

Torturing the Union? An Examination of the Union of Tanzania and Its Constitutionality

*Romuald R. Haule**

I. Introduction

For more than forty years Tanzania has remained the only Union of independent states in Africa. There has always been much debate on this Union both before the Union took place as well as after its happening.¹ In 1983/1984 and again in 1990/1992 an extensive political and constitutional debate took place, which deeply put the Union of Tanzania to the test. The debates of 1980s caused major amendments to the 1977 Union Constitution and the formulation of the new Zanzibar Constitution in 1984. The debates of the 1990s resulted in the Nyalali Commission² making major recommendations on the restructuring of the Union and the introduction of the multi-party system.

This paper is an attempt to examine where the problem with the Union of Tanzania lies. Is this debate caused by the lack of a referendum at the time of the creation of the Union? Many are already the signs which show that the Union issue is a problem of the United Republic of Tanzania. The question to be examined too, is why it is taking so long to find a permanent solution to the problem generated by the tension in the Union. This paper will also provide the recent goodwill of the political bodies in tackling this problem.

II. Union: Today's Turbulent Issue in Tanzania

One can still agree today with what Julius K. Nyerere said one year before the independence of 1961: "No, I'm not joking ... I fear Zanzibar will be a big headache for us."³ One of the motives for the Union was to stabilise and strengthen the

* Ph.D. Candidate at Ruprecht-Karls-University of Heidelberg, Faculty of Law; Visiting Research scholar at Max Planck Institute for Comparative Public Law and International Law – Heidelberg. I am grateful to Prof. Dr. Rüdiger Wolfrum for his great insights, support and encouragement. I thank too ambassador Prof. Dr. C. Mahalu for his generous insights. Many thanks to Ana Luis for reading this Article. Email: romhaule@hotmail.com.

¹ Cf. B. Rawlence, The Zanzibar Election, in: *African Affairs* 104 (2005), 515 et seq.

² The commission took the name of its chairman, Chief Justice Francis Nyalali. The commission, which comprised 23 members, was established on 27th February 1991 by the then President Mwinji following months of intense public discussion on Tanzania's political future.

³ Cf. B. P. Srivastava, *The Constitution of the United Republic of Tanzania 1977: Some Salient Features – Some Riddles*, Dar es Salaam 1983, 11.

fragile situation which dominated in Zanzibar without harming the autonomy of the same. After 42 years of Union, the situation is still tense in the island and the Union seems ready to crack and wither. After the introduction of the multi-party system in Tanzania the election period has become the strongest test of this Union. The violent incidents that marred both the first multi-party election of 1995 and the second of 2000 in Zanzibar⁴ have tested the strength of the Union. Violence has not spared even the election period of 2005.

In June 2005 ten Zanzibaris filed a case at the Zanzibar High Court, seeking to force the Zanzibar Attorney General to produce the original Articles of the Union. But the Attorney General Idd Pandu Hassan admitted in his counter-affidavit that his office was not in possession of the Articles. On 21st December 2005 the Zanzibar High Court ruled that since the Attorney General had made it clear that his office did not have the original Union document of Agreement establishing the Tanzanian Union of 1964, the court could not force him to produce the document,⁵ basing the ruling on the premise that the Zanzibar Constitution was silent on the existence of the Articles of Union. While the Attorney General maintained that the four-decade old Tanzanian Union was legal,⁶ the ten Zanzibaris demanded more explanation or else they would file a fresh case asking the Zanzibar High Court to declare the Union between Zanzibar and Tanganyika null and void.

The new Tanzanian President Jakaya Kikwete, after he was officially declared the winner of 14th December 2005 polls with a victory of 80.2% of the vote, told the BBC in an interview that calming the tensions of Zanzibar is his greatest concern and that he feared the semi-autonomous archipelago was drifting apart.⁷ In his speech inaugurating the new Union parliament the president was heard to say “as far as the Union is concerned, I promise before this august Parliament, that one of the central tasks of the government that I will constitute will be to protect, to sustain and to strengthen the Union”.⁸

⁴ For more details of the incidents in Zanzibar of 1995 and 2000 see R a w l e n c e, *supra* note 1, 515 et seq.

⁵ Cf. I. Y u s s u f, Zanzibaris Seek to Have Union Declared Illegal, Guardian 24.12.2005, <<http://ippmedia.com/ipp/guardian/2005/12/24/56447.html>>, last visited on 04.01.2006.

⁶ The Attorney General was heard to say: “I am certain the late Abeid Amani Karume and Mwalimu Julius Nyerere signed a treaty to legalize the political union between Zanzibar and Tanganyika to form the united republic of Tanzania. However, I do not know the whereabouts of the original union treaty. ... Moreover, there is no legal obligation to have a copy of the treaty.” I. Y u s s u f, Ten Give Zanzibar AG Ultimatum on Union, in: Sunday Observer, <www.ippmedia.com/ipp/observer/2006/01/01/56956.html>, last visited on 01.01.2006.

⁷ Kikwete Fears for Zanzibar Future, in: BBC News; <www.News,bbc.co.uk/2/hi/africa/4544628.stm>, last visited on 04.12.2005.

⁸ President J. K i k w e t e, Speech on the Occasion of Inauguration of the Fourth Phase of Parliament of the United Republic of Tanzania, 30 December 2005. <www.tanzania.go.tz/hotuba1/hotuba/051230_bunge_eng.htm>, last visited on 05.01.2006.

III. Historical Background of the People

Zanzibar, consisting of the islands of Unguja and Pemba and situated 40 kilometres into the Indian Ocean, is Mainland Tanzania (Tanganyika)'s closest neighbour to the east. The history of Zanzibar can be characterized as the East African meeting point of various cultures while the close relationship enjoyed between Tanganyika and Zanzibar dates back to the pre-Christian era.⁹ It is believed that the indigenous population of Zanzibar, consisting of Wahadimu and Watumbatu, must have originated from the Mainland.¹⁰

The Persian explorers and merchants who, as well as many others, visited Zanzibar in the 7th Century A.D. chose Zanzibar to be their main base among the city states along the East Coast of Africa. The Arab rulers who came to these areas in the early 18th century extended their rule and influence on the Mainland through Zanzibar. The European explorers and missionaries, who appeared on the scene in the 19th Century, used Zanzibar as a starting point to launch their penetration into the African hinterland.

The slave trade made Zanzibar an important centre of this human merchandise. Thousands of people were taken from the Mainland and sent to Zanzibar to be sold before they were shipped to Mauritius, Reunion, Arabia and other places as slave labour. When the clove plantation economy replaced the slave trade as the main economic activity of the island, it was the farm hands acquired from the Mainland that came to the island to open up the virgin land, till it and plant clove trees.

IV. Tanganyika and Zanzibar under Colonial Rule

The two countries of Tanganyika and Zanzibar were administered separately during the time of colonial rule. When Tanganyika was taken as a German colony as a result of the Berlin Conference of 1884/1885 that divided Africa and distributed it amongst the European powers, Zanzibar was already under the Arab rule of Seyyid Said.

Due to the inter-imperialist rivalry in the region, especially between Germany and Britain, the Zanzibar – Heligoland Treaty of 1st July 1890, gave Zanzibar to Britain while Germany acquired Heligoland.¹¹ Seyyid Said's son, Seyyid Ali bin Said, accepted British protection and so the islands formally became a British protectorate on 4th November 1890. This continued the separate administration of

⁹ Cf. S. Ayany, *A History of Zanzibar. A Study in Constitutional Development 1934-1964*, 1970, 7.

¹⁰ Cf. M. F. Lofchie, *Zanzibar: Background to Revolution*, New Jersey 1965, 23 et seq.

¹¹ Cf. W. Fenger, *Konfliktformationen und Zukunftsperspektiven der tanzanischen Union*, Hamburg 1997, 23.

these two countries; namely Tanganyika under German colonial rule and Zanzibar under the British protectorate.

This situation of separate administrations went on until the First World War. When Germany was defeated in the First World War, its colonial possessions were divided up amongst the victor powers. Thus Tanganyika became a British administered Territory under the League of Nations mandate and later, with the creation of the United Nations, the Trusteeship System¹² replaced the mandate system.

But it must be pointed out that even when the two countries were ruled by the same colonial power their administrations were different. The British Governor in Tanganyika was reporting directly to the colonial office in London, and periodically the British had to make a report to the League of Nations and later to the United Nations. On the other hand, even though the British power representative in Zanzibar was answerable to London, he had to take into consideration the sensitivities of the Arab Sultan when making decisions. This indicates that during this period Zanzibar was under a dual power rule although Britain was ultimately the colonial power.

The period of the struggle for independence, not only united East African Countries but also instigated the unity of Tanganyika and Zanzibar. In Tanganyika, the Tanganyika African National Union (TANU), an organisation that was to be the political vehicle of the people in voicing their demands for independence, was founded on 7th July 1945. In Zanzibar, the Zanzibar Nationalist Party (ZNP) was founded in December 1955 and the Afro-Shirazi Party (ASP) was established on 5th February 1957.¹³

Most African nationalist movements during this time recognized the need for waging common struggles in order to achieve independence. Unity in the struggle for independence was the motive that moved TANU to set up a conference on September 1958 in Mwanza in which the Pan-African Freedom Movement for East and Central Africa (PAFMECA) was founded. One of the recommendations of the Mwanza Conference was that where more than one nationalist organisation existed in an area they should try to merge, and if this was not possible, then they should at least coordinate their activities. For this reason, ZNP and ASP agreed to synchronize their activities and a coordinating body was formed.¹⁴

Tanganyika was the first country in Eastern, Central and Southern Africa to gain its independence on the 9th December 1961. The Tanganyika Independence

¹² See UN Charter Chapter VII and VIII.

¹³ Before the formation of these nationalist parties in Tanganyika and Zanzibar, political organizations and trade unions had already been operating: the Tanganyika Territory Civil Servants' Association was established in 1922, and a decree legalizing the formation of trade unions was passed in Zanzibar in 1931. See L. R. P a t e l, *Trade Unions and the Law in Tanganyika*, in: *Law and the Commonwealth*, 1971, 598 et seq.

¹⁴ Within a short time tensions emerged among these parties because of racial factors. The parties in Zanzibar were agreed on one objective but they opposed each other due to race. This caused the split of the ASP in 1959 and the Zanzibar and Pemba People's Party (ZPPP) emerged.

Act¹⁵ and the Tanganyika (Constitution) Order in Council of 1961¹⁶ made the application of the international trusteeship system to Tanganyika possible. This meant that Britain was no longer the responsible administering authority of the territory according to the terms of the Trusteeship Agreement of 1946.¹⁷ Tanganyika acquired a new constitution, known as the Dominion Constitution¹⁸, with an African Prime Minister, Julius K. Nyerere, a multi-racial cabinet and parliament comprising of African Ministers and MPs in the majority, a national anthem and flag, and an assured seat in the United Nations as its 99th member.¹⁹ The Tanganyika Independence Act *inter alia* abrogated Britain's right to legislate for Tanganyika and the Constitution Order in Council revoked all Orders in Council made by the Crown for the territory between 1920 and 1961.

One month after the coming into force of the Dominion Constitution, the ruling party communicated to the government its desire to make Tanganyika a Republic as soon as possible. On 15th February 1962 the National Assembly adopted a motion inviting the government to draft an amendment to the Constitution that made Tanganyika a republic within the Commonwealth without delay.²⁰ On 22nd November 1962, the National Assembly dissolved itself and formed a Constituent Assembly, on the following day the Constitution of Tanganyika known as the Republican Constitution of Tanganyika was enacted.²¹

Tanganyika under the leadership of Julius Nyerere felt that its own independence was meaningless until the whole of Africa was free. It therefore gave support, with all the resources available, so that other peoples in the region could gain their

¹⁵ Tanganyika Independence Act (10 & 11 Eliz 2. c.).

¹⁶ S.I. 1961 No. 2274.

¹⁷ A resolution seeking the approval of the United Nations for the termination of the Trusteeship Agreement was introduced by Cyprus in April 1961 and was supported unanimously by the General Assembly. Cf. UNGA Res. 1609 (XV) of 21st April 1961 and UNGA Res. 1642 (XVI) of 6th November 1961.

¹⁸ This is called the Dominion Constitution because its ultimate source was an external sovereign authority and not the will of the people of Tanganyika. This is noted by the government paper published on 31st May 1962: although indirectly "on the 9th December 1961 we became – suddenly – a monarchy, ... by deciding to remain within the Commonwealth, without making immediate provisions for introducing a republican form of government ... the Queen, who is Head of the Commonwealth and Sovereign of several of its member countries, became our sovereign, and the Government of independent Tanganyika became 'Her Majesty's Government'". See Proposal of the Tanganyika Government for a Republic, in: Government Paper, No. 1 of 1961. It should also be noted that in the same paper the Government refuses to be ever under the dominion of Her Majesty because after the World War I Tanganyika was neither a colony nor a protectorate, but was governed by virtue of a mandate conferred on Britain by the League of Nations. Idem. Tanganyika Prime Minister, Julius K. Nyerere, during the Constitutional Conference in Dar es Salaam on 27th March 1961, asked the British government to allow Tanganyika to become a republic upon termination of the Trusteeship system. To this request British colonial secretary, Ian Macleod said "No". Cf. W. Deggan/J. Civile, *Tanzania and Nyerere: A Study of Ujamaa and Nationhood*, New York 1976, 68.

¹⁹ Idem.

²⁰ Parliamentary Debates, 1st Session of 1st Meeting, 1962, col. 166.

²¹ Constitutional Assembly Act No. 1 of 1962, Cap. 499. For comments see J. McAuslan, *The Republican Constitution of Tanganyika*, in: *Intl. Comp. L. Q.*, 13 (1964), 306.

independence. Tanganyika opened its borders to patriots from other areas running away from persecution and allowed its territory to be used for the training of freedom fighters, etc. TANU decided to give full support to Zanzibar, taking also into consideration that the political situation in Zanzibar was very tense.²²

On 10th December 1963 Zanzibar was granted “full independence” within the Commonwealth by the British²³ although the government was still mainly in the hands of the Sultan. From 8th to 15th July 1963 elections were held in Zanzibar. The ZNP/ZPPP alliance won 18 seats and the ASP 13 seats. The elections were considered very controversial due to the ASP and its supporters feeling cheated during the whole exercise.²⁴

On 12th January 1964 a group of about 330 African militants led by John Okello, a migrant labourer from Uganda, overthrew the government of Sultan Seyyid Jamshid bin Abdullah. With this takeover of power through revolution, the 1963 Constitution was abrogated and a “Constitutional Decree”²⁵ providing for a Constitutional Government and the Rule of Law was proclaimed. The decree stated clearly that “The people’s Republic of Zanzibar is a democratic state dedicated to the rule of law. The President as the Head of State validates legislation by his assent ...”²⁶ This Decree also provided that a constituent Assembly was to be convened within a year so that a Constitution of the People’s Republic of Zanzibar could be adopted²⁷. This did not take place. Rather it was found to be more beneficial that Zanzibar enters into a Union with Tanganyika. This happened on the 26th April 1964.

V. The United Republic of Tanzania

1. The Nature and Structure of the Union

After the ratification of the Articles of Union on 23rd April 1964, and with its entering into force, Tanganyika merged with Zanzibar to form one sovereign and independent state on 26th April 1964. The ratification and approval of the Articles of Union took place under section 3 of the Acts of Union. The Acts of Union also made the declaration of the United Republic:

²² Cf. L o f c h i e, *supra* note 10, 157; R a w l e n c e, *supra* note 1, 515 et seq.

²³ The Zanzibar Independence Constitution of 1963 was apparently similar to the other “Independence constitutions” in former British dependencies. But in essence, it was differentiated by the fact that instead of the Queen of England, the Zanzibaris had “His Majesty, the Sultan of Zanzibar”. And no bill could become law without his assent. Cf. Zanzibar Independence Constitution of 1963 Art. 32 (1) & 39.

²⁴ Cf. L o f c h i e, *supra* note 10, 239.

²⁵ No. 5 of 1964.

²⁶ Const. Decree par. 2.

²⁷ Const. Decree par. 3.

“The Republic of Tanganyika and the People’s Republic of Zanzibar shall, upon union and forever after, be united into one sovereign Republic by the name of the United Republic of Tanganyika and Zanzibar.”²⁸

The name “United Republic of Tanganyika and Zanzibar” was later changed to United Republic of Tanzania by the United Republic (Declaration of Name) Act of 1964.²⁹ The new name was made retrospective to 29th October 1964.³⁰ The newly United Republic of Tanzania became a member of the United Nations on 27th April 1964.³¹

The Articles of Union Treaty clearly stated that “these articles shall be subject to the enactment of laws by the Parliament of Tanganyika and by the Revolutionary Council of the People’s Republic of Zanzibar in conjunction with the Cabinet Minister thereof, ratifying the same and providing for the government of the United Republic and of Zanzibar in accordance therewith”.³² Accordingly the relevant law-making organs in Tanganyika and Zanzibar approved and ratified the Union Treaty by passing two identical pieces of legislation namely the Union of Tanganyika and Zanzibar Act and the Union of Zanzibar and Tanganyika Law, both of 1964, which together are known as Acts of Union of Tanganyika and Zanzibar.³³

The reasons for the Union were more internal than external.³⁴ The foremost accepted reason given by the President of Tanganyika Nyerere to the National Assembly was that the Union was “determined by our two governments for the interest of African unity ... Our unity is inspired by a very simple ideology – unity”.³⁵ The Preamble of the Articles of Union Treaty itself explains the reason for the Union as the long association of the peoples in the two countries, their ties of kinship and amity.³⁶ Srivastava rightly states that the motivating factors for bringing Tanganyika and Zanzibar together in one sovereign Republic are summarized by historical affinity, geographical closeness, cultural identity, common language, similar political objectives and over-all demand for African Unity³⁷.

²⁸ Sec. 4 Acts of Union.

²⁹ Act no. 61 of 1964 (Cap. 578 of the Laws).

³⁰ Sec. 1 of Act no. 61 of 1964.

³¹ Tanganyika was a member of the United Nations from 14th December 1961 and Zanzibar was a member from 16th December 1963.

³² Art. VIII of the Articles of Union Treaty.

³³ “The Articles of Union between the Governments of the Republic of Tanganyika and the People’s Republic of Zanzibar (which Articles are set out in the Schedule to this Act) are hereby approved and ratified.” Cf. Sec. 3 The Union of Tanganyika and Zanzibar Act, 1964.

³⁴ The Western block’s fear of the introduction of Communism through Zanzibar had already been internalised; yet Nyerere was more concerned about not hindering the spread of his Ujamaa ideology. Of course one can not deny the external pressures and influences during that time due to the fact that the independent states of Tanganyika and Zanzibar were still young.

³⁵ Cf. J. K. Nyerere, *Freedom and Unity*, Dar es Salaam 1966, 293.

³⁶ Preamble, Articles of Union Treaty.

³⁷ Cf. Srivastava, *supra* note 3, 10.

2. The Objectives of the Founding Fathers of the Union: J. Nyerere and A. Karume

Even though the two leaders wanted the Union, scholars can now show that the immediate political objectives of the leaders were different and did not have much in common.³⁸ It is argued that self-preservation was the key motivating force on Karume's part, who was keen to protect himself from onslaughts made by the radical factions of his party, while Nyerere was concerned with protecting his ideas of African socialism in Tanganyika from being contaminated by communist doctrines which could be infiltrated through the small island of Zanzibar. Along the same lines Kabudi argues that just as Karume sought the Union to safeguard his position in the isles' volatile political climate, Nyerere also needed the Union for the sake of Tanganyika's security in the Indian Ocean.³⁹

Karume for his part stated in August 1964 that the "Tanganyika and Zanzibar Union had brought strength to the Island and protected them against external enemies who were trying to sabotage the fruits of the Revolution".⁴⁰ On the other hand Nyerere's worries over Zanzibar's vulnerability and the security problem had been known previously; one year before independence he was heard to say "If I could tow that Island Zanzibar out in the middle of the Indian Ocean, I'd do it... It is very vulnerable to outside influences".⁴¹

Despite the differences between them, the common elements uniting these two peoples were the uniting motive and reason for both of them. Nyerere in his speech to the National Assembly on 25th April 1964 was heard to say: "Tanganyika and Zanzibar are neighbours geographically, historically and linguistically – they are neighbours by custom and culture and politics."⁴² In August 1964 Karume said, in Pemba, that: "the Union was essential since culture and language were the same".⁴³ Pan-Africanism, geographical proximity, common historical, cultural and political heritage were all factors which brought about the Union. The criticisms that these factors were not the immediate reasons but were simply used to rationalize and realize the Union⁴⁴ are improper because immediate reasons regard the imminence of the act⁴⁵ and not the motives for the Union itself. The reason for the Union is one aspect and the why it was conducted speedily is another.

³⁸ Ibid., 11; H. G. Mwakymbe, Tanzania's Eighth Constitutional Amendment and Its Implications on Constitutionalism, Democracy and the Union Question, Hamburg 1995, 50.

³⁹ P. Kabudi, International Law Examination of the Union of Tanganyika and Zanzibar: A Federal or Unitary State?, LL.M. Diss. University of Dar es Salaam 1986, 223.

⁴⁰ Cf. Srivastava, *supra* note 3, 11.

⁴¹ Idem.

⁴² Cf. Nyerere, *supra* note 35, 291.

⁴³ Cf. Srivastava, *supra* note 3, 26.

⁴⁴ Cf. Mwakymbe, *supra* note 38, 50.

⁴⁵ "... the Act of Union between Tanganyika and Zanzibar in 1964 was an emergency act, we hastened to unite because we recognise that only speedy initiative could achieve unity." Cf. J. K. Nyerere, Speech to the National Assembly 16th June 1970 – "Uamuzi wa Busara", Dar es Salaam 1972.

3. The Union Structure

Immediately upon the entering into force of the Union Treaty, the United Republic of Tanzania was to be governed, as an interim measure, in accordance with the modified provisions of the Republican Constitution of Tanganyika of 1962. The Union of Tanganyika and Zanzibar Act of 1964 excluded the Republican Constitution of Tanganyika of 1962 from the “existing law” insofar as it provided for the government of the Republic of Tanganyika and declared that on commencement of the Interim Constitution of the United Republic, the Constitution of Tanganyika was to cease to have effect for the government of Tanganyika as “a separate part of the United Republic”.⁴⁶ The Articles of Union Treaty provided the structure for the two governments. In the same way the 1977 United Republic of Tanzania Constitution provides Zanzibar with autonomy and the authority, exclusively within Zanzibar, for matters other than those specified as “union matters”. The Government of Tanganyika was included in the Union government.

a) Union: Neither Federal Nor Confederal Structure

The Union structure of Tanzania is neither a federal nor a confederal structure but can precisely be referred to as a unitary structure. Shivji classifies the constitutional set-up as federal on account of what he considers to be the predominance of the federal principle in the Union between the mainland and the isles,⁴⁷ a position which Othman⁴⁸ and other scholars⁴⁹ consider objectionable because of clear non-federal features in the set-up which can not just be ignored. Nyerere, explaining the reason for the presentation of a Union of two governments structure and not that of one government nor of a federation, argues:

“Our fear had been that if we were to have one Government it would appear that Tanganyika had swallowed up Zanzibar, so we had to find a system that would remove from Zanzibar this fear of being swallowed up, without heaping on Tanganyika the burden of running two Governments of comparable weight”.⁵⁰

⁴⁶ Sec. 2 and 7 Union of Tanganyika and Zanzibar Act of 1964.

⁴⁷ Cf. I. Shivji, *The Legal Foundations of the Union*, Dar es Salaam 1990, 43. President Mkapa, in his speech on the occasion of the 40th anniversary of the Union of Tanzania, was heard to say: “Let us not forget that this is a Union, not a Federation. Those who argue for loosening up our union into a federation should not think that they have come up with a very brilliant or innovative idea. In considering the structure of the union, our founding Fathers must have weighted several alternatives, including that of a federation. So it is not as if they did not consider this possibility. They did; and discarded it. The reasons for discarding it remain valid to this day.” B. Mkapa, *Speech, Climax of Celebrations Marking the 40th Anniversary of the Union, Zanzibar, 26th April 2004*. <<http://www.tanzania.go.tz/hotuba1f.html>>.

⁴⁸ Cf. H. Othman, *Tanzania: The Withering Away of the Union*, Bergen 1983, 23.

⁴⁹ Cf. Srivastava, *supra* note 3, 3-5; Mwakymbe, *supra* note 38, 52.

⁵⁰ J. K. Nyerere, *Our Leadership and the Destiny of Tanzania*, Harare 1995, 35.

This structure has been a source of constant friction and endless complaints for a long time. Principally there are two conflicting areas raised by this structure. Firstly, union matters with respect to the internal autonomy of Zanzibar. Secondly, non-union matters in relation to the Tanzanian Mainland.

In Zanzibar, an area of conflict has been the absence of any scheme for the distribution of revenues between the governments of the United Republic and of Zanzibar.⁵¹ The Prime Minister and First Vice-President's speech in the Union parliament on 30th April 1992 points this out explicitly: "Mr Speaker: I agree with some of the explanations given by the Nyalali Commission for periodic dissatisfaction with the structure of the Union. There are problems; many of them have arisen when matters relating to the Union are being implemented. To speak plainly, many of these problems concern matters of citizenship, the control of foreign exchange, the collection and distribution of taxes and customs duties, and the formula for contributions to the Union expenses. There is no doubt whatever that these are real problems, and sometimes they cause vexation."⁵²

The complaints from the Mainland on the structure of the Union, especially since the 1980s, centred around leadership efforts to ensure and guarantee a separate identity and internal autonomy of the isles in the Union Treaty of 1964 and the 1977 Constitution. In a desire to demonstrate that Tanganyika had no intention of swallowing or annexing the isles the entire structure and system of government was felt to be over-balanced in favour of Zanzibar.⁵³

As the complaints grew regarding the structure of the Union, on 27th February 1991, Tanzanian President Ali Hassan Mwinyi established a twenty-three member President's Commission in order to study Tanzania's Political System.⁵⁴ The intense public discussion on Tanzania's political future was initiated by the then chairman of the CCM ruling party, Julius Nyerere.⁵⁵ The main recommendations of the Nyalali Commission were, *inter alia*, the introduction of a multi-party system, which was accepted by the government and the change of the structure of

⁵¹ For example, the creation of the Fund of the United Republic, see Mwakyembe, *supra* note 38, 182.

⁵² Nyerere, *supra* note 50, 35.

⁵³ "Zanzibar has its representation in the government of the United Republic and since that government functions also as the government of the Tanzanian Mainland, a Zanzibari participates in the governance of Tanzanian Mainland either sitting as a MP in parliament or occupying the office of President, of Vice-President or as Minister in the cabinet. But no Mainlander not even as President or vice President has any such corresponding right to participate in the governance of Zanzibar with respect to all matters other than Union matters." Srivastava, *supra* note 3, 11.

⁵⁴ See Mwakyembe, *supra* note 38, 157.

⁵⁵ On 21st February 1990, six months before his retirement from active politics as chairman of the ruling party (CCM), Nyerere encouraged Tanzanians to openly discuss whether there was still a need to maintain the single-party system of government. See Sunday News (Dar es Salaam), June 3, 1990; M. Mmuya/A. Chaliha, *Towards Multiparty Politics in Tanzania*, Dar es Salaam 1992, 97.

the Union from that of a Union with two governments to a Federation with three governments⁵⁶, a proposal rejected by the Union government.

b) Is a Fully-Fledged Federal System Possible for Tanzania?

Of course a real federal system could provide the missing link in the present set-up with a clear division of competences between the constituent states and the central government. It would allow both Tanganyika and Zanzibar to retain their identity as well as an internal autonomy in specific matters and effect a clear definition of competences.⁵⁷

But there are possible areas of federal weakness originating from the specific conditions of Tanganyika and Zanzibar which must be brought to the people's attention. Apart from the question of the increased cost of running three fully-fledged governments, the main issue is a matter which Nyerere had always raised, the problem of the enormous differences in terms of size and human resources between the Tanzanian Mainland and Zanzibar.⁵⁸

As regards the point of the disproportionate people of Tanzania Zanzibar in relation to the people of Tanzania Mainland, Nyerere gave the reasons for maintaining the status quo and the reasons for neither the federal system of three governments nor the Union of one government being chosen when he argued: "when Tanganyika and Zanzibar agreed to form One Sovereign State, we could have adopted one of these usual structures of unity. But we felt unable to do so because of the small size of Zanzibar relative to that of Tanganyika. Zanzibar had at that time 300,000 people and Tanganyika 12 million people. Tanganyika had swallowed up Zanzibar."⁵⁹ Dash considers that a logical reappraisal of the size of the states desiring a federal Union is important if not necessary.⁶⁰

Taking into consideration these premisses, a federal structure of three governments, as recommended by the Nyalali Commission, seems "to be the only logical option in the situation of Tanzania" but it is not sustainable because it does not answer the question of the inequality of the size of the two parts. The way in which the commission proposed a federal structure of three governments in the 1990s is considered unpractical. In structuring a full-fledged federal system and for the sake of proportionality a federal structure of more than three governments should be taken into consideration.

⁵⁶ The difficulty surrounding this issue had already been seen in the voting process inside the Nyalali Commission itself. Of the 11 Mainland members of the Nyalali Commission, 9 wanted a federal set-up and the rest preferred maintenance of the status quo. On the part of the 11 Zanzibar members of the commission, only 3 wanted a federal set-up, 7 wanted the retention of the 1964 union structure and 1 member was undecided.

⁵⁷ Cf. Mwakymbe, *supra* note 38, 196.

⁵⁸ Tanzanian Mainland has a surface area of 939,657 sq. km with a population of about 35 million people while Zanzibar has a surface area of 8,430 sq. km and a population of about 900,000.

⁵⁹ Cf. Nyerere, *supra* note 50, 34.

⁶⁰ Cf. S. Dash, *The Constitution of India; A Comparative Study*, Allahabad 1963, 126.

This implies that Tanzania Mainland should be divided into proportionate autonomous federal states. Such a measure is practically very difficult to achieve although not impossible “where the states have remained independent for a long time prior to their participation in the federal system”.⁶¹ In this case, some have doubts that Zanzibar’s long separate historical experience and more than four decades of autonomy in the Tanzanian Union, along with Tanganyika’s long pre- and post-independence history as a single political entity, render any idea of rearranging the federal states impossible to pursue.⁶² But one should not overlook that there are mainly two types of Federal System; the homogeneous federal system (e.g. Germany) and the multicultural federal system (e.g. Switzerland, Ethiopia etc.).

Moreover it cannot be ignored that part of the federal set-up is to place the financially stronger federal states on an equal footing with the weaker ones. As K a r p e n rightly argues; “In a horizontal sense, ‘rich’ provinces contribute to the budgets of other provinces, and in a vertical sense the central purse gives additional funds to provincial budgets ...”⁶³ In the case of Tanzania, the enormous fiscal differences between the Tanzanian Mainland and Zanzibar could bring greater problems than before, if the Tanzanian Mainlanders are not made to understand these issues clearly.

The present Union structure can be restructured and transformed into a more acceptable Union suitable for Tanzania. The present problems can be resolved if there is a strong political will on the part of the political class and if the people are told the truth about those problems. People are especially sensitive when dealing with the structure of their Constitution, since it is an expression of their identity, and they need not only to be told the truth but also argued to participate actively in the constitutional law making process be it through their representatives or they themselves through a referendum. Nyerere rightly pointed out that “No one person has the right to say, ‘I am the people’. No Tanzanian has the right to say ‘I know what is good for Tanzania and the others must do it’. All Tanzanians have to make the decisions for Tanzania.”⁶⁴

VI. Comparative Survey of the Structure of the Tanzanian Union

The Union structure of Tanzania is not *sui generis* and not unique in the world. The Tanzanian Union can be compared to the relationship between Scotland and England. The United Kingdom of Great Britain came into being on the 1st May

⁶¹ Ibid.

⁶² Cf. M w a k y e m b e, *supra* note 38, 197.

⁶³ U. K a r p e n, Federalism: An Important Instrument for Providing Pluralism in the New Democratic South Africa, in: Occasional Papers, Johannesburg, April 1994, 5.

⁶⁴ Cf. J. K. N y e r e r e, Freedom and Development, Dar es Salaam 1968, 70.

1707 following the treaty of Union between the Kingdoms of Scotland and England. The said Treaty, as in the case of the Union of Tanganyika and Zanzibar, was ratified, approved and adopted by Acts of the Parliament of Scotland and England called the Acts of Union.⁶⁵

The Tanzanian Union has been seen to be similar to the relationship between Great Britain and Northern Ireland. This comparison, inferred by the then former US ambassador in Dar es Salaam⁶⁶ and in recent scholarship proposed by Msekwa⁶⁷, is in law inaccurate. The government of Ireland Act 1920 expressly declared the United Kingdom Parliament to be supreme.⁶⁸ Even though it gave law-making powers to the Northern Ireland Legislature in specified matters, the United Kingdom Acts of Parliament extended to Northern Ireland were to prevail in case of conflict with the Irish Acts. The relationship between Zanzibar Parliament and Tanzanian Union Parliament is different. The Zanzibar Parliament is not subordinate to the Union parliament. Its powers are not devolved or delegated.⁶⁹ Its powers are plenary in all respects bound only by the instrument that creates it, in this case the Acts of Union and Zanzibar's Constitution.

Others compare the Tanzanian Union with the United Arab Republic of 1958 between Egypt and Syria.⁷⁰ Seaton and Maliti in advancing their thesis that the structures created by the Acts of Union were provisional or transitional, have found similarity with the United Arab Republic established in 1958 between Egypt and Syria.⁷¹ Shivji suggests rightly that this comparison too is misleading.⁷² In the case of the United Arab Republic, it is very clear from the Proclamation and the provisional Constitution of the United Arab Republic, that one single government – including all three branches: executive, legislative, and judicial – was created, with Egypt and Syria as regions, whose affairs were to be overseen by respective Executive Councils during the interim period. Clearly a total fusion was envisaged and there is nothing in the instruments which set up the United Arab Republic about division of legislative and executive powers.

⁶⁵ T. B. Smith, *The United Kingdom, the Development of Its Laws: Scotland*, London 1955, 642 et seq. For the Act and the Treaty of Union see reproduced at 1156.

⁶⁶ In a cable message to his government on 22nd April 1964, the day the "Articles of Union" were signed by Karume and Nyerere, he stated "Like the relationship between Northern Ireland and Britain, the union of Zanzibar and Tanganyika gave the island limited regional administrative autonomy ... but ensured overall power ... was held by the centre at Dar es Salaam". H. Othman, *Forty Years of the Union: Is It Withering Away?*, <<http://kongoi.com/modules.php?op=modload&name=News&file=article&sid=50>>, last visited on 03.01.2006.

⁶⁷ P. Msekwa, *Insha za ufafanuzi wa Baadhi ya Masuala ya Chama*, Tabora T.M.P. 1982, 8.

⁶⁸ K. C. Wheare, *Federal Government*, 4th ed., Oxford 1963, 16 et seq.

⁶⁹ Shivji, *supra* note 47, 39.

⁷⁰ For more details on the formation of the United Arab Republic see E. Conran, *Some Legal Aspects of the Formation of the United Arab Republic and the United Arab States*, in: ICLG 8, 346 et seq.

⁷¹ E. Seaton/S. Maliti, *Tanzania Treaty Practice*, Oxford 1973, 106.

⁷² Shivji, *supra* note 47, 40.

A vivid comparison of Union of Tanzania is found too – even though at the level of federal state – in the structure of the state of Bremen of Federal Republic of Germany which has the same type of Union structure since 1947. The state of Bremen is composed of two constituent parts namely the city of Bremen and Bremerhaven. The latter is much smaller in size and population than the former. Under the Constitution of the State of Bremen of 1947 (*Landesverfassung der Freien Hansestadt Bremen*)⁷³ legislative power is vested in the state Parliament which consists of 100 members.⁷⁴ According to Bremen election law (*Bremisches Wahlgesetz*)⁷⁵ 80 members of the State Parliament have to be elected from the City of Bremen and the remaining 20 members from Bremerhaven.

The smaller constituent part – Bremerhaven has its own constitution (*Verfassung für die Stadt Bremerhaven*) and their legislature deals with matters in and for Bremerhaven. But the other constituent part, the City of Bremen, does not have a separate legislature. The same legislature for the State of Bremen becomes the legislature for the city of Bremen when it sits without the 20 parliamentarians from Bremerhaven. The same preservation of Bremerhaven's autonomy exists with regard to the other organs of government, and the same careful demarcation of the roles of the centre when it acts for the State of Bremen as a whole or for the City of Bremen alone.

The Freie Hansestadt Bremen has managed this Union structure since 1947 without generating any serious conflicts calling the constitutional order into question. There is much to be learned from the structure of Bremen since it does not differ much from that of Tanzania. Scholars have, in fact, been arguing for a restructuring of the legislative organ since the 1980s, especially on non-union matters in relation to Tanzania Mainland.⁷⁶ On this issue Othman argues: “The same principle of separation of personnel should apply in relation to parliament i.e. when a bill with respect to a non-union matter in and for Mainland is being considered, only MPs from the Mainland shall constitute the national Assembly and shall be entitled to participate and vote.”⁷⁷

VII. Validity and the Legal Status of the Articles of the Union Treaty

1. The Question of Ratification and Referendum

One of the issues raised by the debate on the Union of Tanzania is the issue of ratification and thus the validity of the Union Act Treaty itself. It was D o u r a d o ,

⁷³ It was passed on 21st October 1947, see Bremen GBl. 1947, 251.

⁷⁴ Art. 67 and 75 Bremen Constitution.

⁷⁵ It was enacted on 22nd April 1965. See Bremen GBl. 1965, 63.

⁷⁶ See S r i v a s t a v a , *supra* note 3, 12; M w a k y e m b e , *supra* note 38, 187.

⁷⁷ Cf. O t h m a n , *supra* note 48, 29.

Attorney General of Zanzibar at the time of the Union, who caused a small sensation among lawyers in 1983 when he told a Tanganyika Law Society seminar that there was no law ratifying the Articles of Union of 1964 in the statute books of Zanzibar.⁷⁸ Shivji, in his 1990 analysis of the Union question,⁷⁹ supports that there was no publication of the law in Zanzibar for the ratification of the Articles of Union Treaty. This then became the hot topic because the Articles of Union had expressly stated that they were subject to ratification by the Parliament of Tanganyika and by the Revolutionary Council of Zanzibar.

But Shivji, later in the same work⁸⁰, was to point out that there was one reference from General Notice No. 243 of 1st May 1964 in the Tanganyika Gazette which stated that a law ratifying the Articles of Union was made by the Revolutionary Council of Zanzibar in connection with the Cabinet of Ministers on 25th April 1964. He also admits that non-publication of a law ratifying the Union in the Zanzibar Government Gazette cannot be taken as conclusive evidence of non-ratification. Shivji also recalls that on 27th April 1964 a ceremony of exchanging the Instrument of Ratification attended by Presidents Karume and Nyerere took place in the National Assembly.⁸¹ This shows that the fact of the validity of the Articles of the Union *per se* has at no point been challenged.

The Nyalali Commission, of which Dourado was a member, was satisfied that the Revolutionary Council did meet to ratify the Articles of Union on the basis of personal accounts of two former members of the Revolutionary Council of Zanzibar at that time, Abdulrahman Babu and Khamis Ameir.⁸² Thus it can be concluded that there was not in any way a case of ratification by acquiescence.

Another question, which continues to be raised concerning the legal nature of the Union, is whether the two Presidents had the power in their own right to sign such a Union Treaty and why they did not call for a referendum before taking the step of signing the Treaty. The unification process in Tanzania was done not only quickly but also secretly.⁸³ On 1st February 1984, addressing the Union parliament as a Party Committee member, Nyerere was heard to say:

“I casually told Sheikh Karume that ‘I have told President Kenyatta that any time when Kenya is ready, we in Tanganyika are ready to unite our two countries’. I have communicated the same to Obote. I am telling you the same. Once you are ready let us

⁷⁸ Cf. Mwakyembe, *supra* note 38, 179.

⁷⁹ Cf. Shivji, *supra* note 47, 5 et seq.

⁸⁰ Ibid.

⁸¹ But he refers to the ratification by acquiescence “therefore Government may be said to have ratified the Articles by acquiescence”. Cf. Shivji, *supra* note 47, 4-5.

⁸² Cf. Othman, *supra* note 48, 20. But Mwakyembe points out rightly that “above efforts to elucidate the matter do not, however, clear the air as to the honesty of Dourado himself. As Attorney-General of Zanzibar, Dourado knew from the outset that the Articles of Union had been duly ratified. If one may ask, was it surely the duty of President Karume to ensure that the relevant legal measures adopted by the Revolutionary Council were published in the Zanzibar Gazette? Was it not a matter within Dourado’s job description?”, Mwakyembe, *supra* note 38, 181.

⁸³ Nyerere, *supra* note 35, 291.

unite our countries. And Karume immediately replied: 'Mwalimu what do you mean by being ready. I am ready now. Summon the pressmen, tell them now that we are uniting our two countries into one, one government and you are the leader.'"⁸⁴

As a consequence of the issues that have been raised, Srivastava argues that although the Union came into existence, that element of mutual trust so essential for its perseverance has been missing.⁸⁵ And Shivji comments along the same lines that the 1964 Union itself was an agreement between two leaders for reasons of expediency and practical politics rather than a Union of two peoples.⁸⁶

Here it must be pointed out that in the then legal system of Tanganyika and Zanzibar the question of a referendum did not exist and this was because it did not exist in the Anglo-Saxon legal system of that time. The referendum was only introduced into the British legal system in the 1970s.⁸⁷ The then Constitutions of Tanganyika and Zanzibar did not contain the necessary provisions for a referendum. If one had asked Nyerere in 1964 to call for a referendum under which article of the Constitution would have one asked him to do so?

Moreover under both the 1962 Republic of Tanganyika Constitution and the Zanzibar Presidential Decree No. 5, the two Presidents had the powers to enter into international agreement on behalf of their governments. The will of the people was there, as Othman argues that the leaders were representing the will of the people. As you know also this agreement was sent to the Parliament here on the Mainland and to the Revolutionary Council in Zanzibar and these two bodies ratified.⁸⁸ *De facto* and *de iure* the Articles of Union Treaty are not only valid, but also legitimate.

⁸⁴ Nyerere told Karume to wait a bit as it was too early for the press to be informed. See, J. K. Nyerere, *Hotuba ya Mwenyekiti wa Chama cha mapinduzi na Rais wa jamhuri ya Muungano wa Tanzania* 1st February 1984, in: *Taarifa ya kazi za Chama (1982-1984)*, 152.

⁸⁵ Cf. Srivastava, *supra* note 3, 11.

⁸⁶ Cf. I. Shivji, *The State of the Constitution and Constitution of the State in Tanzania*, in: *Eastern Afr. Law Rev.*, vol. 11-14, 1978-81, 24.

⁸⁷ A referendum was used for the first time in the British legal system in relation to a constitutional matter in Northern Ireland in 1973 and 1997; in relation to devolution in Scotland and Wales in 1977 and 1997; in London in 1998 in relation to the establishment of a directly elected mayor and the establishment of a London-wide elected authority; and in the United Kingdom as a whole in 1975 in relation to the United Kingdom's continued membership of the European Community. Cf. H. Barnett, *Constitutional and Administrative Law*, London 2004, 198.

⁸⁸ Interview of Wolfgang with Othman, in: Fengler, *supra* note 11, 132. In one of his speeches, Karume, in the early days of the Union of Tanzania, was heard to say: "Many people want to know how the government of Zanzibar and the government of Tanganyika came to unite, and became a Union only. I want every citizen to know that this was not the work of Mwalimu Julius Nyerere. Neither was it the work of Abeid Karume. This is a matter for all Africans. Mwalimu Julius Nyerere and Abeid Karume are only servants of the people, and we have accepted to be their servants. We serve them according to their own wishes, in ways they consider to be in their best interest. Therefore, this matter of the Union, Tanganyika and Zanzibar, is a matter that was considered by the citizens of Tanganyika and Zanzibar themselves. Furthermore, this is something that is expected all over Africa.", Mkaapa, *Speech*, *supra* note 47.

VIII. Legislative Power in the Structure of the Union

The structure of the Union in Tanzania as envisaged in its Constitution provides for two governments and two legislatures; the government and the legislature of the United Republic of Tanzania and the government and the legislature of the Zanzibar. For Zanzibar sections 55 (1) and 59 (3) vest executive and legislative powers “with respect to all matters in and for Zanzibar other than union matters” in the Executive (the Revolutionary Government of Zanzibar)⁸⁹ and the legislature (House of Representatives of Zanzibar)⁹⁰ respectively. For the United Republic of Tanzania, Section 50 reads, “Legislative power with respect to all union matters in and for the United Republic is vested in parliament.” This section refers to legislative power with respect to all union matters in and for the United Republic. These union matters are those enumerated in the second Schedule to the Constitution, which now amount to twenty-two although originally there were only eleven such items.⁹¹

This increase in the list of the union matters has raised worries that the legislative power of Zanzibar has been limited, that Zanzibar’s semi autonomy might remain only a nutshell if most matters are to belong to the union. Some scholars go further in their consideration of these additional union matters which they deem invalid arguing that the Union parliament is not competent to amend the Articles of Union.⁹² But the question of invalidity is irrelevant in this case because the amendment procedure of items of union matters is provided in the Union Constitution 1977 itself.⁹³

On the other hand, other scholars question the seemingly unequal representation⁹⁴ in the Union parliament as far as amending the list of union matters. The Constitution of the United Republic of Tanzania 1977 provides clearly that, the procedure for amending the list of union matters requires the concurrence of two-thirds of the Members of Parliament hailing from Mainland Tanzania and two-thirds of the Members of Parliament hailing from Zanzibar.⁹⁵

Another problem regards not so much union matters but rather non-union matters with respect to the Tanzanian Mainland. Zanzibar has its own legislature and so does the United Republic but there is neither legislature nor government for the issues concerning the Tanzanian mainland only.

But it should be pointed out that as far as legislative power is concerned, the main problem regards not so much union matters but rather non-union matters with respect to the Tanzanian Mainland. Zanzibar has its own legislature and so

⁸⁹ Sec. 55 (1).

⁹⁰ *Idem.*

⁹¹ Articles of Union IV.

⁹² Cf. *Srivastava*, *supra* note 3, 7; *Shivji*, *supra* note 47, 86 et seq.

⁹³ Sec. 98(1) (a) of Tanzania Constitution 1977.

⁹⁴ This issue was raised by *Srivastava*, see *supra* note 3, 5.

⁹⁵ Sec. 98(1) (a) of Tanzania Constitution 1977.

does the United Republic but there is neither legislature nor government for the issues concerning the Tanzanian Mainland only. Union matters cannot, under any type of interpretation, be deemed to include non-union matters, rather by the application of the principle: *expressio unius est exclusio alterius*,⁹⁶ section 50 of the Constitution of the United Republic of Tanzania 1977 expressly states that “legislative power with respect to all union matters in and for the United Republic is vested in parliament”.⁹⁷ However the nature of this question can only be resolved if there is a clear distinction between how MPs participate in the Union parliament; accordingly in the procedure of passing a bill with respect to a non-union matter in and for the Mainland, only MPs from Mainland should constitute and be entitled to participate and vote.

IX. Conclusion

As far as the Union in Tanzania is concerned, a lot has been done but more is needed in order that the Union is suitable to the situation of Tanzania today. After four decades of Union, its main motive of strengthening and stabilizing the situation of Zanzibar by uniting Tanganyika and Zanzibar has proved to show that more needs to be done. It is crucial that a clear distinction is made between the centre exercising powers over union matters in respect of the United Republic of Tanzania and the centre exercising powers over non-union matters in respect of the Tanzanian Mainland alone.

The function of a Constitution is, of course, to balance power, be it legislative, executive or judicial. But the main reason for having a constitution is identity; the constitution serves as the identity of the people. The Union of Tanzania is something to be proud of, because after the struggle for independence, it is one of the most important decisions made in Tanzania, by Tanzanians themselves and for Tanzanians. It restored something that had always been there, the identity of being one people. If there was some external influence, it can only be termed as *felix culpa* because it has contributed to helping Tanzania reach its desired goal.

As pointed out earlier, a federal structure of three governments, as recommended by Nyalali Commission appears to be a good start and after foreseeing the problem of disproportionate size of the regions, the federal structure of more than three governments could also be taken into consideration. But it must be pointed out too that even a fully-fledged federal structure cannot be a solution where the constituent parts do not share a strong mutual desire to maintain it. If Tanzania, with the good will of the current political body, is not able to find a sustainable solution for the present Union, then the people should be courageous enough to say that the alternative is too horrendous to contemplate. If there were tensions and

⁹⁶ Cf. Srivastava, *supra* note 3, 6.

⁹⁷ Sec. 98(1) (a) of Tanzania Constitution 1977.

violence in Zanzibar even before the Union, there is no guarantee that these will cease after the Union.

One should not forget that the national language (Kiswahili) and the Union (the United Republic of Tanzania) are factors, which have restored and reaffirmed the oneness and peace since independence. In 2004 President M k a p a of Tanzania re-invigorated this point as he argued:

“Both sides of the Union are inhabited by one people. Only the colonial history, which put Zanzibar under British rule and the Mainland under German rule, separated Zanzibar and Tanganyika. If we, who are essentially one people, cannot unite properly, we are worse hypocrites than the rest of all Africans.”⁹⁸

This oneness has helped Tanzania to overcome, ethnic hatred and violence, religious bigotry and regional parochialism since independence. Since independence the motto of Tanzania has been: “Unity is strength and disunity is weakness.” The culture of peace of Tanzania has made it an example to be imitated by many countries; its virtue of peace has not only made it be respected but also a place where millions have found their refuge. The duty to maintain the peace and unity of Tanzania should be the pride of all Tanzanians.

The new president of Tanzania, K i k w e t e, being determined to resolve the problem of the Union, has assured the National Assembly that he intends to develop mechanisms to speedily and seriously deal with the problems related to the Union. K i k w e t e intends to relieve the Vice-President of the portfolio of poverty reduction to give him more time to focus on union matters; to strengthen existing structures and frameworks for resolving Union problems and will look again into how the Union government can more effectively support socio-economic development in Zanzibar, without infringing on the autonomy of the Zanzibar Revolutionary Government on non-union matters.⁹⁹ To show that President’s speech was not only intended to please the National Assembly, one week later he announced his new reformed cabinet with a clear focus on union matters and relieved the Vice-President of some tasks. This sacrosanct determination for national unity and goodwill of the new government to resolve the problems besetting Zanzibar was saluted not only by the opposition parties but also welcomed by all Tanzanians since the issue has become a headache for all and everyone knows that the Union without unity is the torturing of the Union itself.

⁹⁸ M k a p a, Speech, *supra* note 47.

⁹⁹ President K i k w e t e, Speech, *supra* note 8.

ZaöRV 66 (2006)