



EAST AFRICAN COMMUNITY

EAST AFRICAN LEGISLATIVE ASSEMBLY

Official Report of the Proceedings of the East African Legislative Assembly

13TH SITTING – SECOND ASSEMBLY: THIRD MEETING – FIRST SESSION

Wednesday, 26 September 2007

The East African Legislative Assembly met at 2.30 p.m. in the Chamber of the Assembly, Ngorongoro Wing, Sixth Floor, AICC Complex, Arusha

PRAYER

[The Speaker, Mr. Abdirahin Haithar Abdi in the Chair]

The Assembly was called to order.

BILL **First Reading**

The East African Community Trade
Negotiations Bill, 2007

Mr. Gervase Akhaabi (Kenya): Mr. Speaker, sir, the issue of the East African trade negotiating has been in the forum of this Assembly for quite some time, and I now beg to move that the *East African Community Trade Negotiations Bill, 2007*, be read the First Time. I beg to move.

Ms Janet Deo Mmari: Seconded

(The Bill was read a First Time and it was committed to the relevant committees)

BILL **Second Reading**

The Summit (Delegation of Powers and
Functions) Bill, 2007

The Minister for East African Community Cooperation, Tanzania (Dr. Ibrahim Msabaha) (Ex-Officio): Mr. Speaker, sir, on behalf of the Chairman of the Council of the Ministers, I have the honour to move that *The Summit (Delegation of Powers and Functions) Bill, 2007* be read the Second Time.

The Counsel to the Community (Mr Wilbert T.K. Kaahwa): Seconded

Dr Msabaha: Mr. Speaker, sir, as I move this motion this afternoon for the second reading of *the Summit (Delegation of Powers and Functions) Bill, 2007*, allow me to remind this

august House that the Treaty for the Establishment of the East African Community provides for and establishes an institutional framework. This framework, which to some extent imports a separation of powers, provides in detail the functions and *modus operandi* for each of the organs and institutions of the Community.

Hon. Speaker, according to Article 11 of the Treaty, the Summit of Heads of State shall, among other functions:-

- (a) give general direction and impetus as to the development and achievement of the objectives of the Community;
- (b) consider the annual progress reports and such other reports submitted to it by the Council of Ministers;
- (c) review the state of peace, security and good governance within the Community and the progress achieved towards the establishment of a political federation of the Partner States.

Hon. Speaker, sir, in Articles 11(5) the Treaty also provides that: *Subject to the Treaty, the Summit may delegate the exercise of any of its functions, subject to any conditions which it may think fit to impose, to a member of the Summit, to the Council of Ministers or to the Secretary General.*

The Treaty goes on to provide in Article 11(6) that: *“An Act of the Community may provide for the delegation of any powers, including legislative powers conferred on the Summit by this Treaty or by any Act of the Community,*

to the Council or to the Secretary General.” The purpose of this Bill, therefore, is to give effect to this provision of the Treaty.

Mr. Speaker, sir, besides the overall functions of giving general directions and impetus as to the development of the objectives of the Community, the Treaty, in various provisions, stipulates for specific functions of the Summit. These include the following:-

- (a) Power to establish organs of the Community, in Article 9(1)(h) ;
- (b) Power to determine the procedure for meetings of the Summit, in Article 12(5);
- (c) Power to appoint judges, in Article 24(1);
- (d) Power to remove judges, in Article 26(1);
- (e) Power to determine the terms and conditions of service of the members of the Members of the Legislative Assembly, in Article 51(2);
- (f) Power to assent or withhold assent to a Bill of the Assembly, in Article 63(1);
- (g) Power to appoint the Secretary General, in Article 67(1);
- (h) Power to approve terms and conditions of service of the Secretary General, in Article 67(5); and
- (i) Power to appoint and approve terms and conditions of service for Deputy Secretaries-General, in Article 68(1).

Mr Speaker, sir, together with these powers, the contracting parties to the

Treaty saw it fit to deliberately make a difference between the functions of the Summit and the Authority provided under the 1967 Treaty of Co-operation. It is instructive, therefore, to note that pursuant to Article 11(4), the Summit shall have such other functions as may be conferred by the Treaty.

Mr Speaker, sir, this provision is not unique to the East African Community. Like with all other international and regional organizations, the aspect of giving general direction and impetus is wide, and indeed varied. It can accommodate all other areas of concern, including those which are not specifically provided by the Treaty. And to this extent, regional organizations, including ECOWAS, COMESA, SADC, NAFTA, and ASEAN, always provide a legislative mechanism for delegation of some powers by authorities equivalent to the Community's Summit of Heads of State. For purposes of facilitating decision-making, powers and functions have been appropriately delegated on a permanent basis or as regularly as possible.

In the East African Community, with the growth in country membership and expansion of programmes and activities, it will be imperative to smoothen decision-making. One of the areas in which this can be done is evidently with regard to delegation of the powers and functions of the Summit as foreseen by the Contracting Parties to the Treaty. This explains the need for an Act to provide for delegation of powers and functions as foreseen by the Partner States as contracting parties to the Treaty.

Mr. Speaker, sir, in order to operationalize the Treaty and facilitate decision-making as appropriate, the Bill before this august House provides for:-

1. Delegation, in clauses 3 and 4;
2. Order and contents of delegation in clauses 5 and 6; and,
3. Possibility of revocation of any such delegation of powers in Clause 9.

In Clause 10, the Bill also highlights the exceptions to delegation as provided under the Treaty.

Mr. Speaker, sir, as the Community grows it is important to improve on our efficiency in order to facilitate fast achievement of the objectives of the Community for the benefit of the peoples of East Africa. One area which we should continue improving is the process of decision-making.

It is in this regard, therefore, that I urge this august House to consider favourably and indeed pass this legislation this afternoon. I thank you, Mr Speaker, sir and the honourable Members of the Assembly for your very kind attention. I beg to move – (*Applause*).

(Question proposed)

Chairperson, Committee on Legal, Rules, and Privileges (Mr. Ali Hassan Abdalla Mwinyi (Tanzania): Mr. Speaker, sir, I beg to lay on the table the report of the Committee on Legal, Rules and Privileges.

REPORT OF THE COMMITTEE ON LEGAL, RULES AND PRIVILEGES ON THE SUMMIT (DELEGATION OF POWERS AND FUNCTIONS) BILL, 2007

Chairperson, Committee on Legal, Rules, and Privileges (Mr. Ali Hassan Abdalla Mwinyi (Tanzania)) : Mr Speaker, sir, *the Summit (Delegation of Powers and Functions) Bill, 2007* was referred to the Committee on Legal, Rules and Privileges by the Speaker pursuant to Rule 66(4) of the Rules of the Assembly at its Third Meeting in Arusha for consideration. During the consideration of the Bill, the Committee invited the Counsel to the Community and his team to clarify various issues raised by the Members of the Committee.

Consideration of the Bill

The Committee noted that the authority for the Bill is Article 11 of the Treaty for the Establishment of the East African Community; specifically Article 11(5), which stipulates as follows:

“Subject to this Treaty, the Summit may delegate the exercise of any of its functions, subject to any conditions which it may think fit to impose, to a Member of the Summit, to the Council or to the Secretary General”.

Delegation is defined as follows:

“...the act of entrusting another with authority or empowering another to act as a representative. Delegation of powers is a transfer of authority by one organ of government to another organ or administrative agency.”

Mr Speaker, sir, the Committee observed that the expansion of the East African Community and increment in the Community activities and programs necessitates the need for delegation of powers and authority for timely, smooth and cost effective management of the Community. The Committee further noted that the Bill is to operationalize the provisions of the Treaty cited above by enactment of this enabling law.

The Committee therefore proposes the following amendments to the Bill:

1. The functions of the Summit need to be clearly stipulated for clarity, consistency and certainty. It was noted that other than the functions of the Summit stated under Article 11 of the Treaty, which are: -

Article 11(1) – power to give general directions and impetus as the development and achievement of the objectives of the Community

Article 11(2) – power to consider the annual progress reports and such other reports submitted to it by the Council as provided for by this Treaty.

Article 11(3) – power to review the state of peace, security and good governance within the Community and progress achieved towards the establishment of a political federation of the Partners States.

Mr Speaker, the Summit also has other powers and functions provided for in other parts of the Treaty besides Article 11(4) of the Treaty. These include, among others:

Article 9 (1) (h) - powers to establish organs of the Community

Article 12 (5) - powers to determine the procedure for meetings

observer status to foreign countries; and,
iv. Assent to Bills.

Article 24 (1) - powers to appoint judges

Mr Speaker, the Committee proposes that for clarity, consistency and certainty, the powers and functions of the Summit as provided in the Treaty should be stated in the Bill.

Article 26 (1) - powers to remove judges

Article 51(2) - power to determine the terms and conditions of service of the members of the Assembly

2. Mr Speaker, sir, the Committee further proposes that Clause 8 should be deleted as it negates the purpose of delegation. Clause 8 provides that the Summit may concurrently exercise the powers and functions which it may have delegated. The Committee was of the view that this may result in confusion in exercising the delegated functions. Furthermore, the Committee noted that Clause 9 empowers the Summit to vary, amend, replace, or revoke at any time the delegated functions.

Article 63 (1) - powers to assent or withhold assent to a Bill of the Assembly

Article 67 (1) - powers to appoint the Secretary General

Article 67(5) - power to approve terms and conditions of the Secretary General

Article 68 (1) – powers to appoint deputy secretaries general

Mr Speaker, sir, the Committee observed that Article 11(6) provides that “...*an Act of the Community may provide for the delegation of any powers, including legislative powers, conferred on the Summit by this Treaty or by any Act of the Community to the Council or to the Secretary General*”.

Article 68 (1) – powers to approve terms and conditions of service of Deputy Secretaries General

Mr Speaker, sir, the Committee further noted that under Article 11(9) of the Treaty the following powers and functions cannot be delegated:

- i. the giving of general directions and impetus;
- ii. appointment of judges to the east African Court of Justice;
- iii. the admission of new members and granting of

The Committee noted that legislative powers under the Treaty are vested in the Assembly, and the Summit only has powers to assent or withhold assent to Bills, which power cannot be delegated as per Article 11(9). The Committee further noted that since the legislative function is not vested in the Summit, the Summit cannot delegate this function. This observation forms part of the Committee’s proposal for the amendment of Article 11(6) of the Treaty.

In Conclusion, Mr Speaker, sir, the Committee recommends as follows:

1. The Powers and functions of the Summit should be listed and included in the Bill for clarity and ease of reference.
2. Clause 8 of the Bill should be deleted.

Finally, I would like to take this opportunity to thank the Standing Committee on Legal, Rules and Privileges for their diligent work and support in a very short period of time that was accorded to us to review this Bill – *(Applause)*. Furthermore, I would like to thank the Counsel to the Community and Minister Dr. Msabaha for their support and co-operation during our time of deliberation – *(Applause)*.

Mr. Speaker, sir, I beg to move.

The Speaker: Hon. Members, before we open debate, I want to take this opportunity to recognize the presence of the following Members of Parliament from Uganda, seated in the Speaker's Gallery:

Hon. Dr. Chris Baryomunsi, Chairperson, Parliamentary Forum on Population and Development.

Hon. Jane Alisemera, the Vice-Chairperson

Hon. Mathias Kasamba, the Secretary-General.

Mr. Wamala Musa, a member of staff from the same Parliament.

(Applause)

Mr. Daniel Wandera Ogalo (Uganda):

Mr. Speaker, I thank you for this opportunity to contribute to on the

Motion before the House. I also want to thank the Chairperson of the Committee on Legal, Rules and Privileges for his hard work in producing this report. I have a few comments to make.

Mr. Speaker, the enactment of this Bill into law will go a long way into furthering the integration process. It will do so because at the moment, there is power vested in the Summit which sometimes leaves the Council without sufficient power to move things forward. I will give an example.

Under the Treaty, the terms and conditions of service of Members of the Assembly and the Speaker are determined by the Summit. Now, the Summit has determined that Members of the Assembly who wish to travel by road will be paid 22 cents per kilometer. Now when you calculate that, it is not even sufficient to buy even one litre of fuel; yet our colleagues from Kenya have to travel by road. This means that they have to use their own money to supplement their transport here. Now, in order for that to be changed, we have to go before the presidents and say, please can you increase from 22 cents to US\$1. Mr Speaker, sir, that is a power which can be vested in the Council of Ministers; it is a small thing, it is logical, and the Council would be able to change it – *(Applause)*.

The same argument would go for the residence of the Speaker. As the Assembly is aware, this is the only Parliament where at the end of a session Members close up their offices and even the Speaker closes his offices and they all go away; they meet at the beginning of the Assembly. Now who is there to work on the resolutions, the motions and

on the matters of the Assembly? Who is there to relate with the other organs of the Community to make sure that the integration process goes forward? This means that during the time when the Assembly is in recess, all work of the Assembly goes into limbo because there is no head of administration here to push it forward. I am very sure that Waziri Msabaha knows this and he sees the point – *(Laughter)* - but his hands are tied. And yet, if he had these powers delegated to him, I am sure tomorrow we would have a resident Speaker - *(Laughter)*.

Mr. Speaker, sir, the other point I would wish to comment on is just to amplify what the Chairperson of the Committee said, and I think we should make this clear for the avoidance of any doubt, that there are no legislative powers for the Summit to delegate, that what appears in the Treaty was an anomaly, and that this is one of those areas which should be addressed during the amendment to the Treaty.

Mr. Speaker, sir, as the Minister ably pointed out, this general power of impetus and direction is very wide, and if it is delegated sufficiently to the Council of Ministers or to the Secretary General of the Community, we would be able to move the process of integration very fast. Many things are tied now in this Community because the Secretary General complains that he does not have sufficient powers, the Council of Ministers complains of the same, so this Bill has really come at a very critical time.

Finally, sir, I have an appeal to the Council of Ministers. Clause 4 of the Bill says: “*Where a need arises for*

delegation of powers or functions of the Summit, a request shall be made through the Council to the Summit.” My request is that the Council of Ministers should not feel shy to request for power. They should not feel that the Summit might think that the Council is trying to take on so much power. The essence is to make sure that the Community integrates faster. They should not feel that now, if we ask for this power, the Summit might think we are trying to encroach on their power; no! Do not feel shy to say that for us to be able to push the integration process forward there is need for power in the Council of Ministers and in the Secretary-General – *(Interruptions)*.

Mr. Speaker, sir, this clause would say a request shall be made through the Council to the Summit but in case the Council does not move, the request can come from the Assembly directly to the Council – *(Applause)*. My view is that instead of being nagged by the Assembly to ask for this power, the Council should feel strong and courageous enough to ask for this power. Mr. Speaker, sir, I beg to support – *(Applause)*.

Ms. Dora Kanabahita Byamukama (Uganda): Thank you, Mr. Speaker. I also thank the Chairperson of the Committee on Legal, Rules and Privileges for the report. I just have one point that I would like to make.

Mr. Speaker, as a Member of the Committee, I was very glad when I saw this move to operationalise the Treaty because this particular Article of the Treaty has been dormant since the Treaty was adopted and ratified by the different States. This definitely signifies that we are moving from rhetoric or theory to action.

Mr Speaker, practical reality demands that in this particular instance when we have five Heads of State who make up the Summit, there is need for us to have some of these powers delegated. This is because when you look at practical reality and you consider all the five presidents being in one place at one time, for example, to work on the issues which have been articulated here, you will have to take into account issues of cost, security and the issues of lost opportunities in that the presidents could have been doing something else in a different place altogether. Therefore, this will expedite the work, and this Bill will also help us to save on vital resources, and it will also groom potential leaders in the region because I foresee that when power is delegated, then those to whom power is delegated are able to practice and essentially put into effect what they will have practiced – (*Applause*).

Mr. Speaker, sir, as members of the Committee, we were very clear on the issue of clarity and conciseness and consistency. These three Cs in drafting are very critical. They are so critical that they actually bring to bear when it comes to issues of interpretation in courts and operationalisation. I look forward to a time when the hon. Chairperson to the Council will come to this House and keep on updating us on the kind of powers and functions that they have been delegated, because this indeed will enable us to execute our work more efficiently and effectively. With those few comments, I beg to support.

Mr. Kennedy Mike Sebalu (Uganda): Thank you very much, Mr. Speaker. I would like to thank the Committee for the good work that they have been able

to do although they were pressed for time, as usual, a common problem with the East African Legislative Assembly. I would also like to thank the minister for his intervention.

Mr. Speaker, this Bill is indeed timely, it is necessary, and I do believe that it is well intended, so that we have this Community moving logically to achieve the stated objectives. I particularly want to raise two issues, which I find quite important in this Bill, and which are also very pertinent to the integration process.

One of the issues is decision-making. In a process of this nature where there are many interests involved, where there are many players involved, and where the stakes are high, you really need to have a thorough mechanism of decision-making in order to make progress. The intentions defined in this Bill clearly make that requirement very possible, because to expect all matters to be handled at the Summit level at all times would be a hindrance, in one way, to progress. So, this provides an alternative avenue and mechanism that can allow the activities and programmes of the Community to move along even when their Excellencies are busy with other issues of national importance.

Secondly, it also brings in the aspect of leadership. This is because leadership without power to make decision becomes defective. So, the Council of Ministers and the Secretariat can now enjoy more leadership terrain in order to fulfil their mandate. So, when we allow this level of delegation, it helps that to be undertaken.

Finally, Mr Speaker, I would like to associate myself with the observation of

the Committee regarding the issue of legislative powers within the Summit. I think that was something that was not very well thought out, and it could lead to misunderstandings between the different organs. The power to legislate is a function that should be undertaken by the legislature, and any provisions that seem to suggest that, that power can be undertaken by another organ, definitely, can only breed confusion. So, the observation of the Committee regarding that aspect is something that needs to be pursued so that there is clear separation of powers between the Summit and the other organs. I do not want to see a situation where the Treaty alludes to Parliament assuming some other powers which are of executive nature. Even if it were provided, as a Parliament, we would disassociate ourselves from it because we want to play the role that is mandated to us. So, this observation is quite logical and I think the earlier it is straightened out the better so that each one of us plays their part, and at the end of the day, collectively we make a contribution to the East African Community in a manner that is going to help our people.

Mr Speaker, with those few comments, I wish to thank the Committee for a job well done and I support the Bill – *(Applause)*.

Mr. Bernard Mulengani (Uganda): Thank you very much, Mr. Speaker. I wish to join the previous speakers to also thank the Minister for his intervention, and the Committee for the good report.

Mr. Speaker, I just want to echo what the Committee mentioned on the last paragraph of page 4. It is good that they were able to put forward the issue of

separation of powers; they noted that the legislature should not continue existing within the Summit. But I note that the Bill is not really bringing out what they are mentioning in that paragraph.

Mr Speaker, as a lot of powers are delegated to the Council of Ministers, and noting that particular point on the issue of separation of powers, I would have wished for the Committee to take note that in situations where the Summit meets and possibly reaches a stalemate, there should have been a provision in this Bill where the Summit may – it should be according to their wishes - consider to recommend the stalemate to the Assembly to debate over and form an opinion on.

Mr Speaker, as you may be informed, the ECOWAS way of handling issues, which is really moving very well in terms of the Assembly within the ECOWAS, is that when the Summit reaches a deadlock on a particular issue, they may forward such an issue to the Assembly for it to give an opinion on.

I would, therefore, propose that the Committee should, at an appropriate moment, and in consultation with the Council, consider the possibility of amending Clause 4 by either including a new clause or a sub-clause to say: “...*the Summit may forward such a deadlock to the Assembly*”, because in the last paragraph of page 4, the Committee seriously notes the issue of separation of powers but no delegations are given to the Assembly.

Mr Speaker, I am aware, well informed and well read about the fact that the legislation is not and should not be under the arm of the executive. We have also

been told various times and been given examples of how other Assemblies are working in other regional blocs. I personally have read about ECOWAS and how its legislature is working. Mr Speaker, it is on the basis of all this that I am proposing, if it is true that the Committee on Legal, Rules and Privileges observed that some bit of legislative function exists within the Summit and therefore should be moved out, that one of the gestures to attain that would be for the Committee to - at an appropriate moment and with the consent of the Council, if the Committee thinks that what I am raising is existing somewhere in the region, and I believe they are informed, too, under the good leadership of hon. Mwinyi - move an appropriate amendment; not one compelling the Summit, but one that says "...as they may wish..." Use the word "may" and not "shall". With those few words, I beg to support the report.

Mr. Clarkson Otieno Karan (Kenya):

Thank you, Mr. Speaker for giving me this opportunity to also commend the Committee for a job well done within such a short time. The window which has been opened by the introduction of this Bill is one that can be exploited to ensure that most of the things that were stagnant about the progression of the East African Community can now move on. It will now be upon the Council of Ministers to prove whether they are in a position to move East Africans to higher heights because what has been happening is that the Summit is composed of people who are completely engaged in other very important assignments in their countries, and with the enlargement of the membership of the East African Community, it was becoming difficult for the Heads of State

to be put together to do administrative work to implement the Treaty. So, this Bill has opened a window, and it is a challenge to the Council of Ministers whether it is ready to take power and move the East Africans ahead in terms of what was not possible as a result of the fact that the Summit was not able to move.

Mr. Speaker, I would also like to commend the Committee for the proposal to delete Clause 8, because this clause, in fact, was trying to negate the delegation of powers to the Council by the Summit.

Mr Speaker, since we came here, most of the issues that we have raised so that the East African Community can be seen to be working have not been able to move because of the fact that powers were not within the Council; they were vested in the Summit. Now that this Bill has been brought before the House - and I believe it will be passed - it will give opportunity for things to move forward, and I think we will never, in the future, hear any complaints of power not being within the Council of Ministers, and any blame will squarely rest with the people who are supposed to take power in case they refuse to appropriately take this power - (*Laughter*). With those few remarks, I beg to support - (*Applause*).

Ms. Safina Kwekwe Tsungu (Kenya):

Thank you, Mr. Speaker, sir. Allow me to add my voice to commend the Chairperson of the Committee on Legal, Rules and Privileges and the Members who sat under his guidance, for a well articulated report. Hon. Speaker, allow me to comment on two issues only that some honourable Members have already

touched on, but let me add my voice to theirs.

First of all, I would like to commend the Committee for their wisdom in identifying an anomaly in the Treaty that had bestowed non-existent powers to the Summit. Powers that the Summit did not have were purported to be delegated. How can you give what you do not have? (*Applause*) I would therefore like to congratulate the Committee for identifying that anomaly, and because the amendment of the Treaty also falls under that Committee, I hope that when the time comes, that amendment will be taken care of appropriately.

Allow me also to commend the Committee on the recommendation to amend the Bill by deleting Clause 8. As it is in the Bill, this Clause is quite contradictory. I would like to equate this to giving food to a very hungry person. Hon. Speaker as you know, a hungry person is an angry person. So when you give this person this food, and just as he is about to partake of it, you tell him, “hold on a minute, I think I will have the plate myself after all’! You can imagine the kind of reaction you will get from such a person. Therefore, when you delegate powers, it means that you have faith in that institution, organization or that individual. It would therefore be quite ironic to delegate and then you take those powers back even before the delegation process has been completed – (*Applause*). I would, therefore, once again, congratulate the Committee for their wisdom in seeing that Clause 8 would be making a mockery of this Bill.

I thank you, Mr Speaker, and I pray that the powers that will be delegated to the Council and the Secretary-General will

be used appropriately for the prosperity of East Africans. I thank you, Mr Speaker.

Dr. Said Gharib Bilal (Tanzania):

Thank you, Mr. Speaker. Let me take this opportunity to commend the Committee for the wonderful amendments which they have come up with. And, let me say that I fully support this Bill, and I would also like to commend the Council for introducing it.

Mr. Speaker, I have only two observations to make: one is about the proposal on page 5, on what hon. Byamukama called the three “C”s; certainty, consistency and clarity. How can you delegate powers effectively if you are not clear about your functions? I think the result is that you end up usurping too much power, and we have been complaining about the Summit having too much power and sometimes not being able to use them. I, therefore, support the proposal that there should be clear definition and identification of what powers the Summit should have, and that these should be clearly listed in the Bill.

The secondly issue, Mr Speaker, is the issue of power and the ability to use power. I would like to take comfort in the fact that the Council of Ministers has the necessary predisposition to use these powers – (*Applause*). I have worked with the hon. Dr. Msabaha in other assignments, and I remember him saying one time that “seek power, arrogate it to yourself and use it” - (*Laughter and Applause*). So I have no reason to doubt his ability to use this power. Therefore, I am very happy that this Bill is before us.

Mr. Speaker, we feel that with the positive spirit that the Council of Ministers has so far expressed in working together with us, I think we shall have a better working of this important institution. In that respect, therefore, I think we shall also be able to have a process of collegiality where we can move things and even be able to effect a situation where they can come and stay in Arusha, together with the Speaker being also resident in this area. With those remarks, I beg to support – (*Applause*).

Ms. Deo Janet Mmari (Tanzania):

Hon. Speaker, let me also add my voice in congratulating the Committee for the excellent work that it did within a very short time. When I look at the East African Community at the time when it began, it was very small; even the administrative arm, which is the Secretariat, had a slogan of small and competent. But now, when you look at the mandate of the East African Community, you also look at the demands in the different levels of integration and the functions that can be done by other people. For that reason, I think these actors have come in at a very pertinent time because we need things to move fast. If we they can fast-track the few things to be done - when you fast track it means you must have people to be given responsibilities to discharge on your behalf so that everything moves with speed.

Hon. Speaker, having said that let me point out two contradictions in this Bill. When you look at Clause 5(2)(d), it says that when you delegate, that order to delegate: “*shall operate and continue to confer powers and functions until it is revoked by a subsequent order made in a*

like manner.” But now, when you look at Clause 8, it means this person is delegating, but without even revoking. This means that when somebody at that very moment is acting, those powers are taken out, or he or she is performing what he has been asked to do, but at the very same time the very person who delegated the powers is also doing exactly what he has delegated. At the end of the day, when do we come to decide who has done it? Is it the person who was delegated to or is it the person who delegated but retained the very powers that he delegated?

Hon Speaker, having said that, I am definitely in support of the findings and recommendations made by the Committee, and for that matter, I would definitely say that Clause 8 should be deleted forthwith, and the functions of the Summit should be listed and included in the Bill for clarity and for ease of reference.

Hon. Speaker, the third item is that when the time comes now to look at the amendment of the Treaty for the Establishment of the East African Community, Article 11 should be deleted. Mr. Speaker, I thank you very much and I beg to support the motion – (*Applause*).

The Speaker: Honourable Members, with no one else to debate, I now give the power to the Minister to reply – (*Laughter*).

Dr. Msabaha: Hon. Speaker, I want, first and foremost to thank the Members for their contributions in the debate this afternoon. This Bill is, in essence, about efficiency in decision making, and I could see that the Members this

afternoon have been quite exemplary. Out of the majority of the honourable Members, only nine contributed, and we have taken only about an hour. So this shows that they have worked in the same spirit as the Bill is attempting to achieve, by being very exemplary – (*Applause*).

Mr. Speaker, sir, may I now move ahead to recognize, by name, the distinguished honourable Members who have contributed to the debate this afternoon as follows: I first of all wish to recognize the contribution made by the Chairperson of the Committee on Legal, Rules and Privileges, the hon. Abdalla Mwinyi, then by the hon. Dan Wandera Ogalo, the hon. Dora Byamukama, the hon. Mike Sebalu, the hon. Bernard Mulengani, the hon. Otieno Karan, the hon. Safina Kwekwe, the hon. Dr. Gharib Bilal and the hon. Janet Mmari. I do pray I have not missed any Member who contributed directly to this debate this afternoon.

Mr. Speaker, sir, I want to say that I am in full agreement with most of the sentiments, contributions and points that have been made here this afternoon. It may be because of the fact that almost all the honourable Members have supported the Bill, in a sense it does make my task less taxing this afternoon in the sense that we have a meeting of minds between the Council and the distinguished Members of the Assembly.

Mr. Speaker, sir, I would now wish to move to specific themes or points that have been raised, and I would like to begin with this one on the question of separation of powers, that the majority of the Member who spoke this afternoon mentioned, specifically with reference to Article 11(6) of the Treaty and wherever

else that such a reference is made to note that legislative powers should not be vested in the Summit, that they are and should legitimately be vested in the Assembly, and that the Treaty does, in this particular sense, have “inaccuracies, inconsistencies and contradictions as to the functions and roles of the distinctive organs and institutions of the Community” – (*Applause*).

Mr. Speaker, sir, I am in full agreement with the vision that is laid down in the submissions of the distinguished Members that for the proper functioning of the Community, you must have proper separation of powers.

I want to assure the honourable Members that I am a believer in the doctrine of separation of powers among the institutions of the Community, as I would be among similar institutions of State in a national context – (*Applause*) - but this belief is not limited to me. If anything, I should say that I must have been comforted by the example that was shown by the Heads of State of the East African Community in their belief in the necessity for the existence of separation of powers, in their belief in the doctrine of separation of powers, and in fact we can show no better example than the one that we had just months ago.

We had a crisis; one of the organs of the Community, namely, the East African Court of Justice, made a decision and the Heads of State fully respected that decision – (*Applause*). So we can get no better example than our own Heads of State who decided very effectively that this Community is a young institution, and in order for it to grow effectively, one of the earliest things to do should be to respect the doctrine of separation of

powers by respecting the decision of the East African Court of Justice.

So, I want to assure the distinguished Members of this Assembly that the Summit does believe in the doctrine of separation of powers; that the Summit did and does practice this doctrine, and I believe there should be no doubt at all left in our minds that the Summit, for any reason, would wish to usurp the powers of any other institution, specifically, the institution of the East African Legislative Assembly.

I do acknowledge that the Treaty does have certain inconsistencies and provisions that require amendment. But the Treaty is a living entity, in that sense. It will continue to be improved in accordance with the times and circumstances that come up from time to time, and in this spirit, just as I said earlier, Mr Speaker, we have had such a meeting of minds between the Council and the House in this particular Session. That is absolutely unbelievable - *(Laughter)*.

Mr. Speaker, sir, in connection with this, I would like to now take the liberty to add to this aspect of separation of powers the point that was specifically mentioned by hon. Bernard Mulengani. He was wondering why all other institutions, in a sense...well, there could be delegation of powers to the Council, but where there is an impasse, maybe some reference should be made to the Legislative Assembly. It is, very frankly, an extremely intelligent contribution, and I have no doubt that hon. Mulengani has foreseen instances in which there could be an impasse at the level of the Summit. So I am in full agreement with him and with the rest of the Members

where we foresee that within the context of the Summit, there could be some impasse.

Luckily, hon. Speaker, the Treaty, in Article 36, does foresee a situation in which you could have an impasse. But it provides that where such an impasse exists, then it should be referred to the East African Court of Justice for advisory opinion. I think this is the kind of situation we would all wish to see. We, as politicians, would not wish to be vested with executive functions. Sometimes such functions could even over-shadow our overall political supervision function. And I believe the honourable Members of the Assembly would agree with me that the Treaty as it stands at the moment has provided an excellent opportunity for dealing with such an impasse.

Mr. Speaker, sir, I agree and I believe my distinguished colleagues in the Council would agree, that, as I said earlier, there are areas in the Treaty that require amendments. Let me revert to a proverb in Kiswahili that says "*Kwanza nimesikia*" – but "*nimesikia*" is not the proverb; the proverb is: "*Mtu mzima haambiwi mara mbili. Nimesikia*" and this refers specifically to the issue of legislative powers being usurped. I believe this is an area, as the honourable Members have pointed out, that would require amendment, and I fully concur with them - *(Applause)*.

Mr. Speaker, other areas that have been mentioned...maybe let me go straight to the last contribution made this afternoon on the Floor, by the hon. Janet Mmari who was very worried about the contradictions that appear in the Bill, and may be she was trying to see in what

manner we can deal with these contradictions. I should say that specifically if we agree, as we have already agreed that Clause 8 should go, and if you retain Clause 9, then, of course, the problems that the hon. Mmari mentioned are taken care of.

Mr. Speaker, sir, as I said earlier, I thought I should dwell on just a few points since the rest of the points that were made by the honourable Members are those on which we have complete meeting of minds. Let me assure this august House that the Council of Ministers will continue to do all it can to ensure that the organs and institutions, and the activities and programmes of the Community do function appropriately.

With these remarks, I would like, once again, to ask the distinguished Members to join me this afternoon, as I have come here on behalf of the Council of Ministers, to pass this Bill so that we can enhance the performance of the Community, its organs and institutions, and so that we can implement our programmes and activities in a manner befitting the expectations of the peoples of East Africa. I wish to thank you very much for your very kind attention - *(Applause)*.

(Question put and agreed to)

Bill read a Second Time.

THE ASSEMBLY IN COMMITTEE

(The Chairman Presiding)

BILL **Committee Stage**

The Summit (Delegation of Powers and Functions) Bill, 2007

Clause 1, agreed to.

Clause 2, agreed to.

Clause 3

The Counsel to the Community (Mr. Kaahwa): Hon. Chairperson, the Council of Ministers is proposing to move that Clause 3 be amended by adding the following words in the fifth line after the word "Treaty": "*and specified in the Schedule to this Act*", which schedule is part of the Report of the Committee on Legal, Rules, and Privileges - *(Applause)*.

Hon. Chairperson, sir, with your permission, I will refer you to the Report of the Committee on Legal, Rules, and Privileges. On page 3, the Committee proposes that for clarity, consistency and certainty, the powers and functions of the Summit, as provided in the Treaty, should be stated in the Bill. The Committee, on page 5 actually recommends that those powers should be listed and included. The Committee goes on to provide in its report, a Schedule of those functions and powers of the Summit, which need to be provided in this legislation. The appropriate clause would be Clause 3, but we need some substantive reference to the Schedule in this very clause so that the clause can be read together with the Schedule.

(Question of the amendment put and agreed to)

Clause 3, as amended, agreed to.

Clause 3, agreed to.

Clause 4, agreed to.

Clause 5, agreed to.

Clause 6 agreed to.

Clause 7, agreed to.

Clause 8

(Question proposed)

Mr. Mwinyi (Tanzania): Hon Chairman, we propose that the Bill be amended by deleting Clause 8.

Dr. Msabaha: Conceded, Mr. Chairman.

(Question on the amendment put and agreed to)

Clause 8, as amended, agreed to.

Clause 8, agreed to.

Clauses 9, agreed to.

Clause 10, agreed to.

Schedule

(Question proposed)

Mr. Mwinyi: Hon. Chairman, I beg to move that a Schedule, in terms stated here below, be part of the Bill:

The Schedule

Powers and Functions of the Summit

(1) *Article 9 (1)(h) - Power to establish organs of the Community;*

(2) *Article 12 (5) - Power to determine the procedure for meetings;*

(3) *Article 24 (1) - Power to appoint judges;*

(4) *Article 26(1) - Power to remove judges;*

(5) *Article 51(2) - Power to determine the terms and conditions of service of the members of Assembly;*

(6) *Article 63(1) - Power to assent or withhold assent to a Bill of the Assembly;*

(7) *Article 67(1) - Power to appoint the Secretary General;*

(8) *Article 67(5) - Power to approve terms and conditions of the Secretary General;*

(9) *Article 68(1) - Power to appoint Deputy Secretaries General;*

(10) *Article 68(1) - Power to approve terms and conditions of service of Deputy Secretaries General; and*

(11) *Any such powers and functions as may be conferred upon it by the Treaty or any other law*

Hon. Chairman, I beg to move.

Dr. Msabaha: I do agree, Mr. Chairman.

(Question on the amendment put and agreed to)

The Schedule, agreed to.

The Title

(Question proposed)

The Counsel to the Community (Mr. Kaahwa): Hon. Chairperson, sir I beg to move that the Title be amended to read: *“Enacted by the East African Community and assented to by the Heads of State.”*

(Question of the amendment put and agreed to)

The Title, as amended, agreed to.

MOTION FOR THE HOUSE TO RESUME

The Minister for East African Cooperation, Tanzania (Dr. I. Msabaha): Mr. Chairman, sir, I beg to move that the House do resume and the Committee of the Whole House do report thereto.

(Question put and agreed to)

(The Assembly resumed, the Speaker, presiding)

BILL Report Stage

The Summit (Delegation of Powers and Functions) Bill, 2007

The Minister for East African Cooperation, Tanzania (Dr. I. Msabaha): Mr. Speaker, sir, I beg to report that the Committee of the Whole House has considered the *Summit (Delegation of Powers and Functions) Bill, 2007* and passed it with amendments.

MOTION FOR THE ADOPTION OF THE REPORT OF THE COMMITTEE OF THE WHOLE HOUSE

The Minister for East African Cooperation, Tanzania (Dr. I. Msabaha): Mr. Speaker, sir, I beg to move that the report of the Committee of the Whole House be adopted.

(Question put and agreed to)

BILL Third Reading

The Summit (Delegation of Powers and Functions) Bill, 2007

The Minister for East African Cooperation, Tanzania (Dr. I. Msabaha): Mr. Speaker, sir, I beg to move that the *Summit (Delegation of Powers and Functions) Bill, 2007* be read a Third Time and do pass.

The Counsel to the Community (Mr. Kaahwa): Seconded.

(Question put and agreed to)

The Bill was read a Third Tim.

ADJOURNMENT

The Speaker: Hon. Members, I think we have come to the end of business today. I would like to congratulate the Minister again. I think, for the Members, who were in the last Assembly, he is the first Minister to have passed three Bills successively – *(Applause)*. Like he said, I think that is because there is indeed a meeting of minds, and we are happy with the work the Council is doing. We hope they keep it up.

With no other business, I would now like to adjourn the House until 3 December 2007 at a venue to be communicated to you at a later date.

(The House rose at 4.00 p.m. and adjourned until 3 December 2007)