



# The doctrine of state sovereignty and its implications for the harmonisation of banking regulation and supervisory frameworks under the East African community common market protocol

Geofray Ngulla<sup>1</sup>

<sup>1</sup>geofrayngulla@gmail.com

<sup>1</sup>Mbeya University of Science and Technology, Tanzania

**Recommended Reference:** Ngulla, Geofray. "The Doctrine of State Sovereignty and Its Implications for the Harmonisation of Banking Regulation and Supervisory Frameworks under the East African Community Common Market Protocol." *African Quarterly Social Science Review* 2, no. 4 (2025): 190–200. <https://doi.org/10.51867/AQSSR.2.4.19>

## ABSTRACT

The treaty establishing the East African Community [EAC] is more ambitious than a mere international agreement, as it focuses on achieving economic integration that will establish an internal market, an economic and monetary union, and ultimately a political federation. The common desire of the Partner States is to yield part of their sovereignty to the EAC as an intergovernmental organisation, but this desire does not oust the jealousy of the Partner States to maintain a considerable degree of sovereignty. This research was guided by intergovernmentalism and neofunctionalism theory. This study employed a qualitative research design using the doctrinal legal research method of data collection to establish the significance of sovereign ceding for regional development. The study, through a documentary review, has revealed that the EAC member states limit their sovereignty to avoid being subjected to EAC jurisdiction regarding the regulation and supervision of the banking industry. The study found that the domestic laws of the Partner States do not adequately reflect the fundamental and operational principles necessary for achieving EAC objectives, as efforts are focused on strengthening the domestic banking business instead of the EAC banking system. This paper suggests that the core to the realisation of EAC objectives through the banking industry is the adherence to the effective political and economic will among the Member States.

**Keywords:** Banking Industry, East African Community, Harmonisation of Laws, Member States, Sovereignty

## I. INTRODUCTION

The world economy after World War II evidenced resilient rules for controlling cross-border capital movements. Time has changed and changed dramatically, with international flows instigated to develop, especially during the occurrence of the Eurodollar market in London in the 1960s and the downfall of the Bretton Woods system in the early 1970s. And since then, international financial integration has proceeded intensely.<sup>1</sup> Efforts are being deployed to strengthen financial regulation through international regulatory harmonisation, and the obsessed formation of so-called 'International Standards' or 'International best practices', rather than being under national domestic regulatory mechanisms.<sup>2</sup> This approach began in 1988 after the establishment of the Basel Committee on Banking Supervision, which laid down rules governing capital adequacy at banks.<sup>3</sup>

The primary concern of bank regulation is making sound and good management of a bank's financial operation; it is referred to as *prudential* regulation, or in the United States, the concept is referred to as *safety and soundness* regulation.<sup>4</sup> According to neoclassical economic theory, regulation is regarded as state intervention in the market economy operations.<sup>5</sup> This intervention is done mainly for two reasons: first is to ensure the market operates efficiently (to limit market inefficiencies, or what economists refer to as 'market failures'), and second is to change market results

<sup>1</sup> Chey, H. (2014). *International Harmonisation of Financial Regulation?: The Politics of Global Diffusion of the Basel Capital Accord*, Routledge, New York, p 1

<sup>2</sup> *Ibid*, in his book Chey, views the term financial regulation, international regulatory standards and international regulatory harmonisation, to mainly mean prudential regulation, and to international regulatory standards and international regulatory harmonisation in the area of finance, respectively. See also Nakagaw, J. (2011). *International Harmonisation of Economic Regulation*, Oxford University Press, London, p 1, where international harmonisation of economic regulation is defined as "the process by which countries work to eliminate or narrow differences among their respective regulatory regimes. It may loosely define as making the regulatory requirements and governmental policies of different jurisdictions identical or at least more similar".

<sup>3</sup> *Ibid*

<sup>4</sup> Schooner .H and Taylor, M. (2010). *Regulation of Global Banking Principles and Policies*, Elsevier, London, P. 1

<sup>5</sup> Dragomir, L. (2010). *European Prudential banking Regulation and Supervision: The Legal Dimension*, Routledge, New York, P.



to attain social objectives.<sup>6</sup> These two reasons may also be referred to as economic regulation and social regulation, respectively.

Ceding sovereignty while it is often seen as a threat or a source of tension for the effective functioning of regional courts, should really be an automatic attribute of regional integration. It is widely and well understood that sovereignty is a fundamental principle in international relations, granting states the authority to govern themselves without external interference. Sovereignty is not absolute and can be limited or shared through international agreements. By agreeing to be bound by the treaties that govern their Regional Economic Communities (RECs), member states consent to be bound by the rules of the RECs over and above their own. This consent demonstrates the state's willingness to accept the obligations outlined in the treaty, which may require it to alter its laws or policies in alignment with the treaty's provisions. By agreeing to these terms, member states effectively limit their sovereign powers in specific areas. This process inevitably implies the surrender of national policies to the supranational authority for the consolidation of regional economic integration. It is therefore necessary that Member States should yield to a gradual surrender of sovereignty to strengthen the integration process, which would ensure long-term benefits for integrating states.

### 1.1 Statement of the Problem

Currently, the legal and practical problems facing the banking industry in the EAC are highly attributed to the application of domestic laws on the regulation and supervision of the EAC banking business. Where EAC member states are not commonly willing to cede their sovereign powers partly to the community as an intergovernmental organisation that will ensure sound and prudential regulation and supervision of the banking industry in the EAC. This assertion opposes the spirit of the EAC Treaty, which requires all Community integration matters to be administered by the Treaty principles<sup>7</sup> and be regarded as a source of law as well as a roadmap on the policy-making process, which all Partner States are bound to observe and adhere.<sup>8</sup>

The East African Community (EAC), as an intergovernmental economic community, subjects all Partner States to a duty to achieve the community objectives by taking all necessary steps to harmonise all their national laws pertaining to the Community.<sup>9</sup> The Common Market as one of the EAC pillars, derives its legal root from the EAC Common Market protocol that has set standards on its implementation and set forth the requirements for harmonisation of the EAC member states' banking laws in consideration with the states' sovereignty.

### 1.2 Research Objectives

The main objective of the paper is to address how the doctrine of state sovereignty affects the realisation of the EAC objectives, especially the Common Market Protocol, in line with the banking activities regulation. Furthermore, the paper suggests appropriate solutions to address the ongoing challenges attributed to the EAC Member States.

## II. LITERATURE REVIEW

### 2.1 Theoretical Review

#### 2.1.1 Neo-functionalism Theory

This theory, developed by Ernest Haas,<sup>10</sup> from the theory of functionalism, shows the way as to how and why national states will partly cease to be sovereign and interact with other states, while on the other hand gaining a new way of dealing with matters.<sup>11</sup> According to Mattli, he says that functionalism describes a process whereby political officers in various national settings are influenced to shift their loyalties, expectations, and political activities toward a new institution with jurisdiction over national states.<sup>12</sup>

The basis of neo-functionalism is the concept of 'spillover', where further integration or co-operation will be achieved through economic and political dynamics. There are two types of spillover, and both depend much on deep and widened integration using interest-group pressure, public opinion, elite socialisation, and domestic actors and processes.<sup>13</sup> The first, *functional spillover*, is an economics-based approach, where pressure is placed on the economic

<sup>6</sup> Schooner, *Supra* note 7

<sup>7</sup> See Article 6 and 8 of the EAC Treaty

<sup>8</sup> Possi. A & Kamanga. C, (2017). "General Principles Governing EAC Integration", In Ugirashabuja. E, *et al*, *The East African Community Law*, Brill, P 204.

<sup>9</sup> Article 82(1)(b) of the EAC Treaty

<sup>10</sup> Haas .E, *The Uniting of Europe: Political, Social and Economic Forces, 1950-1957*, Stanford University Press, Stanford, 1958, p. 22

<sup>11</sup> *Ibid*, 24

<sup>12</sup> *Ibid*

<sup>13</sup> Moravcsik .A, *Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach*, Journal of Common Market Studies, Harvard University , Volume 3 1, No. 4 December 1993, p. 474



policies in the areas of integration and economic sector so as to have a wide policy co-ordination. The second is *political spillover*; this is where the presence of supranational organisations sets in motion a self-reinforcing process of institution-building for supranational authorities to regulate the integrated economy.<sup>14</sup> The theory aims at attaining a greater political entity than the national state and analyses prerequisites under which a political entity will develop.<sup>15</sup> Neo-functionalism a method of achieving the final goal of creating a supranational political entity by starting from economics and later taking integration to the political sphere.

### 2.1.2 Intergovernmentalism

This is an intergovernmental organisation (IGO), also called a classical international organisation, described as a permanent entity made by two or more members with international legal personality that promotes voluntary cooperation and coordination between or among its members but has neither autonomous power nor the authority to impose its decision on its members.<sup>16</sup> According to Kembayev, IGO involves no surrender of sovereignty by its member, and the member state's representative is responsible for making a decision based on sovereign equality, either to adopt it or not by voting on a proposed decision.<sup>17</sup>

Intergovernmentalism can be understood as an instrument of bargaining between heads of governments of leading states in a region. Moravcsik described intergovernmentalism by considering the status of states (big or small) when voting on fundamental changes to integration.<sup>18</sup> That big states exercise a de facto veto over any decision on integration.<sup>19</sup> The key difference between intergovernmentalism and neofunctionalism is the position of the head of state as a central player in IGO.<sup>20</sup>

## 2.2 Empirical Review

According to neo-functionalism theories, sovereignty is considered a pinpoint that facilitated the adoption of regional integration. Both David Matrny and Erenest Haas agreed on the creation of a supranational entity as a creature with sovereign states to control the economic and political ambitions at hand. In African regional integration, sovereignty has been marked as one of the key constraints to the attainment of a fully united Africa. This section illustrates the importance of the concept of sovereignty in achieving strong and successful regional integration.

### Conceptual Review.

There are several concepts that do not define sovereignty but rather unite most of the sovereignty's traditions. The first one is legitimate authority. Authority is "the right to command, and correlatively, the right to be obeyed," and authority is legitimate when it is seen as right by those living under it".<sup>21</sup> In his chapter Philpott claims not to confuse legitimate authority with simple power. Borrowing an example from R.P. Wolff, that "if I am forced at gunpoint to hand over my money, I am subjected to power; if I pay my taxes, even though I think I can cheat, I am recognising legitimate authority".<sup>22</sup> Legitimacy yields power but is not itself powerful, but the vice-versa is true that power can establish legitimacy. Hence, one can conclude that sovereignty is made up of legitimate authority, not power, and it is suggested by the law.<sup>23</sup> A second ingredient of sovereignty's definition is territoriality; it's on territory where authority or control is exercised because states are territorial configurations.<sup>24</sup> The location of borders defines people where the holder of sovereignty governs. Hence, in general, Sovereignty can be defined as a supreme authority within a territory.<sup>25</sup>

<sup>14</sup> *Ibid* p. 474

<sup>15</sup> Cavlak .H, *et al*, *EU Health Policy: To what extent the EU got involved in the field of health?*, In Engin .S and Hasan .D, (ed) "Regional Economic Integration and the Global Financial System, Business Science Reference", Hershey PA, USA 2015, pp 98-119, p. 102

<sup>16</sup> Kembayev .Z, *Legal Aspects of the Regional Integration Processes in the Post-Soviet Area*, Springer-Verlag, Berlin, 2009, p. 14.

<sup>17</sup> *Idem*

<sup>18</sup> Moravcsik. A, *Negotiating the Single European Act: national interests and conventional statecraft in the European Community*, International Organisation, 45, 1, Winter 1991, p. 25.

<sup>19</sup> *Ibid*

<sup>20</sup> Mattli. W, (1999) *The logic of Regional Integration, European and Beyond*, the press syndicate of the university of Cambridge, London, p. 29

<sup>21</sup> Philpott .D, (1997). "Ideas and the Evolution of Sovereignty" In S. Hashmi .S, (ed) *State Sovereignty: Change and Persistence in International Relations*, The Pennsylvania State University Press, Pennsylvania, P. 17

<sup>22</sup> Wolff. R, (1990) "The Conflict between Authority and Autonomy", In Raz. J, (ed) *Authority*, Oxford University Press, Oxford, P. 20-12

<sup>23</sup> Philpott, *Supra* note 25, P. 17

<sup>24</sup> Onuf .N, (1998). *The Republican Legacy in International Thought*, Cambridge University Press, London, 1998, P. 120

<sup>25</sup> Philpott, *Supra* note 25, P. 19



Linking regional integration with sovereignty, scholars and various schools have conceptualized sovereignty in two forms, the ‘internal and external’ sovereignty,<sup>26</sup> or according to Hashmi in his book, is Absolute and non-absolute.<sup>27</sup> Internal or absolute sovereignty connotes that, supreme authority covers sovereignty within borders and immunity from external intervention.<sup>28</sup> And external or non-absolute sovereignty is what international lawyer understands when discussing sovereignty and what is known by the UN Charter as “political independence and territorial integrity”.<sup>29</sup>

According to Grimm, in his book, external sovereignty is connected with the existence of a state conferred with public power and is not subjected to or affected by questions related to its internal allocation, separation, and limitation. For the state to enjoy external sovereignty, it ought to be a legal subject.<sup>30</sup> Grimm, also claims that it is not possible to possess internal without external sovereignty and that a political system must first ensure it firmly holds its external sovereignty for it to maintain its internal sovereignty. He proceeds to add that “Lack of external sovereignty means nothing less than the subordination of state power to a foreign will and to that extent rules out self-determination”<sup>31</sup>

Currently, in international relations, no single state is fully sovereign within the meaning of sovereignty in the nineteenth and first half of the twentieth century.<sup>32</sup> In the European Union, it is the member states that transferred sovereignty rights, to be exercised by the Union in its name and with direct effect to the member states.<sup>33</sup> In the book by Cooley and Spruyt, they adopted the scholarly traditional definition of ‘integration’ to mean, the “aggregated transfer of sovereign assets or function to another actor or organisation.”<sup>34</sup> The process of sovereign transfer (supranationalism) is constituted by the reapportioning of sovereign, rights, functions, and territories from one entity to another.<sup>35</sup> A good example cited by Cooley and Spruyt is that when a state loses its exclusive sovereignty in the area of economic governance to a regional organisation, it tells the gain of the governance of the same function to that regional organisation.<sup>36</sup>

In her book, Magdalena Martinez argues that the value of the state’s life was fundamentally supported by international cooperation subsequent to the failure of the League of Nations and the revulsions of the Second World War. It increased the states’ awareness of the issues that facilitated political and economic cooperation through domestic rule states authorized to be incorporated in international institutions, which lender deprivation part of the state’s sovereign, a process that needs certain conditions to adhered so that to ensure proper transfer of the state’s power. Magdalena Martinez in her book pointed out constitutional conditions for the transfer of State’s power.<sup>37</sup>

Adherence to internal or domestic procedures prior to the transfer of power process. For example, is the adoption of parliamentary consensus for a state to join the international organisation. Condition to be fulfilled by the international Organisations addresses of the transfer. Conditions to be fulfilled by all the States that are or will become members of the International Organisation. For example, reciprocity in their relationships, equal treatment within the international organisation, and proportional distribution of responsibilities assumed by each member to achieve a common purpose. Despite the adoption of the above conditions, different Constitutions, although not all, have embodied certain limits to the process of the transfer itself. They constitute a state’s consent to be involved in international organisations.<sup>38</sup> The

<sup>26</sup> Onuf, *Supra* note, *ibid*, P. 122

<sup>27</sup> Philpott, *Supra* note 24, P. 20, see also Wallerstein. I, “states? Sovereignty? The Dilemmas of Capitalists in an Age of Transition” In Smith. D, (1999). (ed) *States and Sovereignty in the Global Economy*, Routledge, New York, Pp. 20-50, P. 22, provides the meaning of internal (in ward looking) and external (out ward looking) that “Sovereignty of the state, in ward looking, is the assertion that, within its boundaries (which therefore must necessary be Clearly defined and legitimated within the interstate system) the state may pursue whatever policies it deems wise, decree whatever laws. And Sovereignty of the state, outward looking, is the argument that no other state in the system has the right to exercise any authority, directly or indirectly, within the boundaries of the given state, since such an attempt would constitute a breach of the given state’s sovereignty”.

<sup>28</sup> *Ibid*

<sup>29</sup> *Ibid*

<sup>30</sup> Grimm. D, (1993). *Sovereignty: The Origin and Future of a Political and Legal Concept*, Columbia University Press, New York, P. 93

<sup>31</sup> *Ibid*

<sup>32</sup> *Ibid*, P. 91, that “This is clearly the case for the member states of the European Union. It is also true, however, for UN member states, and even more so for those that have ratified the treaty on the international Criminal Court. An exception may be made-not purely factual, but based on legal status for states that do not belong to the European Union and hold a permanent seat on the UN Security Council, because no UN measures may be taken without their agreement. If they belong to the WTO, however, their sovereignty, too, has been compromised”

<sup>33</sup> *Ibid*, P. 89

<sup>34</sup> Cooley A, and Spruyt H. (2009). *Contracting States: Sovereign Transfers in International Relations*, Princeton University Press, 41 William Street, New Jersey, P. 8

<sup>35</sup> *Ibid*

<sup>36</sup> *Ibid*

<sup>37</sup> *Ibid*

<sup>38</sup> *Ibid*



transfer of power is limited only to the exercise of certain sovereigns, but not in their ownership, which is reserved to the states. This power will revert automatically to the state once the objectives of international organisations are accomplished.

The transfer is limited to material. That, the extent of power transfer is limited; normally the Constitution avoids the transfer of the total power of a state. The power transferred will be exercised by international organisations in a much-defined field, executive, legislative, and judicial function, but they can never replace the states. The transfer should be temporal. A delegation should not be construed as a dereliction or a definitive cession of sovereignty. A state can recover its transferred power through unilateral withdrawal from the international organisation.

In the international legal order, states are regarded as “quasi-states”. That, according to Brad Roth is known as “sovereign equality of states” where states acquire the same external rights and responsibilities as all other states.<sup>39</sup> To qualify this approach, Roth, came out with three legal irrefutable presumptions; that is, first a state is presumably bound to the extent of its actual or constructive consent, second, the international state’s obligations presumably have legal effect to the extent of incorporation by domestic laws. Third, “the inviolability of a state’s territorial integrity and political independence, as against the threat or use of force or extreme economic or political coercion is presumed to withstand even the state’s violation of international legal norms.”<sup>40</sup>

On the other hand, states may automatically transfer part of their sovereignty on the operation of customary international law or peremptory norms (*jus cogens*); there is no way for the state to opt out when the customary norm is in operation.<sup>41</sup> From these assertions, the ordinary meaning of sovereignty has been eroded by international treaties and customary international law norms to create sovereignty of equality.

### III. METHODOLOGY

This study employed qualitative research design using doctrinal legal research method of data collection to establish the significance of sovereign ceding for regional development. The reason why the doctrinal legal research method was selected is because of the common take under the legal research tradition of reviewing authoritative texts that is legislations and case laws reviewed form part of the primary source in the legal research. It is viewed as the best methodology for legal research, since the method assesses law by using statutes and judicial decisions to structure, rectify and clarify the law in any point of interest.<sup>42</sup> Furthermore, some secondary sources were reviewed that consist of scholarly works, which helped in locating secondary data, such as indexes and digests, and commentaries on the law that include encyclopedias, books, articles, and journals. For data analysis, collection of data was analyzed to develop a common approach to respond to the objectives through discussion.

### IV. FINDINGS & DISCUSSIONS

#### 4.1 The Common Market Protocol

The Common Market is the second pillar among four of the EAC integration, which came into operation on 1st July 2010. The negotiations to establish the Common Market commenced in April 2008 and ended in November 2009, after the Protocol on the Establishment of the EAC Common Market was signed by the EAC Head of State.<sup>43</sup> A Common Market is an approach whereby Partner States within a regional economic community work as a single market for goods, services, capital and labour, common revenue, and trade laws.<sup>44</sup>

Professor Kennedy Gastorn argues that there are main two grounds stand in support of a common market or absence of internal barriers: firstly, that freedom of trade and movement tries to develop a new system where all undertaken production in the community is supervised in the best sectors that suit it; and secondly, it tries to guarantee that, the presence of commodity large-scale production, it will be produced on large scale in few places, but it covers the whole community area.<sup>45</sup>

<sup>39</sup> Roth, B. (2011). *Sovereign Equality and Moral Disagreement*, Oxford University Press, New York, p. 53

<sup>40</sup> *Ibid*, P. 67

<sup>41</sup> *Ibid*, P. 68

<sup>42</sup> Hutchinson, T, and Nigel, D, *Defining and Describing What We Do: Doctrinal Legal Research*, Deakin Law Review, 2012, Vol. No.17, Issue No.1, p.102.

<sup>43</sup> Gastorn. K & Masinde.W, (2017) “The EAC Common Market” In Ugirashebuja .E, *et al*, (ed) *East African Community Law: Institutional, Substantive and Comparative EU Aspects*, Brill, Pp 285-292, p 285

<sup>44</sup> *Ibid*

<sup>45</sup> *Ibid*



The general objective of the Common Market is to expand and deepen Partner States cooperation in the area of economic and social fields for Community development.<sup>46</sup> The EAC Common Market is mainly grounded on five freedoms and two rights, namely the free movement of goods, free movement of labour, free movement of services, free movement of persons and free movement of capital, the right of establishment; and the right of residence; thus, it involves the integration of the four markets; (a) the goods market, (b) the labour market, (c) the services market, and (d) the capital market.<sup>47</sup>

The spirit of the EAC Common Market depends much on the approximate and harmonisation of Partner States national laws. This is vividly reduced down from Article 4(3) of the EAC Common Market Protocol which suggests the realisation of the EAC Common Market depends much on the Partner States cooperation in the integration and harmonisation of their policies in areas provided for in the Protocol and in such other areas as the Council may determine to achieve the objectives of the Common Market. Therefore, from the above observation, harmonisation of laws and rules on the regulation and supervision of the banking industry as one of the key tools in the EAC Community is still vital to meet the full realisation of EAC Common Market integration.

#### Principles of the EAC Common Market

The EAC Common Market is subjected to the fundamental and operational principles of the Community as provided under Articles 6 and 7 of the Treaty; where the fundamental principles that shall govern the achievement of the objectives of the Community by the Partner States shall include:<sup>48</sup>

Mutual trust, political will, and sovereign equality;

Peaceful co-existence and good neighbourliness;

Peaceful settlement of disputes;

Good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, and gender equality, as well as the recognition, promotion, and protection of human and people's rights in accordance with the provisions of the African Charter on Human and Peoples' Rights;

Equitable distribution of benefits; and

Co-operation for mutual benefit.

Also, there are Operational Principles that shall govern the practical achievement of the objectives of the Community include:<sup>49</sup>

People-centred and market-driven co-operation;

The provision by the Partner States of an adequate and appropriate enabling environment, such as conducive policies and basic infrastructure;

The establishment of an export-oriented economy for the Partner States in which there shall be free movement of goods, persons, labour, services, capital, information, and technology;

The principle of subsidiarity with emphasis on multi-level participation and the involvement of a wide range of stakeholders in the process of integration;

The principle of variable geometry which allows for progression in co-operation among groups within the Community for wider integration schemes in various fields and at different speeds;

The equitable distribution of benefits accruing or to be derived from the operations of the Community and measures to address economic imbalances that may arise from such operations;

The principle of complementarity; and

The principle of asymmetry.

The above fundamental and operational principles of the Community shall govern Partner States on the realisation of Common by subjecting them to undertake the following:<sup>50</sup>

Observe the principle of non-discrimination of nationals of other Partner States on grounds of nationality;

<sup>46</sup> Article 4(1) of the EAC Common Market protocol, also there are specific objectives provided under Article 4(2) of the EAC Common Market Protocol, that includes;(a) accelerate economic growth and development of the Partner States through the attainment of the free movement of goods, persons and labour, the rights of establishment and residence and the free movement of services and capital; (b) strengthen, coordinate and regulate the economic and trade relations among the Partner States in order to promote accelerated, harmonious and balanced development within the Community; (c) sustain the expansion and integration of economic activities within the Community, the benefit of which shall be equitably distributed among the Partner States; (d) promote common understanding and cooperation among the nationals of the Partner States for their economic and social development; and (e) enhance research and technological advancement to accelerate economic and social development.

<sup>47</sup> Article 2(4) of the EAC Common Market Protocol and Articles 76 and 104 of the EAC Treaty,

<sup>48</sup> Article 6 of the EAC Treaty

<sup>49</sup> Article 7 (1) of the EAC Treaty

<sup>50</sup> Article 5(1) and (2) of the Common Market Protocol



Accord treatment to nationals of other Partner States, not less favourable than the treatment accorded to third parties;

Ensure transparency in matters concerning the other Partner States; and  
Share information for the implementation of this Protocol.

Non-discrimination in this sense means that a “partner state must treat nationals of other partner states as it would treat its own. ‘Not less favourable’ means that a partner state must treat its fellow EAC nationals as well as it would treat non-EAC nationals”.<sup>51</sup> The EAC Common Market offers chances for Partner States to take advantage of the opportunities presented by social, political, and economic provisions in the Protocol, but the restriction on harmonisation of laws and policies across the partner states remain to be a serious challenge to ward the realisation of EAC Common Market Protocol.

#### 4.2 The Challenges Posed by the EAC Partner States' Sovereign Protection

It has to be borne in mind that, for there to be a strong regional financial convergence, a strong financial legal framework has to be in place in any regional integration. And one of the key factors influencing the presence of a strong financial legal framework is the desire of regional integration member states to cede their state's sovereignty in the area of integration and vest it in a supranational body. The realisation of the EAC objectives as provided by the EAC Treaty and the Protocol establishing EAC Common Market has been subject to key obstacle, where each Member State protect its sovereign power in the area of financial control, specifically on banking regulation and supervision. This assertion has led to a major failure in attaining the EAC harmonised banking regulatory legal framework. Unlike integration, which is a typical political process, harmonisation of laws is the legal process that operates as a tool to facilitate the realisation of integration objectives.<sup>52</sup> Therefore, harmonisation is considered as a legal tool for transforming integration objectives into common applicable principles from the international level to the national level. To attain the highest level of supranationalism, that is, placing the integration laws at uniformity and standard application at the top of the norm's hierarchy, an area where the EAC is still striving to attain for its development.

It has been cited that among the reasons why the EAC Partner States retain their sovereign power of financial regulation is the fragmentation of legal system in the East African countries or diversity of legal tradition.<sup>53</sup> These countries' legal system is categorically described by using colonial enterprise, a Eurocentric legal tradition, either common law<sup>54</sup>, civil law<sup>55</sup> or mixed (hybrid) legal system<sup>56</sup>. Thus, Tanzania, Kenya, South Sudan, and Uganda uses common law, while Rwanda, Burundi, the Democratic Republic of Congo, and Somalia uses civil law legal system. These legal systems lay down differences in legal principles both in substantive and procedural matters that in the end attract hardship during the harmonisation of laws discussion. Lastly, there is no appropriate approach to harmonisation. The Sub-Committee approach does not yield positive outcomes, since there is no effective mechanism to monitor the process and implementation by the Member States. Furthermore, Article <sup>46</sup> of the Common Market Protocol requires the Council of Ministers to establish an authority or institution to manage the Common Market. This authority is not yet established; the reason is the Partner States' failure to accommodate ceding of sovereign power on specific issues to the EAC authority.

The study has observed one of the notable challenges posed by non-ceding of sovereignty that faces the banking industry at the EAC level is the fragmentation of the cross-border banking regulations to facilitate banks and financial institutions operating across the East African.<sup>57</sup> That, cross-border regulation in several jurisdictions attracts prudential regulation of a single financial institution to be shared between regulators, and this approach demands cooperation among regulators. The current status in the EAC, each Member State regulates and supervises banking activities by using domestic laws, there is no common rules in place on regulating and supervising banks that draw a line of the EAC supremacy over national laws. The reason is that each Member State protects its sovereign power to regulate cross-border banking activities. This has attracted slow realisation of the EAC objectives on the Common market because it is not possible to monitor a bank, especially on a cross-border basis, unless the whole of its operations can be considered in a coordinated manner.

<sup>51</sup> The Institute of Economic Affairs, (2011) “Trade Notes,” Issue 33 of January, <https://www.ieakenya.or.ke/downloads.php?page=ISSUE-33-2011.pdf>, p 3

<sup>52</sup> Mbaye. K (2002). ‘Foreword’ In Mator B, Pilkington N, Sellers. D & Thouvenot. S, *Business Law in Africa: OHADA and the Harmonisation Process*, Evershed, London, P. xxiv.

<sup>53</sup> Oppong, *Supra* note 317, Pp. 114-115

<sup>54</sup> For example: Tanzania, Kenya, Uganda, Gambia, Ghana, and Sierra Leone

<sup>55</sup> For example: Benin, Burkina Faso, Rwanda, Burundi, the Central African Republic, the Democratic Republic of Congo, and Guinea

<sup>56</sup> For example: Botswana, South Africa, Cameroon, Lesotho, Mauritius, Namibia, Swaziland, Seychelles, and Zimbabwe.

<sup>57</sup> Mayes. D, (2012). “Some Rules for Cross-Border Banks in Europe” In Alexander. K & Dhumale. R, (ed) *Research Handbook on International Financial Regulation*, Edward Elgar Publishing Limited, London, p 133



In the EAC, the concept of cross-border banking is generally covered by Cross-border Investments (CBI), where the Partner States undertake to protect cross-border investments and returns of investors of other Partner States within their territories.<sup>58</sup> The Protocol defined the term Cross-border Investment to mean “any investment by a national of a Partner State in the territory of another Partner State”.<sup>59</sup> The same has also been defined by the African Development Bank to mean all capital flows, both private and public, between countries, i.e. investment across the geographical borders of countries. Intra-regional CBI is therefore related to capital flows listed within a Regional Economic Community (REC).<sup>60</sup>

In the EAC, banks and financial institutions play a major role in facilitating cross-border investments which are marked as an important indicator to determine the level, content, nature, and depth of the economic and social integration of the EAC. Furthermore, CBI is considered a source of Foreign Direct Investment (FDI), which paves a positive way to innovation and technology transfer, job creation, sustainable business processes, and regional managerial services.<sup>61</sup> Taking into consideration these expected results of CBI, the EAC Common Market protocol subjects the Partner States to ensure the realisation of CBI in the Community by undertaking the following:<sup>62</sup>

To ensure protection and security of cross-border investments of investors of other Partner States;

To observe non-discrimination of the investors of the other Partner States, by according to these investors treatment no less favourable than that accorded in like circumstances to the nationals of that Partner State or to third parties;

That in case of expropriation, any measures taken are for a public purpose, non-discriminatory, and by due process of law, accompanied by prompt payment of reasonable and effective compensation.

To implement these directives, the EAC Partner States were supposed to take actions and measures within two years after the coming into force of the Common Market protocol,<sup>63</sup> but nothing has been undertaken due to sovereign protection. A good example is of a recent order passed and enforced by the government of the United Republic of Tanzania in July 2025, the Business Licensing (Prohibition of Business Activities for Non-Citizens) Order, 2025. This Order prohibits issuing a license to a non-citizen to carry out business activities, some of which are within the area of cooperation under the EAC Common Market Protocol. Such as ownership and operation of micro and small industries.<sup>64</sup> This Order goes off key with the spirit of the Common Market Protocol, which suggest free movement of capital within Partner States for the of investments. In this regard, Tanzania has demonstrated with a clear and strong voice on how Partner States are jealous of their sovereign power and they're not even intending and willing to cede part of it to the EAC as an intergovernmental organisation so as to make it a full supranational organisation.

Furthermore, protection of sovereignty by the EAC Partner States has stumbled a move towards the realisation of the single currency. Where the Monetary Union Protocol of 2013 and subsequently the establishment of the East African Payment System (EAPS) of May 2014, were both geared toward such achievement.<sup>65</sup> It is vividly positioned that, the banking industry in EAC is vainly laddering due to uncertainty on its regulation and supervision since each Partner State strives to strengthen her banking system before the full adoption of the EAC Monetary Union. The EAPS facilitates real-time cross-border payments between members of the EAC, as it encourages intra-regional trade by plummeting risks and costs in cross-border money transfer.

Despite these positive initiatives, challenges are being foreseen to include the process of macroeconomic convergence due to serious variations in inflation and economic growth rates to among the EAC members. Another unaddressed challenge is the difficulty of monetary convertibility within the EAC Partner States. All the challenges are influenced due to a stand that each national applies its domestic laws to govern cross border activities, which were supposed to be regulated by at the EAC level so as to attain a common goal.

A good example of how the implication of sovereign protection affects the EAC is taking a case of the banking industry in Tanzania, which is governed by statutes, regulations, and guidelines made by the Bank of Tanzania (BOT).<sup>66</sup>

<sup>58</sup> Article 29 of the EAC Common Market Protocol

<sup>59</sup> Article 29(4) of the EAC Common Market Protocol.

<sup>60</sup> The African Development Bank Group, “Regional Integration Brief”, NEPAD, Regional Integration and Trade Department - No. 2, September, 2013, p 1

<sup>61</sup> The African Development Bank Group, (2013) “Regional Integration Brief”, NEPAD, Regional Integration and Trade Department - No. 2, p 1

<sup>62</sup> Article 29(2) of the EAC Common Market Protocol

<sup>63</sup> Article 29(3) of the EAC Common Market Protocol

<sup>64</sup> The Business Licensing (Prohibition of Business Activities for Non-Citizens) Order, 2025, Order 3. (1) The business activities specified in the Schedule to this Order shall not be carried out by noncitizens. (2) Upon coming into effect of this Order, licensing authorities shall not issue or renew a licence for a noncitizen to carry out any of the business activities prohibited under this Order.

<sup>65</sup> Oxford Business Group, “The Report, Kenya 2016”, <https://oxfordbusinessgroup.com/reports/kenya/2016-report>

<sup>66</sup> Few to mention the laws governing are the Bank of Tanzania Act, No 5 of 2006 the banking and financial institution Act, No 6 of 2006, the Microfinance Act, No 8 of 2018 and the Foreign Exchange Act, No 1 of 1992.



The legal framework on bank regulation and supervision in Tanzania does not provide the best approach to facilitate the process of harmonisation of the banking regime in the EAC. A good example is that currency convertibility within the EAC region is not addressed by banking laws, but rather by a memorandum of understanding which does not form part and parcel of the EAC legal framework, it is only a member states arrangement.

The main challenge in trading currencies from the EAC Partner States is that there is no clear cost-effective arrangement, covered by the domestic laws or the EAC laws. The banking law in Tanzania also does not address issues relating to the EAC currency convertibility to cover the cost aspect. The current practice is that it is the financial institution at the national level that bears the cost of transporting the accumulated currencies to the central bank at the head office.<sup>67</sup>The study found that this challenge is rooted in the requirement of repatriation of the currencies, where most of the time there is an imbalance among the EAC Partner States on the surplus currencies that need to be repatriated. This challenge is attributed by non-ceding of partial sovereign power on the matter by the Partner States, thus escalating the absence of a single rule on currency convertibility made by the EAC, which needs to be adopted within the Partner States' national laws.

## V. CONCLUSION & RECOMMENDATIONS

### 5.1 Conclusion

To sum up this discussion, the study has displayed vividly that the concept of sovereignty is a vital aspect for the attainment of the objectives of any regional economic integration. Basic theories of regional integration suggests that member states of any regional integration are subjected to the demand of yielding part of their sovereign to the regional organisation, a demand that has promptly attracted number of challenges. The Partner States are not willing either economically or politically to cede part of the sovereign power to the organisation so it can address its own objectives as provided under the treaty establishing the EAC. It is agreed that efforts have been made to address these challenges, but they are not enough compared to the level of measures taken by the Partner States to protect their sovereign power. This situation has intensively affected the realisation of the EAC Common market, particularly in the regulation and supervision of the banking industry. One of the challenges established by the study is fragmentation of the cross-border banking regulation, also it has been established that monetary convertibility is very difficult within the EAC partner states due to protection of domestic financial industry.

### 5.2 Recommendations

It is hereby recommended by this study that the Partner States should be willing to cede part of their sovereign powers to create a well organised regulatory authority with legal power to deal with issues related to regulation and supervision of banks and financial institutions. The authority will be there to ensure banks operate in a sound and far away from business risks so as to attract foreign direct investment in order to ensure the realisation of the EAC common market.

For the EAC to realize its objectives, there is a need to have in place an organ that is tasked to monitor and entrench harmonisation of laws, then the same is left to the mere Committee with no legal status to affect the observations. Also, it's difficult for the EAC to monitor its own progress, hence other Civil and Economic societies may be involved and take chances to play a vital role in monitoring and reporting the progress on the implementation of EAC objectives through harmonisation of laws. Also, the call to the realisation of EAC objectives through the banking industry is the adherence to the effective political and economic will among the Member States. These include good governance, respect for fundamental rights, and a budget for harmonisation of laws.

The presence of regional *hegemons* may have a positive or negative impact on the integration progress. A regional hegemon with economic power may monopolies the majority will of the region against other members, but on the other hand, such a hegemon may influence by using their economic power to the harmonisation of laws through financial and administrative assistance to other EAC member states in institutional development that will help the implementation of regional objectives. A good example is in the ECOWAS where Nigeria contributes much to the regional economy and security. For there to be an effective realisation of the EAC pillar there must be effective leadership by regional hegemons, in the EAC, Tanzania and Kenya may lead as hegemons on the whole process of harmonisation of laws that the Common Market and Monetary Union depend on.

---

<sup>67</sup> Adam, Christopher S., Pantaleo Kessy, Camillus Kombe, and Stephen O'Connell. "Exchange Rate Arrangements in the Transition to East African Monetary Union." *CSAE Working Paper Series 2012-07*. Centre for the Study of African Economies, University of Oxford, 2012.



## REFERENCES

- Adam, Christopher S., Pantaleo Kessy, Camillus Kombe, and Stephen O'Connell. "Exchange Rate Arrangements in the Transition to East African Monetary Union." *CSAE Working Paper Series 2012-07*. Centre for the Study of African Economies, University of Oxford, 2012.
- Cavlak, H., et al. "EU Health Policy: To What Extent the EU Got Involved in the Field of Health?" In Engin, S. and Hasan, D., eds., *Regional Economic Integration and the Global Financial System, Business Science Reference*. Hershey, PA, USA, 2015, pp. 98-119.
- Chey, H. *International Harmonisation of Financial Regulation?: The Politics of Global Diffusion of the Basel Capital Accord*. New York: Routledge, 2014.
- Cooley, A., and H. Spruyt. *Contracting States: Sovereign Transfers in International Relations*. Princeton, NJ: Princeton University Press, 2009.
- Dragomir, L. *European Prudential Banking Regulation and Supervision: The Legal Dimension*. New York: Routledge, 2010.
- Gastorn, K., and W. Masinde. "The EAC Common Market." In Ugirashebuja, E., et al., eds., *East African Community Law: Institutional, Substantive and Comparative EU Aspects*, pp. 285-292. Leiden: Brill, 2017.
- Goodhart, C. *The Basel Committee on Banking Supervision: A History of the Early Years, 1974–1997*. New York: Cambridge University Press, 2011.
- Grimm, D. *Sovereignty: The Origin and Future of a Political and Legal Concept*. New York: Columbia University Press, 1993.
- Haas, E. *The Uniting of Europe: Political, Social and Economic Forces, 1950–1957*. Stanford: Stanford University Press, 1958.
- Hutchinson, T., and D. Nigel. "Defining and Describing What We Do: Doctrinal Legal Research." *Deakin Law Review* 17, no. 1 (2012): 102.
- Kembayev, Z. *Legal Aspects of the Regional Integration Processes in the Post-Soviet Area*. Berlin: Springer-Verlag, 2009.
- Leeson, R. *Ideology and the International Economy: The Decline and Fall of Bretton Limited*. London: Edinburgh Gate, 2003.
- Mattli, W. *The Logic of Regional Integration, European and Beyond*. London: The Press Syndicate of the University of Cambridge, 1999.
- Mayes, D. "Some Rules for Cross-Border Banks in Europe." In Alexander, K. and R. Dhumale, eds., *Research Handbook on International Financial Regulation*, p. 133. London: Edward Elgar Publishing Limited, 2012.
- Mbaye, K. "Foreword." In Mator, B., N. Pilkington, D. Sellers, and S. Thouvenot, eds., *Business Law in Africa: OHADA and the Harmonisation Process*, p. xxiv. London: Evershed, 2002.
- Moravcsik, A. "Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach." *Journal of Common Market Studies*, Harvard University, 31, no. 4 (December 1993): 473-524.
- Moravcsik, A. "Negotiating the Single European Act: National Interests and Conventional Statecraft in the European Community." *International Organisation* 45, no. 1 (Winter 1991): 19-56.
- Nakagaw, J. *International Harmonisation of Economic Regulation*. London: Oxford University Press, 2011.
- Onuf, N. *The Republican Legacy in International Thought*. London: Cambridge University Press, 1998.
- Oxford Business Group. "The Report, Kenya 2016." <https://oxfordbusinessgroup.com/reports/kenya/2016-report>.
- Philpott, D. "Ideas and the Evolution of Sovereignty." In S. Hashmi, ed., *State Sovereignty: Change and Persistence in International Relations*, pp. 17-20. University Park, PA: The Pennsylvania State University Press, 1997.
- Possi, A., and C. Kamanga. "General Principles Governing EAC Integration." In Ugirashebuja, E., et al., eds., *The East African Community Law*, p. 204. Leiden: Brill, 2017.
- Roth, B. *Sovereign Equality and Moral Disagreement*. New York: Oxford University Press, 2011.
- Schooner, H., and M. Taylor. *Regulation of Global Banking Principles and Policies*. London: Elsevier, 2010.
- The African Development Bank Group. "Regional Integration Brief." NEPAD, Regional Integration and Trade Department, No. 2, September 2013.
- The Institute of Economic Affairs. "Trade Notes." Issue 33, January 2011. <https://www.ieakenya.or.ke/downloads.php?page=ISSUE-33-2011.pdf>.
- Wallerstein, I. "States? Sovereignty? The Dilemmas of Capitalists in an Age of Transition." In D. Smith, ed., *States and Sovereignty in the Global Economy*, pp. 20-50. New York: Routledge, 1999.
- Wolff, R. "The Conflict between Authority and Autonomy." In Raz, J., ed., *Authority*, pp. 20-12. Oxford: Oxford University Press, 1990.



**Statutes, Protocols, and Treaties (if included in bibliography):**

*The Business Licensing (Prohibition of Business Activities for Non-Citizens) Order, 2025, Order 3.*

EAC Treaty (various articles as cited).

EAC Common Market Protocol (various articles as cited).

**Legislation (examples, if needed for a bibliography):**

Bank of Tanzania Act, No. 5 of 2006.

Banking and Financial Institution Act, No. 6 of 2006.

Microfinance Act, No. 8 of 2018.

Foreign Exchange Act, No. 1 of 1992.