar, an idea that Nyerere tried to avoid, inasmuch as it



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would have set a bad precedence in their efforts to unite the whole continent under the Pan-Africanist ideals. The most important factor that pushed for a two government structure was the cost of running the Union Government (Nyerere, 1995a: 35). Nyerere (Ibid) believes that Tanganyika would have carried the bigger burden of paying the cost of the federal government, but at the same time running its own government. The two- tier structure of the Union was meant to avoid such unnecessary costs.

The architects of the Union were also concerned with the identity and the legacy of the Afro- Shirazi Party, in their struggle for self- rule. Zanzibar had gone through a very historically fascinating struggle against both colonialism and racism. These efforts could have been lost if the country was eventually submerged into the bigger United Republic of Tanzania. One of the important historical legacies to be remembered is the 1964 Revolution of Zanzibar, which the late Vice-President of Tanzania, Dr. Omar Ali Juma (in Mapuri, 1996: xi) described as the only successful peoples Revolution in Africa. The revolution is also pronounced as a historical culmination of centuries of oppression and subjugation of the African people in the Isles (Mapuri, 1996: 1).

However, one of the other rationales, which is not mentioned by the architects of the union, is the probable resource conflict that could have emerged had they adopted a federal structure of three governments. According to Mushi (2006: 34) many conflicts have been averted by putting all the natural resources under the United Republic. If Tanganyika had its own Government, revenues accrued from natural gas and minerals could have raised squabbles if they were to be used by the Union Government. Thus, the two-tier arrangement resolved such dilemmas without many questions being raised by the Tanganyikans.

It is important to understand whether or not asymmetrical federations can bring about stability in political unions. In his analysis of asymmetries in Spain (with seventeen autonomous communities) and Canada (four provinces but with a preferential treatment accorded to Québec), Funk (2010) noted that asymmetries bring a feeling of unfair and imbalance, which in turn may cause disgruntlement among the other units in the federation. This view is also reiterated by Thomas Hueglin who compares a federal system with individuals in a polity, thus endowed with 'liberal equality'. To Hueglin (2010: 3), like, individuals, all units within a federation must be handled equally without any preferential treatment. According to this logic, the preferential treatment accorded to Zanzibar in the Tanzanian union setting is against 'liberal equality' as should be applied to all units in a federation. This argument, however,

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misses the context of the polity in question. In the two demographically and geographically distinct entities like Tanganyika and Zanzibar, liberal equality may not hold sense. For example, how can it be applied to matters such as contribution to running the Union Government and the allocation of public posts to 300,000 Zanzibaris versus 12 million Tanganyikans as of April 1964? I would think that when the costs of running the government are weighing heavily on one side, the authority of that partner state might be quick to run a reality check, which in turn may jeopardize the union itself.

It is also argued that asymmetries underline disparities between the parties in the federation and may result into demands for more autonomy by some of the entities (Funk, 2010:36, 55). Consequently regional autonomy is more emphasized than solidarity of the federation as a whole. This may be a destabilizing factor but it is also a constitutional matter. When matters of the union are constitutional, a breach by one unit is unconstitutional and it is the duty of the leadership in power and the citizens to take action against it. In Tanzania, for example, the case of Mwalimu Paul Mhozya, versus Attorney General, in the High Court of Tanzania case No. 206 of 1993, sets an example of how such demands can be handled constitutionally. In this case, Mwalimu Mhozya, demanded, inter alia, the Court's declaratory order that the Revolutionary Government of Zanzibar infringed the Constitution of the United Republic by joining the Organization of Islamic Countries (OIC). But also, the Court should declare that the President of the United Republic of Tanzania was responsible in his capacity as Head of State for allowing this infringement to happen and thus be barred from carrying his Presidential duties. Although, the application was dismissed on the ground that it is only the Parliament that can impeach the President as per Article 46 (a) of the Constitution, this was a landmark case, which showed how the leadership could be held to account on their constitutional responsibilities.

Despite the hitches mentioned above, it has been highlighted unreservedly that asymmetries have been a huge success in both Spain and Canada as it can be argued for the Tanzanian case. In Canada, the federation has been "a huge success story, that has kept the country together for 146 years since 1867 (Hueglin, 2010: 3). In Spain, Funk (2010: 55) is of the view that asymmetry has been an effective tool to address disparities that already exist. In Tanzania, as Mushi (2006: 35) argues the experience shows that the current arrangement, which offers a preferential treatment to Zanzibar, is very useful that is why it has kept the Union for almost 50 years now. Mushi (Ibid) shares the same argument with Funk (2010) who maintains that such arrangements have

reduced heightened tensions and demands for secession. That is to say, even though the union between Tanganyika and Zanzibar has witnessed many complaints, it has managed to survive not by political will but by the design reflected in its current structure.

#### **The Statehood of Zanzibar under the Two Tier Union Structure**

Is Zanzibar a *sovereign* State? It seems to me that, more often than not, Tanzanians from the two parts of the union have been offering divergent responses to this question. For politicians, the responses have always been conscious with the view to protect their parochial interests. For example, the Civic United Front's Members of Parliament, Ibrahim Mohamed Sanya, and Hamad Rashid Mohamed, (both Zanzibaris) asked the Prime Minister, in a parliamentary session whether or not Zanzibar was a state (*ni nchi au siyo nchi*) (URT, 2008a). This question resonates with their party policy which calls for greater autonomy of Zanzibar in the union of three governments. The Prime Minister's 'NO' answer prompted a countrywide debate and hostile reactions from Zanzibar among both leaders and citizens. Some politicians from Mainland Tanzania did not remain quiet on that matter. The then Iramba West Member of Parliament Hon. Juma Kilimba, for example, called for isolation of people who cultivated the opinion that one part of the union is being marginalized (Ibid).

However, although politicians brought this discussion to the public, it has remained to be an unresolved debate among scholars. The position of lawyers in this case appears to be very interesting for many reasons. The most important reason is, *inter alia*, the fact that they use the same legal references to argue for or against the same issue. For lawyers, the turning point in the debate on Zanzibar's statehood is the case of S.M.Z v. Machano Khamis Ali and 17 other Zanzibaris. Machano and 17 others were charged for treason under section 26 of the Penal Decree (cap.13) of the laws of Zanzibar. The charge alleged that, by words and actions, the accused persons conspired to overthrow the Government of Zanzibar and in particular, to oust from power the President of the Revolutionary Government of Zanzibar. However, before the Zanzibar High Court had presided over the case, four preliminary issues were raised by the defendants' learned advocates (Mr. Hamidu Mbwezeleni, Mr. Salim Mnkonge, and Mr. Nassor Khamis), the main issue being that Zanzibar is not a sovereign state to which the offence of treason could be committed against its Government.

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The charges on this case were withdrawn for political reasons immediately after 7<sup>th</sup> November 2000 general elections when Aman Abeid Karume was elected Zanzibar President. However, the Court of Appeal of Tanzania, which had received an appeal from the accused persons, decided to revisit the case for reasons that it involved an important constitutional matter. The Court of Appeal believed that the matter needed clarifications on the jurisdiction of the High Court of Zanzibar vis-à-vis treason cases, to the effect that such an offence could be committed against the Revolutionary Government of Zanzibar in future. In what is referred to as the 'Order of the Court' from the Court of Appeal of Tanzania, the Zanzibar High Court's jurisdiction over treason cases was finally justified, but the statehood and sovereignty of Zanzibar were in the process denounced. Here is where the contestations began. The disagreement did not centre on the jurisdiction of Zanzibar to preside over treason cases, but the statehood and sovereignty of Zanzibar.

In the 'Order of the Court', Justices R.H. Kisanga, A.S.L. Ramadhani and K.S.K. Lugakingira endeavoured to explain why Zanzibar is neither sovereign nor a state. The bases of their argument were twofold: the definition of a state in international law, and the Union Constitution itself. They defined a state in light of Moelwyn-Hughes (1927) who describes it as "a permanently organized society, belonging to the family of nations, represented by a Government authority to bind it, independent in outward relations, and possessing fixed territories". Four conditions must exist: people, a territory, Government and Sovereignty. Sovereignty is defined according to Oppenheim (1937: 113) as "a supreme authority, an authority which is independent of any other earthly authority". On the bases of the definition of a state, and sovereignty above, the learned Justices therefore, submitted that 'the international persons called Tanganyika and Zanzibar ceased to exist as from 26 April 1964 because of the Articles of Union, as the two states merged to form a new International Person called the United Republic of Tanzania. In line with this argument, Earl (1927: 36) argues that, "a nation cannot indefinitely surrender the treaty-making power to another, and at the same time retain its existence as a sovereign state". Therefore, both Tanganyika and Zanzibar and not Zanzibar alone, surrendered their treaty-making powers to the United Republic. But, on the basis of the Union Constitution, the Court relied on Article 2 (1) which defines the territory of URT to include Zanzibar, and Article 103 which names the Head of the Revolutionary Government but not mentioning the state of Zanzibar, though the head of the Revolutionary Government is also titled President (URT, 2008b). However, they did not rule out the sovereignty of Zanzibar completely as it has authority for law making and law enforcement on non-union matters to

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give her 'internal sovereignty' and the jurisdiction over treason cases. Internal sovereignty is derived from the conclusion that sovereignty is divisible as in semi-independent states, of a federal state. In the ruling of the High Court of Zanzibar, Deputy Chief Justice Tumaka, made reference to the Nigeria's Criminal Code Law, sections 37& 38, which states explicitly that treason could be committed against President or State Governor.

However, by using the same provisions of international law, and particularly from the same authors of international law, Shivji argues that "a real Union is not itself a state, but merely a union of two full sovereign states which together make one single but Composite International Person" (taken from Oppenheim, 1937). He categorically concludes that, in international law the United Republic is first of all *not a state* but a composite International Person and that Zanzibar is a *State* and although it cannot conclude treaties it can enter into treaties. Secondly, after examining the Zanzibar constitution, he concluded that Zanzibar is sovereign and a state. However, its sovereignty is limited and the jurisdiction of the executives and the legislature is limited to non-union matters in Zanzibar, while its Judiciary has unlimited jurisdiction. In this regard, Shivji pointed to the unlimited jurisdiction of the Zanzibar court with reference to its mandate even to try treason cases.

#### **Joining the Tug of War: A Realist Perspective (Real politik)**

The definition of statehood as defined by Moelwyn-Hughes (1927) above seems to have clearly captured the essential ingredients. However, we need a conceptual clarity on the term sovereignty inasmuch as it has fundamental implications to our understanding of a state as it is used in this discussion. A comprehensive usage of this terminology might aid our conclusion to whether or not Zanzibar is a sovereign state. According to Krasner (1999), sovereignty has often been used in distinct ways such as domestic sovereignty, international legal sovereignty, Westphalian sovereignty, and interdependence sovereignty. Domestic sovereignty implies effective control of the state's domestic sphere which also indicates the presence of an organized political authority (Krasner, 1999: 11). In the Zanzibar case, Article 102 (1) of the Union Constitution names the executive of Zanzibar, which is vested with authority over non-union matters. The House of Representatives is stated in Article 106 (1) and Article 114 legitimizes the existence of the High Court of Zanzibar and its subordinate courts (URT, 2008b). This is a complete structure of domestic authority over non-union matters, to which Krasner's conception of domestic sovereignty applies.

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However, the three other usages of sovereignty are best described in relation to other States. For example, international legal sovereignty “refers to practices associated with mutual recognition between territorial entities that have formal juridical independence” (Ibid: 4). This is mostly founded on the practice of being recognized by other states in the international system, and the state’s right to join inter-governmental organizations. The Westphalian sovereignty, which is based on the doctrines of territorial integrity and the exclusion of external actors from the authority structure within the domestic sphere, portrays both, the domestic control and the ‘international presence’. This aspect of sovereignty is linked to the Westphalia Treaty of 1648 that ended a 30 years’ war. The peace pact therefore, led to the establishment of modern day states whose distinguished trait is sovereignty (Dune and Schmidt, 2001). And finally, interdependence sovereignty refers to the state’s ability to regulate the flow of goods across its border in its relationship with other states. This has to do with the states’ legislative power to control what is imported and exported on the basis of its priorities. Although, as Krasner (1999: 12) holds, globalization has eroded this form of sovereignty, this does not imply that states have no such authority within their realm. It is only a consequence of their interaction with powerful states in the international arena that has eroded their interdependence sovereignty.

On the Zanzibar’s statehood in the current arrangement of the union, the learned brothers seem (though not explicitly) to agree on one aspect which is the domestic sovereignty of Zanzibar- a concept that some analysts refer to as autonomy (Sisk, 2003: 789). It is autonomy on non-union matters which gives Zanzibar internal sovereignty, which is constitutionally established. As we saw earlier, very elaborate administrative structures are enshrined in the constitution and its leaders are democratically elected. Much as the Zanzibar President is elected by all Zanzibaris, it is logical to think that, just as in the case of the state Governor in Nigeria, treason can be committed against the Zanzibar president, and the Zanzibar High Court has the right to preside over such cases.

However, in *realpolitik*, an entity can only be called a ‘sovereign state’, if both the internal/domestic and the international parameters of sovereignty are in place. The three aspects, such as the right and capability to enter into relations with others, the right to create institutions and legislate laws to bind its subjects domestically, and the complete territorial authority over people and things, is what is comprehensively referred to as sovereignty. According to realist scholars the presence of sovereign authority domestically implies that individuals do not need to worry about their own security, since this is

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provided for them in a form of a system of law, police protection, prisons, and other coercive measures (Dune and Schmidt, 2001: 150). However, externally, in the relations among independent sovereign states, insecurities, dangers and threats to the very existence of the state loom large. To realists therefore, apart from internal authority, the primacy of sovereignty is placed on a state's relations with others internationally (Ibid). That is to say without these rights that territory will acquire another name but not a 'sovereign state'.

Zanzibar, in the current arrangement of the union, cannot be said to possess all these aspects of sovereignty. Although Zanzibar possesses some 'sovereign' powers on non-union matters it cannot be referred to as a sovereign political entity. Calling Zanzibar a *sovereign state* as Shivji (2006) does misses both the nature of the Tanzanian union and the international practice of states. In practice, Zanzibar is not recognized internationally as a state. It lacks the international legal aspect of sovereignty, which according to realists, function as a 'no trespass sign' placed in a border between states' (Dune and Schmidt 2001). With reference to the Articles of Union, among other things, Zanzibar does not have even an army to defend itself from the dangers posed by the international forces. The Union Government is instead recognized internationally and protects Zanzibar from external threats.

On the nature of the union between Tanganyika and Zanzibar, it is important to understand that it centres on what neo-realists call 'high politics'. High politics refers to power issues such as defence and security in military terms as well as emergency powers, while low politics refers to welfare issues (Gehring, 1996:228). It is a political union which is the highest form of integration. Unlike in economic cooperation or regional integration where states cede only a miniature of their sovereign rights, a political union presupposes complete surrender of a state's sovereignty on matters of high politics. This surrender, as in the case of the Union between Tanganyika and Zanzibar, presupposes that external relations are also wholly vested in the union government.

#### **The New Draft Constitution and the Statehood of Zanzibar**

The Articles of the Union between Tanganyika and Zanzibar had four important areas that are essential for the existence of a modern state. Article (IV) lists them as (b) external affairs (c) Defence, (h) External Trade and Borrowing (j) Income Tax, Corporation Tax, Customs and Excise. While the first two matters are central to our understanding of issues of high politics and state sovereignty, the last two matters are critical to economic development and welfare. They are essentially the main source of income to run the state. State

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power may not only be understood from a military perspective, but economic leverage most certainly gives a state an elevated status in international relations.

The Draft Constitution proposes a major change to the United Republic not only on the three government structures, but also the authority of the government as defined by Matters of the Union. The Draft Constitution has trimmed Matters of the Union from the current 22 to only 7, although some of the Matters, such as defence and security, were initially two separate issues but now have been welded together. These matters are mentioned in article 63 and are read together with the Schedule on Union matters as: the Constitution and Authority of the United Republic, defence and security, citizenship and Immigration, Currency and Bank of Tanzania, Foreign Affairs, Registration of Political parties and Excise duty on goods and non-taxable revenues obtained from Union Matters. In terms of the structure, the Draft Constitution proposes a three government structure of the Union, which will necessitate the re-establishment of the Tanganyika Government. As such, there will be the Government of United Republic of Tanzania, Government of Tanganyika and that of Zanzibar.

It should be remembered that the 10<sup>th</sup> amendments of the Zanzibar Constitution, that were intended to accommodate the Government of National Unity, ushered in some provisions to bolster the Zanzibar autonomy. In response to the Prime Minister's answer that 'Zanzibar is not a state, Article 1 of the Constitution stated categorically that Zanzibar is a 'state' and it delineates its borders. Article 2A removed the power of the Union President to divide Zanzibar into regions and districts in consultation with the Zanzibar President, and vested such power to the Zanzibar President. Article 99 limited the jurisdiction of the Tanzania Court of Appeal such that it had no power, *inter alia*, to interpret the Zanzibar Constitution. While the Union Constitution is supposed to be the mother law, the Zanzibar Constitution was clearly abrogating the Union Constitution.

The Draft Constitution sought, *inter alia*, to address the constitutional hitches resulting from the 10<sup>th</sup> Zanzibar constitutional amendments, of which Article 8 underlines the supremacy of the Union Constitution where the constitutions of Member States must abide by. Moreover, Article 31(1) of the Zanzibar Constitution requires the President to take oath as will be determined by the House of Representatives. However, Article 69 (2) of the Draft Constitution seeks to make protecting the Union as one of the oaths that would be taken by



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the Presidents of Tanganyika and Zanzibar. Generally, the Draft Constitution seeks to appease Zanzibar in their demands for the restoration of Tanganyika and their participation in international relations such as joining certain international non-governmental organizations, borrowing and regulating international trade. This arrangement, however, has greater implication to the autonomy of the Zanzibar and the Tanganyika governments. In practice, the Draft Constitution enhances both the domestic sovereignty of Zanzibar as well as interdependency sovereignty derived from its economic relations with the external world. Although this arrangement does not necessarily confirm the Statehood of Zanzibar within the Union arrangement, the shift in the structure of the Union presents a serious challenge to the survival of the Union itself. These challenges are discussed in the subsequent section.

It seems that, those who prepared the Draft Constitution were concerned more with having a minimal union government in order to give more autonomy to the member states, Tanganyika and Zanzibar. On the basis of the matters of the Union, the Union Government will only be preoccupied with the Citizenry on matters of immigration (as in issuance of travel documents) as well as their personal security and that of their properties. If we go back to our debate on the imperatives for sustenance of the union, this arrangement may not create an enduring legitimacy of the Union Government to the citizens. Two reasons lead me to that conclusion: first, the Union Government that is created by this Draft Constitution will stand as a self-serving authority inasmuch as it will only be there to 'protect its own survival'.

When the two tier-government structure was in existence, Tanzania had a full-fledged ministry to deal with problems of the Union. I would like to assume that, that ministry is now extended into a powerful government domestically and internationally with the president who is also a Commander-in-Chief of all armed forces, i.e., the army, police and the directorate of intelligence. However, this Government will not offer direct services to the people on the bases of their priorities. Although, Article 10 (c) of the Draft Constitution focuses on the economic vision such as poverty eradication, to create a conducive environment for the prosperity of agriculture and to ensure that the national wealth benefits all people, these areas are not within the domain of the Union Government. Priority areas of Tanganyikans and Zanzibaris such as education, health care, construction or roads, railways and agriculture will not be taken care of by the Union Government. As such, this political union is premised on the imperative of 'threat', which I argue is no longer topical in Tanzania. The Draft

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Constitution has failed to cultivate an imperative of gains that could be discernible to its citizens as a genuine holding force for modern political unions.

Secondly, the Union Government may not operate smoothly in its relationship with Governments of member states. One of the main reasons in this probable friction will be the cost of running the Government. Mwalimu Nyerere (1995a: 35), who had been Head of State for more than 22 years, had once noted that only those who “think with their tongues” can say running three governments is not costly. The Government of United Republic of Tanzania, which hereinafter I refer to as an extension of the “Union Ministry” will have a cabinet of up to 15 ministries, a House of 75 Members of Parliament, the Judiciary and embassies in many parts of the world. The cost of running these high profile institutions must be put into perspective. Article 231 of the Draft Constitution lists 5 sources of the revenues for the Government of the United Republic of Tanzania. Three of these sources constitute the core of the revenue of the United Republic. These are: Excise duty on goods, non-taxable revenue obtained from union matters, and the third is domestic and external loans. Members of the Constitutional Review Commission knew that these sources might not be enough. As such, they included a provision that governments of Member States (Tanganyika and Zanzibar) must also contribute to the costs of running the Union Government.

The danger of this arrangement is that the Union Government will compete for the same scarce resources with the Governments of Member States. The only difference is that, while Member States will need resources to offer service to their people, the Union Government will need the same resources for its survival. As such, the Union Government might be considered a ‘parasite’ institution whose rationale of existence might come into question. It is also unclear where exactly will the Union Government derive the legitimacy to borrow domestically and internationally if it has to depend on the contribution of Member States.

If Tanzanians want to restructure the union to three governments, the Federal/Union Government must be stronger for it to survive. Apart from security and defence, the strength of the Union Government, as it is to the Federal Government of the USA, must be discernible on its collection and allocation of resources. Article 1 Section 8 of the Constitution of United States of America, for example, states that the Federal State via the Congress has power to determine and collect taxes, duties, imposts and excises. It also has power to borrow money on behalf of the United States and to look after the

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welfare of the peoples of the United States. These matters are central to the legitimacy and authority of the Federal Government. The United States' Federal Government would be an 'empty shell' if these matters of the economy were to be left to Member States. It can be stated categorically that for the Union Government to attract legitimacy it should:-

1. Collect all revenues such as income tax from individuals and corporations, customs duty, and excise duty on goods. Governments of Member States could only be allowed to collect some taxes. The Union Government would be required to distribute such income to Member States;
2. Be the one borrowing on the credit of the United Republic of Tanzania. Allowing Member States to borrow may lead to accumulation of national debts;
3. Regulate external trade, on behalf of Member States;
4. Have a few Union ministries that are dedicated to socio- economic development such as education, health care, and economic planning.

#### **Conclusion**

The structure of the Union between Tanganyika and Zanzibar was premised on the objective situation regarding the two erstwhile sovereign states. The two states had surrendered their sovereignty to the United Republic of Tanzania. Tanganyika had practically disappeared and surrendered even its internal autonomy to the Union Government, while Zanzibar retained autonomy on non-union matters. Nonetheless, in such an arrangement, Zanzibar could not be a sovereign state alongside the United Republic. The two-tier government structure of the union, however, has attracted widespread criticisms with regard to the statehood of Zanzibar, and the material gains Zanzibar is entitled to in Tanzania's relationship with the external world. Calls have been made for the restoration of the government of Tanganyika from both the Isles and Mainland Tanzania. The change in the structure of the Union seems to be inevitable, where the three governments' structure is currently preferred. Nonetheless, it should be noted that the current form of the union has endured storms for almost 50 years. This longevity should not only be attributed to the political will of the leadership but also to the Union's design. In the design of the form of the Union, the geographical size of Zanzibar and Tanganyika and the demographic and economic factors can only be ignored at the peril of the

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union itself. I project in this article that a three government structure, with a small Union Government, as proposed in the Draft Constitution is not viable in its operation. Whereas there is no guarantee that the introduction of a three-tier government will reduce calls for greater autonomy, sovereignty and statehood of Zanzibar and Tanganyika; the legitimacy crisis emanating from the Union Government's self-serving nature and its inability to offer services to the citizens will only exacerbate matters. The legitimacy crisis of the Union Government will, in the long run, destabilize and break the Union.

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