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**THE QUEST FOR A SUPRANATIONAL ENTITY IN WEST AFRICA:  
CAN THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES  
ATTAIN THE STATUS?**



**2013 VOLUME 16 No 3**

<http://dx.doi.org/10.4314/pelj.v16i3.9>

## THE QUEST FOR A SUPRANATIONAL ENTITY IN WEST AFRICA: CAN THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES ATTAIN THE STATUS?

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### 1 Introduction

The importance of institutions as a tool for states to surmount the national, regional and international challenges that face them cannot be over-emphasised. However, it is necessary to examine the system which a particular institution adopts to achieve its objectives.

The Economic Community of West African States (ECOWAS) was established on 28 May 1975<sup>1</sup> to promote economic cooperation within the region.<sup>2</sup> It adopted at its inception an intergovernmental approach to governance, creating an institution with a regional economic system based on national sovereignty and non-interference in the affairs of its member states.<sup>3</sup>

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<sup>1</sup> ECOWAS comprises of 15 members due to the withdrawal of Mauritania. They are Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, the Gambia, Liberia, Guinea Bissau, Guinea, Ghana, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

<sup>2</sup> Article 2(1) of the *Treaty of the Economic Community of West African States* (1975) (hereinafter the *ECOWAS Treaty*) sets out the aims and objectives of the community as follows: "... to promote co-operation and development in all fields of economic activity particularly in all fields of industry, transport, telecommunication, energy, agriculture, natural sciences, commerce, monetary and financial questions and in social and cultural matters for the purpose of raising the standard of living of its peoples, of increasing and maintaining economic stability of fostering closer relations among its members and of contributing to the progress and development of the African continent."

<sup>3</sup> Kufuor *Institutional Transformation* 30. Kufuor *Institutional Transformation* 30 explains the intergovernmental nature of the ECOWAS Treaty as: "... under the 1975 Treaty, the sovereignty of the members was left intact. As a result, there was only a general undertaking in the Treaty that all the members of the community in planning and directing their national policies would do so with the aims of the ECOWAS in mind".

However, due to the failure of ECOWAS to achieve its objectives, a Committee of Eminent Persons (the CEP) was established to examine the reasons behind its failure and to make recommendations for its reform "in order to accelerate the integration process and contribute effectively to West African development".<sup>4</sup>

The major recommendation of the CEP was that the intergovernmental system of the 1975 treaty should be jettisoned and a supranational system adopted.<sup>5</sup> The aftermath of the report was the *Revised Treaty of the Economic Community of West African States* of 1993,<sup>6</sup> which attempted to turn ECOWAS into a supranational institution.

This article discusses the issue of the supranational status of ECOWAS. The article consists of six parts. The first part is an introduction, while the second part examines the reasons behind the quest for supranational status. Part three highlights the steps that the community has taken so far to achieve supranational status. A critique of supranationalism with a discourse on its advantages and disadvantages is dealt with in part four. Part five examines whether or not ECOWAS can really become a supranational entity, and the conclusion is given in part six.

## 2 Why the new structure?

ECOWAS has been in existence for almost thirty-eight years (from May 1975 to date). It has faced challenges in the process of implementing its treaties as well as inevitable obstacles and setbacks on the road to co-operation and integration. A feeling of dissatisfaction as to its performance permeated the entire period of thirty-eight years.<sup>7</sup>

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<sup>4</sup> Kufuor *Institutional Transformation* 30.

<sup>5</sup> Kufuor *Institutional Transformation* 36.

<sup>6</sup> *Revised Treaty of the Economic Community of West African States* (1993) (hereafter the *Revised Treaty*).

<sup>7</sup> Nwauche 2011 *Journal of African Law* 182 stated: "34 years after the formation of the Economic Community of West African States (ECOWAS) as a regional economic and social community, not much has been achieved to realize the community's lofty objectives".

Omoniyi<sup>8</sup> surveyed public opinion on the issue and came out with a balanced view:

The Economic Community of West African States (ECOWAS), the largest and the latest of the communities established in 1975, cannot be said to have met the expectations of its founding fathers. It is unfair to write it off as 'non-operational', as indeed, a number of ministers and officials in some member states did in the course of our investigations; but it is true that its impact in their economic development of the sub-regions has been marginal.

There are various reasons why ECOWAS could not achieve its aims and objectives within the span of thirty-eight years, and most of them have to do with the structure of the organisation.

Firstly, it lacks the necessary organ or institution to accomplish its objectives. The supreme decision-making power lies with the Authority of Heads of State and Government and the secretariat of the community is charged with the task of executing the decisions taken by it.<sup>9</sup> There is no supranational institution to implement the decisions, several of which are important, particularly those relating to the promotion of intra-community trade.<sup>10</sup> The secretariat has no discretionary power to make decision and the parliament is a mere debating gathering for the ordinary "ventilation of views".<sup>11</sup>

The institutions of ECOWAS are inter-governmental by nature, not supranational. Supranational institutions are different from intergovernmental institutions. Intergovernmental bodies could never grow into an "international integration", but supranational institutions, which represent a community of nations, could develop into federal systems or confederations and be great facilitators of integration.<sup>12</sup>

<sup>8</sup> Omoniyi "West Africa's Multiple Inter-Governmental Organisations" 20.

<sup>9</sup> Article 19(3)(a) of the *Revised Treaty*.

<sup>10</sup> Omoniyi "West Africa's Multiple Inter-Governmental Organisations" 20.

<sup>11</sup> See *Protocol A/P.2/8/94 Relating to the Community Parliament* (1994) (establishing the ECOWAS Parliament), which makes the parliament a merely advisory institution. However, a 4(2) of the *Supplementary Protocol A/SP.3/06/06 (Amending Protocol A/P.2/8/94 Relating to the Community Parliament)* (2006) (hereinafter the *Supplementary Protocol*) provides that the parliament powers "shall be progressively enhanced from advisory to co-decision making and subsequently to a law-making role in areas to be defined by the Authority".

<sup>12</sup> Cheong 2004 *East Asian Review* 73.

Secondly, the degree of commitment of member states to the overall objectives of ECOWAS was worrisome. The lack of commitment could be explained from three perspectives. The first is that of the financial obligation of members to the organisation. To our chagrin, monetary contributions do not flow in as regularly as scheduled.<sup>13</sup> There was even a time when the executive secretariat of ECOWAS was finding it increasingly difficult to pay most of its staff because of the default in the payment of contributions by member states.<sup>14</sup> Most members failed to honour their financial obligations for not just a year but for years.<sup>15</sup> There is no doubt that it is difficult for a regional organisation to live up to its expectation if the financial obligations of its members are not fulfilled. The second is that there is no viable commitment to ratify and implement decisions reached by the Authority of Heads of State and Government. The Heads of State and Governments come together to take decisions on behalf of the community but after decisions are reached they see the implication of the decisions as a threat to their national sovereignty and some of them renege on their commitment in order to protect their national interest. Consequentially, there is a delay in the ratification and implementation of decisions and protocols, which constitutes a serious barrier to the effective development of the community.<sup>16</sup>

The consequences of this lack of commitment<sup>17</sup> would be destructive to any organisation, particularly when the organisation is not empowered to enforce

<sup>13</sup> Umozurike *Introduction* 231.

<sup>14</sup> Nwakile "Degree of Commitment of Member States" 147.

<sup>15</sup> See Jide *The Guardian (Nig)* 14.

<sup>16</sup> Eventually, when protocols are signed and ratified by members, the members still find a way of protecting their national interest by implementing the protocols half-heartedly. For example, after the signing of *Protocol A/P.1/5/79 Relating to the Free Movement of Persons, Residence and Establishment* (1979), an agreement on free movement, in compliance with a 3(2), all ECOWAS countries abolished visas and entry permit requirements for visits not exceeding 90 days. In spite of that abolition, which could have been regarded as full compliance with the provisions of that section of the article, citizens are still subjected to harassment at the border and along the interstate roads of member states, which makes a mockery of the whole exercise. The principal programme officer, Immigration, ECOWAS Headquarters, Nfaly said that the failure to comply with the protocol on free entry was undermining the influence of the regional body. See Michael *The Punch (Nig)* 19.

<sup>17</sup> For example, when West African countries were opposing the proposed Economic Partnership Agreement (EPA) between the European Union and the Economic Community of West African States (ECOWAS), Cote D'Ivoire was reported to have signed an interim trade deal. Adeleye 2007

compliance with its decisions, as it would be if it were a supranational organisation. The only seemingly effective supranational organ in ECOWAS is the community court of justice. Under article 76 of the Revised Treaty,<sup>18</sup> the court is competent to deal with disputes referred to it regarding the interpretation or the application of the provisions of the Revised Treaty.

The position of a court in a regional organisation or community of nations with regional integration as an objective could not be over-emphasised. It is the court that interprets the treaty and monitors the ways in which all institutions have observed the treaty. It is the arbiter that redresses the infringement of any rights under the treaty. The regional court must therefore be structured in such a way that its judgements are enforced.

The problem with the Community's court of justice lies in this area of enforcement. ECOWAS does not possess an organ of its own<sup>19</sup> which is responsible for the enforcement of decisions or the execution of judgments. The possibility of enforcing judgments against the members' states is uncertain due to inadequacy of article 22(3) of the protocol, which merely directs the "Member States and Institutions of the Community" to implement them<sup>20</sup> without considering situations where the judgments to be implemented are not in the interests of those responsible for implementing them. As a result, "60 percent of ECOWAS judgments since its inception are not enforced".<sup>21</sup> We shall say more on this in the next section.

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<http://www.bit.ly/172frYN>: "Cote D'Ivoire may have thrown the camp of Nigeria and other West African countries into confusion by signing an interim trade accord with the European Union at the weekend. The organised private sector in Nigeria had opposed some of the clauses in the trade deal which they feared would hurt local firms and wipe out jobs. In fact the Nigerian Minister of Industry, Ogbu, was quoted as saying at a forum last week that government would not let the OPS down".

<sup>18</sup> See the *ECOWAS Treaty*.

<sup>19</sup> Similarly in the EU, community institutions do not possess organs of their own for the enforcement of their decisions or the execution of court's judgments. Enforcement is governed by the rules of civil procedure in force in the state in whose territory it takes place.

<sup>20</sup> *Protocol A/P.1/7/91 Establishing the Community Court of Justice* (1991).

<sup>21</sup> News Agency of Nigeria 2012 <http://www.bit.ly/183JaSW>.

The third is that of the divided loyalty of the member states, which are also loyal to other inter-governmental organisations apart from the ECOWAS. The ECOWAS Commission<sup>22</sup> itself recognises this as one of its problem, which it refers to as:

... the multiplicity of organizations for regional integration with the same objectives. The multiplicity of Intergovernmental Organizations<sup>23</sup> (IGOs) in West Africa contributed in great measure to the slow pace of progress at the community.

Ostensibly ECOWAS thinks that accommodating them within the community could solve the problem of divided loyalty. It therefore purports to allow member states to belong to other economic groupings provided that such membership does not "derogate from the obligations of that member state under the treaty".<sup>24</sup> But the reverse is actually the case, as some organisations like the West African Economic and Monetary Zone (WAEMU), whose membership includes the Ivory Coast, Mali, Mauritania, Niger, Senegal and Upper Volta, stand as rivals to ECOWAS. It is difficult if not impossible for a country to be loyal to two organisations with the same objectives in the same region. If it were possible it would be at the level of ordinary co-operation, but for a country to surrender part of its sovereignty to two supranational institutions on the same matter in the same region and for the same purpose may be unrealistic and a mirage.<sup>25</sup> That is a problem that ECOWAS must resolve if the new structure which will transform it into a supranational institution is to be accomplished.<sup>26</sup>

<sup>22</sup> ECOWAS 1999 <http://www.bit.ly/18ZQVKI>.

<sup>23</sup> They are numerous. For example, there are the Organisation for the Development of Senegal River, the Mano River Union, the Francophone Economic Community of West Africa (CEAO) *etc.*

<sup>24</sup> Article 28(3) of the *Revised Treaty*.

<sup>25</sup> The ECOWAS Council of Ministers appointed an *ad hoc* committee to look into the possibility of harmonising the existing trade liberalisation schemes in the region. The report of the committee, which was presented to the 13<sup>th</sup> session of the Council of Ministers on 7 May 1983 recommended "that the objectives of a customs union adopted by ECOWAS should be approved for trade liberalisation in West Africa sub-region." The Council accepted this recommendation and further recommended to the Authority of Heads of State and Government that a "strong appeal be made to the appropriate authorities of CEAO to merge the objectives, aspirations and programmes of CEAO with those of ECOWAS with a view to avoiding duplication of efforts and facilitating total solidarity towards the creation of the customs union and economic integration envisaged under the ECOWAS Treaty."

<sup>26</sup> Once ECOWAS becomes a supranational institution, the other organisations will become insignificant unless they too become supranational entities. In such a situation there might be conflict of interest.

Thirdly, the gradual approach<sup>27</sup> to regional integration by the Heads of State and Government at the inception of the establishment of ECOWAS was taken to protect the interest of member states as well as to allay the fears of each member particularly the weak states among them, that their national sovereignty would be sacrificed on the altar of the collective will. Consequently the 1975 ECOWAS Treaty revolves around economic issues as a means of developing co-operative ties without making any provision for security cooperation. The absence of provisions dealing with security matters became a problem when a civil war erupted in Liberia during the tenure of the then President Doe, which led to the death of many Liberian citizens and foreign nationals residing in Liberia. Other countries in West Africa, particularly those under the aegis of ECOWAS, were unable in law to intervene, although many of their citizens were being killed during the war.

Therefore, at the 13<sup>th</sup> Summit of ECOWAS in Banjul, the Gambia, it was agreed that a Standing Mediation Committee (SMC) should be set up. When the civil war failed to abate the SMC established an ECOWAS Peace Monitoring Group (ECOMOG) with a mandate to restore peace and separate the warring factions.<sup>28</sup> Though ECOMOG was successful in restoring peace to Liberia, the argument that it had no power or competence to interfere in member states' internal conflicts but only in conflicts that break out between member countries revealed the inadequacy of ECOWAS' Treaty.<sup>29</sup>

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<sup>27</sup> The gradual approach to integration taken by ECOWAS was a copy of or a reflection of the same stance by the generality of African states. When the idea of the African Economic Community was first mooted, the Monrovia Block of African states, which favoured gradual integration, triumphed over the Casablanca Bloc, which favoured pan Africanism or a comprehensive Union of African states. Professor Adebayo Adedeji from Nigeria applauded the gradual approach to African economic cooperation, reiterating the "merits of the geographically narrower, close neighbourhood approach as opposed to (an abrupt) continental all-embracing strategy". See Adedeji 1970 *Journal of Modern African Studies* 213-231.

<sup>28</sup> Comfort 1995 <http://www.bit.ly/HdjiZV>.

<sup>29</sup> *ECOWAS Treaty*. At the time of the civil war in Liberia and the intervention of ECOMOG, the two protocols in existence could not give the desired competence and legitimacy to ECOMOG. The first protocol on Non-Recourse to Aggression states that the community cannot attain its objectives saves in an atmosphere of peace and harmonious understanding among member states. It affirms the rejection of force contained in a 2(4) of the *United Nations Charter* (1945) and respect for the sovereignty of each member state. However, the protocol warns each member state to refrain from "committing, encouraging or condoning acts of subversion, hostility or aggression against the territorial integrity or political independence of the other member state." The problem with this protocol as far as the Liberian civil war was concerned is that the protocol does not address the issue of aggression coming from outside the community or the problem of civil war or internal conflict. The second protocol which relates to Mutual Assistance



However, the Revised Treaty rectified the defect in the legal status of ECOMOG. Article 58 of the Revised Treaty, entitled "Regional Security", commits the community "to work to safeguard and consolidate relations conducive to the maintenance of peace, stability and security within the region." To achieve that objective, member states resolved to cooperate with the community to establish and strengthen the "appropriate mechanisms for the timely prevention and resolution of intra-state and inter-state conflicts".

In addition the Authority of Heads of State and Government now has the power to take decisions on "conflict prevention, management and resolution, peace keeping, security, humanitarian support, peace-building, the control of cross-border crime (and the) proliferation of small arms".<sup>30</sup>

The next problem relates to the issue of the harmonisation of laws, regulations and procedures in the community. The harmonisation of laws is essential not only for trade facilitation<sup>31</sup> but also for regional integration<sup>32</sup> and the attainment of peace and security<sup>33</sup> within the ECOWAS region.

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on Defence addressed the issue of internal conflict. Aa 13 and 17 of the protocol allows for the creation of a community army made up of troops earmarked from national units. An attempt to make the protocol the basis of intervention in Liberia has been pungently punctured: "...that raised several issues. By August 1990, none of these institutions existed, although it was an integral part of the protocol on Mutual Assistance on Defence. ... The protocol on Mutual Assistance on Defence did not provide for alternative institutional arrangements for the independent performance of the Defence commission if the Defence Council was dysfunctional or nonexistent. The decision to intervene undermined the principle of unanimity that governed ECOWAS' decision making. What occurred in Liberia was the establishment of *ad hoc* institutions. These were the standing mediation commission and the committees of five and nine, which gave rise to the taking of decisions. When ECOWAS intervened in the Liberian crisis, the protocol on Mutual Assistance on Defence was nothing more than a policy declaration." See Aning 2000 *Africa Security Review* 516.

<sup>30</sup> Article 6 of the *Protocol Relating to the Mechanism for Conflict Resolution, Management Resolution, Peace Keeping and Security* (1999).

<sup>31</sup> Trade facilitation has been defined as "the simplification and harmonisation of international trade procedures". Trade procedures are described as the "activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade". See WTO Date Unknown <http://www.bit.ly/11Ws5w8>. *Protocol Relating to the Mechanism for Conflict Resolution, Management Resolution, Peace Keeping and Security* (1999).

<sup>32</sup> Probably that is why a 100 of the *Treaty of Rome* (1957) mandates the harmonisation of national laws so as to achieve a common market. In Africa, too, some states have joined the Organisation for the Harmonisation of Business Law in Africa (OHADA), which was created to ensure "a secure legal framework for the conduct of business in Africa". It has a membership of 16 countries (mostly Francophone). It has unified laws in a number of areas, including company law,

The fifth is the insufficient political, economic and social will or perhaps the entire lack of it within the individual capacity of each state and within the collective capacity of the region to take steps to accelerate the pace of integration and thus to realise the goals of the founding fathers of the ECOWAS.

Then there are the social and economic problems plaguing almost all the members of the community and creating a stumbling block for ECOWAS as a regional entity. The irony of the matter is that apart from the social and economic problems of the member states, which come to the fore as a result of their weak national economies, their misuse of funds, corruption, their political instability, their lack of the infrastructure necessary to facilitate Foreign Direct Investment (FDI) and their bad economic policies, some social and economic problems also emerge as a result of the activities of the community. The major problem resulting from the activities of the community is the inflow of refugees into neighbouring countries and the attendant negative consequences.<sup>34</sup>

The last problem is bad governance and the lack of legitimacy of most of the national governments. The Heads of States and Government of the member states have the highest authority in the community, but unfortunately most of them are not true representatives of their people. As is the tradition in Africa, some of them come in through rigged elections, while others come in through the barrel of a gun (through *coups d'etat*).<sup>35</sup> How can one expect such an Authority of Heads of States

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commercial sale agreements and securities, and has also created a dispute settlement system to resolve contractual disputes. See OHADA Legis Date Unknown <http://www.bit.ly/17kV2Ak>.

<sup>33</sup> See Abubakar "Implementing the Moratorium on Light Weapons" 47-53. He discusses obstacles to the harmonisation of laws and regulations in West Africa as regard the declaration of a moratorium on the importation, exportation and manufacture of light weapons, which was signed on 31 October 1998 in Abuja Nigeria by the member states of ECOWAS. Abubakar "Implementing the Moratorium on Light Weapons" 50: "... it should first of all be mentioned that the member states of the community have an obligation to modify their legislation to bring it into line with the code of conduct. On the one hand, this is a general international obligation; when a state concludes a convention which involves bringing its laws and regulations into line, it must automatically undertake any necessary changes".

<sup>34</sup> The problem of refugees led to the problem of trafficking in children and women in the sub-region and the uncontrolled possession of arms and ammunition.

<sup>35</sup> In order to stem the vicious cycle of *coup d'état* rampant in Africa, particularly in the region, ECOWAS adopted the *Protocol on Democracy and Good Governance*, which was signed in 2001. The protocol recognises democratic election as the sole means of acceding to power, the

and Government to support community-oriented programmes that will be inimical to the interests of their unrepresentative regimes? The outcome, to the detriment of the community, is a reluctance to part with their national sovereignty.

But it is not only unfair but also deceptive to write ECOWAS off as a failure. In spite of the plethora of problems make it difficult for ECOWAS to fully fulfil its aspirations, it has recorded some remarkable progress in some sectors. In the area of the free movement of persons, all ECOWAS countries as we have said before have abolished visas and entry requirement to the citizens of the community for visits not exceeding 90 days. Before the establishment of ECOWAS the issue of interstate roads and telecommunication links between the regional states was truly problematic. Today there is improvement in that area, as some "trans-coastal and trans-sahelian roads" have been constructed. The progress in this respect can be described as follows:

... the West Africa sub-region in the recent time has witnessed more tremendous changes through ECOWAS in its joint activities when compared with the dark days of the colonial/ideological affiliation, language barrier, poor telecommunications and erratic transportation that not only pitted the countries in opposite direction but also foreclosed future activities that would yield economic, political and security cooperation and integration of the West African countries.<sup>36</sup>

It is ironic that ECOWAS, which is primarily an economic union, has achieved most in the area of the maintenance of peace and security. ECOWAS (through ECOMOG) restored peace to Liberia and Guinea Bissau, and it used sanctions to force President Faure Gnassingbe to step down<sup>37</sup> as the President of Togo and allow an election to be conducted (which eventually brought him back). In fact, despite articles 52 and 53 of the *United Nations Charter*,<sup>38</sup> when ECOMOG troops invaded Sierra Leone and

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freedom to set up political parties, and the right of political parties to demand a system of public funding and freedom of association, among other things.

<sup>36</sup> Jide *The Guardian (Nig)* 14.

<sup>37</sup> President Faure Gnassingbe was installed by the military immediately after the death of his father as the president of Togo. But in response to the protest from ECOWAS, the African Union and international bodies he was forced to step down. See Panapress 2005 <http://www.bit.ly/192Q4MG>.

<sup>38</sup> Article 52 of the *United Nations Charter* (1945) permits regional organisations to be involved in the maintenance of international peace and security, but article 53 imposes a pre-condition that "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorisation of the security council."

reinstated president Kabbah of Sierra Leone, a democratically elected president who was ousted from power on 25 May 1997, the Security Council of the United Nations Organisation (UNO) adopted Resolution 1156 (1998) on 16 March 1998 to welcome "the return to Sierra Leone of its democratically elected president".<sup>39</sup> The solidarity shown by the Security Council amounts to an approval of the role of ECOWAS in maintaining peace in the region.<sup>40</sup>

Similarly, in the area of institutional capacity building ECOWAS has undergone significant transformation since its creation. It has established "a \$500m cross-border pipeline project (WAGP) that will transport natural gas from Nigeria to three other ECOWAS countries - Ghana, Togo and Benin".<sup>41</sup> In the process of transforming the ECOWAS Parliament from a mere advisory body to a functioning one capable of fulfilling its roles in realising the overall objectives of the organisation, the ECOWAS Treaty was amended.<sup>42</sup> A regional bank known as ECOBANK was established in 1985 and it has grown sufficiently strong to have branches in almost all the states of the Community.<sup>43</sup> The Community Court of Justice was established in 2001 and it has undergone a transformation with the amendment of its enabling Protocol, as a consequence of which the citizens of the community now have access to the court.<sup>44</sup> The formation of the West Africa Health Organisation (WAHO) in 1987, which became operational in 2000, was a great success in harmonising health policies within the Community by merging the pre-existing Anglophone and Francophone health institutions.<sup>45</sup> The list of successes is long.

However, that ECOWAS has problems,<sup>46</sup> as described earlier, is obvious, but the truth is that the organisation is responsible for some outstanding achievements

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<sup>39</sup> See Dakas "Responsibility for International War Crimes".

<sup>40</sup> Note that ECOWAS did not obtain permission from the Security Council.

<sup>41</sup> Bensah 2012 <http://www.bit.ly/IpRzpK>.

<sup>42</sup> See a 4(2) of the *Supplementary Protocol*.

<sup>43</sup> Bensah 2012 <http://www.bit.ly/IpRzpK>.

<sup>44</sup> See a 9 of the *Amended Protocol of the Jurisdiction of the Court* (2005).

<sup>45</sup> For further studies see WAHO 2013 <http://www.bit.ly/12LOzuU>.

<sup>46</sup> For a further study of the structural problems of ECOWAS see Kufuor *Institutional Transformation* 24-31.

despite the problems. If the problems were to be solved ECOWAS would be on the road to achieving the vision of its founding fathers.

### **3 From community to commission – a path to supranational status**

We have described the problems that must be addressed if the challenges that continue to impede growth and development in West Africa are to be surmounted.

It seems that the root of the problems lies in the structure of the Community, which is too weak and moribund to face the new challenges of globalisation and to fulfil the aspirations and objectives of the Community.<sup>47</sup>

Oghogbo<sup>48</sup> explains the need for a new structure as follows:

When a sub-regional group reaches a point where its set-up no longer allows it to meet the aspirations of its founding fathers or even the simplest of integration tasks, then it must be at dangerous crossroads and could be in dire need of re-invention.

Hounkpati, the Deputy Executive Secretary of ECOWAS for policy harmonisation, agreed with that assertion when he said that the current structure of the regional body cannot fulfil the demands of the sub-region, adding that the structure can no longer carry out the integration process and the expansion of programmes that the community has proposed.<sup>49</sup> For him, the restructuring was necessitated by the expansion of the community's programmes, which required too much of the office of the Executive Secretary. The community needed to move from economic integration to political integration.<sup>50</sup>

The truth is that the new structure would ease problem of the ratification and implementation of protocols, as the regional body would be given sufficient power to

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<sup>47</sup> In fact the Committee of Eminent Persons admitted that ECOWAS' structural organs were too weak to make credible impacts in the community and recommended the establishment of a new supranational structure.

<sup>48</sup> Oghogbo *The Guardian (Nig)* 4 April 16.

<sup>49</sup> Elkanah *Daily Trust (Nig)* 10.

<sup>50</sup> Elkanah *Daily Trust (Nig)* 10.

facilitate quick decision-making. This has become essential because when ECOWAS was founded, globalisation had not advanced to a supranational level. What obtained was cooperation at intergovernmental level, whereby states came together to address common issue, pooling their resources and skill to confront common problems without surrendering their sovereignty to a body which had been formed to implement their decisions. However, the situation has changed. Globalisation has taught us the limit of the principle of non-intervention in solving the problems of states and has presented us perhaps with the need for a supranational institution in a vast world which is becoming a global village. We shall discuss the justification or otherwise of the establishment of a supranational entity in the next section.

To reflect the growing trends in the international scene, the ECOWAS summit in December 2006 revolutionised the structure of ECOWAS by making it a supranational entity. The Executive Secretariat was re-designated as a quasi-independent commission headed by a President, with a Vice President and seven Commissioners.<sup>51</sup> The then General Secretary of ECOWAS, Chambas, from Ghana, retained the headship of the organisation as the President of the commission. Other posts were shared between other member states.

Burkina Faso was awarded the position of Vice President; Sierra Leone received the position of the Commissioner for Trade, Customs, Industry and the Free Movement of Persons. Niger was given the position of the Commissioner for Agriculture, Environmental and Water Resources, Togo got Infrastructure, Cote'd'Ivoire got Macro-economic Policy, Mali got Political Affairs, Peace and Security, Senegal got Human Development and Gender, and Nigeria was granted the position of Commissioner for Administration and Finance.<sup>52</sup> According to the President,<sup>53</sup> the

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<sup>51</sup> Oghogbo *The Guardian (Nig)* 4 April 16.

<sup>52</sup> Oghogbo *The Guardian (Nig)* 4 April 16.

<sup>53</sup> The then President of the Commission, Chambas, said: "the commission entails a certain level of ceding of powers by member states to the president and the commission so that we are in a position to take decisions that will involve member states and at the same time to enable us to implement decisions that we will all have faith in together." See Oghogho *The Guardian (Nig)* 31 July 17. See also The ECOWAS Commission 2013 <http://www.bit.ly/13HDChd>: "By becoming a commission with enhanced powers and commissioners in charge of smaller and clearly defined

commission now has enhanced powers and capacity, technically, financially and legally, which make it possible to take decisions quickly.

The main features<sup>54</sup> of the commission are:

- (a) A structure consisting of a President, a Vice President and seven Commissioners.
- (b) Smaller and more clearly defined sectors for all Commissioners, who have the power to take binding decisions for the member states.
- (c) Support offered to member states to build their capacities for programme implementation.
- (d) A predictable rotation system based on equity, transparency and functionality.

Before the new structure was introduced, as we have said before, the principal instruments of law making were protocols and conventions. There was often an inordinate delay in their implementation due to the lengthy parliamentary ratification processes entailed by the system.<sup>55</sup>

The new structure de-emphasises the adoption of conventions and protocols and invokes the principle of supranational decision making as an alternative to ratification.<sup>56</sup> Instead of protocols there will be Acts and decisions which will be directly applicable in member states.<sup>57</sup>

Consequently, "Community Acts will be Supplementary Acts, Regulations, Directives, Decisions, Recommendations and Opinions".<sup>58</sup> The purpose of the Supplementary

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sectors, the ECOWAS secretariat will have more impact and become more visible in member states".

<sup>54</sup> See ECOWAS 2013 <http://www.bit.ly/3mLrD7>.

<sup>55</sup> The ECOWAS Commission 2013 <http://www.bit.ly/13HDChd>: "... decision of the authority were however immediately applicable and binding on Member States, whilst those emanating from the council of ministers were only applicable and binding on the Community Institutions."

<sup>56</sup> See The ECOWAS Commission 2013 <http://www.bit.ly/13HDChd>.

<sup>57</sup> The ECOWAS Commission 2013 <http://www.bit.ly/13HDChd>.

<sup>58</sup> The ECOWAS Commission 2013 <http://www.bit.ly/13HDChd>.

Acts will be to make the treaty complete, and once that is done they (the Supplementary Acts) will be binding on every member state and the institution of the community.<sup>59</sup> The Council of Ministers will enact Regulations and Directives and make Decisions and Recommendations.<sup>60</sup> Regulations will be generally applied and their provisions will be directly enforceable in member states and institutions of the community while decisions and directives will be enforceable in all member states according to their terms.<sup>61</sup> The commission will make Rules for the purpose of implementing the acts enacted by the Council. These Rules will have the same legal status as the acts enacted by Council but the commission's recommendations and advice to the Council will not be not enforceable.<sup>62</sup>

The restructuring, as we earlier, also includes the ECOWAS parliament. The citizens of the Community will be eligible to competetest for parliamentary positions and if they emerge as winners they will have the power to propose legislative acts which, if adopted by the other organs of the Community, will become community law.<sup>63</sup>

The ECOWAS Court of Justice will go through a similar restructuring. The judicial function of the court will be separated from the administrative function. Consequently an appellate court<sup>64</sup> and an ECOWAS Judicial Council comprised of the Chief Justices of the 15 member states will be established with the function of recruiting judges to the Community Courts (the Court of Justice and the Appellate Court, if it is created).<sup>65</sup> In addition, article 24<sup>66</sup> would fast-track the enforcement of Community Court judgments by making provision for the appointment of a national authority by member states to execute the judgments of the court applicable to their

<sup>59</sup> The ECOWAS Commission 2013 <http://www.bit.ly/13HDChd>.

<sup>60</sup> The ECOWAS Commission 2013 <http://www.bit.ly/13HDChd>.

<sup>61</sup> The ECOWAS Commission 2013 <http://www.bit.ly/13HDChd>.

<sup>62</sup> The ECOWAS Commission 2013 <http://www.bit.ly/13HDChd>.

<sup>63</sup> As a result of the study instituted by the ECOWAS Parliament, a document entitled "A Case for the Enhancement of Power of the ECOWAS Parliament" was presented to the President of the ECOWAS Commission, Ouedraogo. If the document is adopted and the *Preliminary Draft Supplementary Act* drafted by the Parliament is also adopted by the institutions of the ECOWAS Community, the issues of the Electoral College and real parliamentary duties for the ECOWAS Parliament would be settled. See Cooljoe 2012 <http://www.bit.ly/TI99Qk>.

<sup>64</sup> The Council of Ministers at its Fifty-sixth Ordinary Session held at Abuja between 12-13 June 2006 directed the Commission to establish an Appellate Court.

<sup>65</sup> Institute for Human Rights and Development in Africa 2013 <http://bit.ly/145HiFv>.

<sup>66</sup> See *Supplementary Protocol A/P1/7/91* (2005).



states. If the issue of the independence of the members of such an authority is guaranteed and men of integrity are appointed, the problem of the enforcement of the Community Court's judgments may be a thing of the past.

In the area of finance, the lofty idea of a common currency called the "ECO" for the region has not yet been abandoned, despite the failure of the Community to commence it as scheduled.<sup>67</sup> A new date of 2020 has been fixed as the commencement date.<sup>68</sup> Having a single currency in the region would facilitate trade and boost the economies of member states, but there are some conditions<sup>69</sup> to be fulfilled before such a unified financial regime of that magnitude can commence. In that regard the delay is understandable. Concerted efforts need to be devoted to meeting the requirements for the implementation of this proposal.

Be that as it may, the consequences of the restructuring process as enumerated by the commission are "the consolidation of the community spirit", "the enhancement of the powers of the commission", "the strengthening of supra nationality" and the adoption of a new legal regime in member states and by the community's institutions.<sup>70</sup>

The change from an ECOWAS secretariat into a commission is not merely a change of nomenclature. It would be wanton ignorance to describe it as such. The international community recognises it as a real change, and as marking a change in the nature of ECOWAS itself. Consequently, many countries are now establishing permanent missions with ECOWAS<sup>71</sup> in order to facilitate trade and economic cooperation between their countries and ECOWAS. The fact that some countries are

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<sup>67</sup> The common currency was planned to become operational in 2005 but the date was shifted to 2009.

<sup>68</sup> See African Manager 2013 <http://www.bit.ly/1bRm2MS>.

<sup>69</sup> For those conditions, see This Day Live 2012 <http://www.bit.ly/172qq4z>.

<sup>70</sup> See ECOWAS Commission 2007 <http://www.bit.ly/1c39tg1>.

<sup>71</sup> See Cedeao ECOWAS 2013 <http://www.bit.ly/12LPQ5g>.

establishing permanent missions with ECOWAS is a testimony to its new supranational status.<sup>72</sup>

We think it would be appropriate to conclude this section with a statement made by Diop,<sup>73</sup> the ECOWAS Director of Communications, on the topic of the new structure:

For us, the coming on board of the commission means everything. It means simply that the implementation machinery of ECOWAS has now been empowered. Before today, there were bottlenecks that could be frustrating. When people complain about the slow pace of the implementation of protocols, they were overlooking the fact that the old secretariat could not move without having to go lengths to consult and get approvals.

#### **4 The focus on supra-nationality: any benefits at all?**

Supra-nationality occurs not when states come together to form an international organisation which is subject to their control but when states surrender part of their sovereignty to such an organisation to the extent that the organisation created by them is able to control them in the areas of its mandate. It is an ironic situation in which a creature (the international organisation) is more powerful in some respects than its creator (the states).

The surrender of power, whether partial or complete, to an international organisation is not an easy task. This is because it is difficult for a state to surrender part of its sovereignty, which is an essential attribute of a state. For the purpose of definition sovereignty can be considered in two contexts. The first of these is legal sovereignty and the second is Westphalian sovereignty.

Legal sovereignty involves "jurisdiction independence and [the] equality of states".<sup>74</sup> Westphalian sovereignty refers to a situation where a country does not take orders from outside or from any other authority. The country is independent in the sense

<sup>72</sup> The establishment of permanent missions with international organisations started with the League of Nations. But the move was boosted later by the emergence of supra international institutions like World Bank, the World Trade Organisation etc.

<sup>73</sup> Oghogho *The Guardian (Nig)* 4 April 16.

<sup>74</sup> Meltzer 2005 *U Pa J Int'l Econ L* 10-15.

that it is not subject to any external control. Consequently, if a state surrenders part of her sovereignty to an international organisation which starts to control it in any form, the Westphalian concept of sovereignty is impinged upon.

It is difficult to see why a country would consent to surrender even part of its sovereignty, particularly in the case of West African states, most of which fought bloody wars for years to gain their independence – their sovereignty. Why would they discard what they fought for, even if it is only a fiction? Evers<sup>75</sup> saw little sense in such a move:

Has the nation state become outmoded? Have the victories of sovereignty that so many wars have been fought over and are still being fought over-been the death of precisely this ... same sovereignty? If so, then who or what will succeed it as the decision-making authority and the principle of order?

Evers failed to answer the question himself, though he admitted that the concept of sovereignty is losing its meaning in a world which is being bound together by globalisation. He<sup>76</sup> wrote:

This sovereignty is now being emptied of its previous meaning on the smaller and the larger scale by the rapid course taken by the interlinked societies. The dialectic relationship between the rapid globalization of the economy, communications and culture and the simultaneous more and more complex and subtle formation of different social spheres actually makes the idea of a central decision-making body seem an anachronism, though nobody doubts that the nation state as an important level of action – perhaps the most important – will continue to exist for a long time to come. It is, however, losing its claim to exclusivity, which, by the way, it never did comply with even in the Anglo-European World of States.

According to Raustiala<sup>77</sup> the question is "Why (do) NATO, the WTO, the UN and the many other international organisations that populate New York, Geneva and elsewhere [exist]?" "Rational choice institutionalism" is an answer that is "distinctly functional, bordering on the tautological". States delegate authority to supranational

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<sup>75</sup> Tilman 1995 *Law and State* 31.

<sup>76</sup> Tilman 1995 *Law and State* 32-33. This is part of a discussion of governance in the European Union, which is a good example of a supranational organisation.

<sup>77</sup> Raustiala 2006 *Ga J Int & Comp Law* 429.

institutions because the anticipated benefits of doing so outweigh the expected costs.<sup>78</sup>

What states gain from international organisations, whether supranational or not, has been so difficult to perceive by the citizens of the states which are members of such organisations. Ignorance of the value or perhaps lack of value of these international organisations is very common in African countries, where even the elites do not see the need for them. The President of the Nigeria Bar Association (the NBA),<sup>79</sup> Agbakoba, a legal luminary and Senior Advocate of Nigeria<sup>80</sup> decried Nigeria's membership of international organisations because, according to him, Nigeria as a country does not benefit from them:

The NBA being a professional body that understands how multilateral institutions work, I want to ask, what has Nigeria benefited from being a member of the commonwealth? What has Nigeria benefited from being a member of the Economic Community of West African States (ECOWAS) the United Nation Organization (UNO) the Organisation of Islamic Countries (OIC) or do we need new institution [to benefit us].<sup>81</sup>

At this juncture our intention is to discuss the benefits and the disadvantages of the existence of supranational organisations. The first benefit is that it is an effective institution for the maintenance of peace and a provider of welfare to the citizens of member states. Functionalism and neo-functionalism postulate that when states lose their "attributes of sovereignty" they "acquire new techniques for resolving conflicts between themselves based on a consensus to settle difference by peaceful means."<sup>82</sup> Earnest Haas<sup>83</sup> explains it in another way, saying that, "Supranationality

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<sup>78</sup> Tallberg 2002 *West European Politics* 25.

<sup>79</sup> The Nigeria Bar Association is the only association of legal practitioners in Nigeria.

<sup>80</sup> A Senior Advocate of Nigeria (SAN) is the equivalent of a Queen's Counsel (QC) in the United Kingdom.

<sup>81</sup> Unachukwu 2008 <http://www.bit.ly/16eo6br>. Agbakoba's statement is his own personal opinion and not that of the Nigeria Bar Association. A day before he made his statement the Minister for Foreign Affairs in Nigeria, Chief Ojo Maduekwe, commended the roles of Nigeria in world affairs when he said "Nigeria's foreign policies have been well-managed over the years to the extent that the country has been projected as a global player and applauded by the international community."

<sup>82</sup> Burton "Functionalism and the Resolution of Conflict" 240.

<sup>83</sup> He was quoted in a paper by Onwuka "Role of ECOWAS" 375.

symbolises the victory of economics over politics ... the supremacy of welfare dominated policies is assured."

We have already explained the role of ECOWAS through ECOMOG in maintaining peace in West Africa. The criticism that greeted its establishment has also been explained. The fact is that ECOWAS was the only institution that could legitimately and successfully perform that task.

The second benefit depends on the objective of the international organisation involved. If the objective is to attain economic or political integration, such an organisation must embrace a supranational status. Hartog<sup>84</sup> argues that "as a matter of fact, integration is usually connected with the transfer of a part of national sovereignty to supranational agencies". The European Union is a supranational institution. Its move towards the supranational began to evolve in May 1950 when the adoption of the proposal of the French Foreign Minister, Robert Schuman, led to the establishment of the European Coal and Steel Community (the ECSC), whose mandate was to create a common market in the sector without any form of trade barrier.<sup>85</sup>

Thirdly, a supranational institution is in a position to strengthen national governments by helping them to solve their problems. Fukuyama<sup>86</sup> seems to be talking about this when he writes: "For the past –September 11<sup>th</sup> period, the chief issue for global politics will not be how to cut back on stateness but how to build it up." Weak nations can be helped by strong nations, that is philanthropic but it is the responsibility of supranational institution to do that as a matter of duty".

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<sup>84</sup> Hartog 1953 *Weltwirtschaftliches Archiv* 165.

<sup>85</sup> To consolidate their gains from the Common European Market, European Governments later extended their delegation of power to the European community as they signed the *Maastricht Treaty of the European Union* (1992), which boosted the supranational status of the European Union.

<sup>86</sup> Fukuyama *State Building* 120.

Another benefit is that of "backstopping"<sup>87</sup> the national governments. States used to help one another in this area before the advent of international institutions. Hugo Grotius<sup>88</sup> explained the position in 1625 when he said:

The state where the convicted offender lives or has taken shelter, should upon application being made to it, either punish the demanded person according to his demerits or else deliver him up to be treated at the discretion of the injured party.

International institutions are better positioned to take up this responsibility, particularly if they are supranational.

Article 17 of the *Rome Statute*, which established the international criminal court, provides that a case cannot be prosecuted by the court if "the case is being investigated or prosecuted by a state which has jurisdiction over it, unless the state is unwilling or unable to genuinely carry out the investigation or prosecution."<sup>89</sup> This means that the international court can backstop national governments only if they fail to try criminal offenders in their territory or if there are good grounds for thinking that their trial may not be genuine. We cannot exhaust the benefits arising from supranational institutions. Suffice it to say that they provide collective solutions to common and particular problems that affect states.

On the other hand, certain problems have emerged with the advent of supranational institutions. Slaughter and Burke-White<sup>90</sup> point out that one of the dangers of using international law to shape and influence domestic politics is that:

a repressive regime is able to use compulsion at the international level as a cover or an excuse to undertake its own domestic policies that may undermine legitimate opposition groups and violate citizens' rights.

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<sup>87</sup> Backstopping is a process whereby some states prosecute an accused person for crime because the states that are supposed to prosecute the offender failed to do so or is incapable of doing so.

<sup>88</sup> Hugo *Rights of War and Peace* 1062.

<sup>89</sup> For examples of international institutions that fit into this category see Slaughter and Burke-White 2006 *Harv Int'l LJ* 327.

<sup>90</sup> Slaughter and Burke-White 2006 *Harv Int'l LJ* 327.

Robinson,<sup>91</sup> the former UN Commissioner for Human Rights, was specific on the issue: "Repressive new laws and detention practices have been introduced in a significant number of countries, all broadly justified by the new international war on terrorism."

The second problem arises when supranational institutions pursue their own interests. Tallberg<sup>92</sup> explains this problem in relation to the European Union when he says:

Delegation is likely to result in both desired and undesired effects ... the undesired effects (occur) ... when supranational institutions succeed in pursuing their own interests ... .

The point here is that supranational institutions may become so powerful that they can go beyond their mandates and pursue other interests, which might be detrimental to the interests of the national governments of their member states or their citizens.

Or problems might emerge as a result of the activities of supranational institutions. For example, the ECOWAS protocol on the free movement of persons, residence and establishment has led to an increase in prostitution, child labour, child trafficking, the commission of crimes and the exploitation of the citizens of the community by employers in the host countries. Ijalaiye<sup>93</sup> explains how this exploitation is being perpetuated when he says that:

there is an apparent conspiracy between the immigration officers or those charged with the implementation of the expatriate quota and the illegal aliens. This ultimately results in the exploitation of the latter's labour without just remuneration by the citizens of the host country.

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<sup>91</sup> Robinson 2003 *Am U Int'l L Rev* 12.

<sup>92</sup> Tallberg 2002 *West European Politics* 25.

<sup>93</sup> Ijalaye "African Economic Community Treaty" 27.

And problems of the harmonisation of laws, cross-border insecurity and the proliferation of weapons have emerged as a result of the fraternity between neighbouring nations in West Africa.

A fourth problem is the financial situation of the supranational institutions. States whose economy is weak may find it difficult to discharge their financial obligations to supranational institutions.

The last problem we shall briefly mention is the low level of loyalty to supranational institutions. Citizens are more committed to their nation states than to the community or the union. For example, Nigerians could not see any justifiable reason why Nigeria should be spending her oil money to guide the course of other nations while except for the ruling class they themselves live in abject poverty.<sup>94</sup>

## **5 Supranationalism: Can the economic community of West African states attain the status?**

The essence of the 1993 Revised Treaty was to move ECOWAS from the "developmental regionalism of the past" to the "new regionalism of the contemporary era".<sup>95</sup> The CEP recommended the establishment of a supranational organisation using the EU as a yardstick. The question is whether or not the EU type of supranationalism could work in West Africa. It has been noted that unlike ECOWAS, which deliberately opted for supranationalism, the emergence of a supranational organisation in Europe was an "involuntary act."<sup>96</sup>

It is essential for us to examine the reasons that informed the CEP's recommendations. In the first instance, it was obvious that the CEP presumed that the wave of globalisation was spreading throughout the region of West Africa, and

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<sup>94</sup> Nigeria played a leading role in the formation of ECOWAS, a leading role in setting up and financing ECOMOG, a leading role in the activities of ECOWAS generally, and in the African union.

<sup>95</sup> Kufuor *Institutional Transformation* 56.

<sup>96</sup> Kufuor *Institutional Transformation* 56.



wanted to consolidate that gain. It recommended that ECOWAS should become a supranational organisation.<sup>97</sup>

Kufuor<sup>98</sup> has rightly debunked the CEP's assumption, as there was no "sufficient evidence of increased integration of the respective ECOWAS economies". The consequence is that there is no structural foundation for supranationalism to thrive.

In addition it was observed that "states' industrial commercial class"<sup>99</sup> demanded the establishment of a supranational organisation in Europe to protect the capital that flows within the region, but there was no such demand in West Africa. Kufuor<sup>100</sup> argues effectively:

If the EU is the yardstick, then it should be noted here that in 1996, just at the time when there was enthusiasm for the new ECOWAS Treaty, the volume of intra-EU capital flows was the equivalent of 49.3 billion ECUs. In addition, the CEP Report did not supply any evidence on the volume of intra-ECOWAS capital flows. We are thus left to speculate on how intense this was. However, if institutions follow cross-border capital flows, as the ordoliberals argue, it is instructive to note that the CIC, charged as noted earlier with an important role in enhancing intra-ECOWAS capital movements is yet to be constituted three decades after the 1975 Treaty provided for it, and more than ten years after such provisions were reaffirmed in the 1993 Treaty.

He concludes by saying that the hypothesis that the existence of a supranational organisation in West Africa was essential to "manage firms" extra-territorial capital exposes the relatively weak foundations on which ECOWAS' supranational organisations have been erected.<sup>101</sup>

For the same reason, despite the emergence of the new Revised Treaty of 1993, ECOWAS is far from being a supranational organisation. Recently, on the 22<sup>nd</sup> June 2009, the Chairman of ECOWAS,<sup>102</sup> at the 36<sup>th</sup> meeting of Heads of States and

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<sup>97</sup> Kufuor *Institutional Transformation* 56.

<sup>98</sup> Kufuor *Institutional Transformation* 56.

<sup>99</sup> Kufuor *Institutional Transformation* 56.

<sup>100</sup> Kufuor *Institutional Transformation* 57.

<sup>101</sup> Kufuor *Institutional Transformation* 57.

<sup>102</sup> See Abuja 2009 <http://www.bit.ly/15JrKu4>.

Governments, lamented the bottlenecks and constraints facing ECOWAS in implementing its decisions:

It is sad to note that 30 years after the signing of the protocol on free movement of goods and services, we are yet to significantly remove the bottlenecks at our borders, which continue to encumber effective economic integration. The reality of the global economic situation today makes it critical for us to recommit to investing the relevant protocols with the requisite will.

In any case, if supranationalism fails in West Africa, what should the alternative be? Should the organisation revert to intergovernmentalism as it operates in the North American Free Trade Agreement (NAFTA) and the Association of Southeast Asian Nations (ASEAN) Free Trade Area (AFTA)?

Our position is that despite the criticism of supranationalism in the European Union and the present unsuccessful attempt by the community (ECOWAS) to embrace it (supranationalism) the move towards supranationalism should not be jettisoned. This is because the universal problem of regional organisations is the problem of compliance with their decisions, and the problem can be better solved by supranationalism rather than by intergovernmentalism.

Despite the nobility of the objectives of AFTA, it has been posited that the major weakness of ASEAN's decision-making process is the absence of a supranational organ. Horacio<sup>103</sup> observed:

ASEAN essentially has no supranational decision-making or law-making organs or supranational bodies it may be argued that this is the Achilles heels of ASEAN integration.

Furthermore, NAFTA is also exhibiting some little signs that could be read to mean that the organisation is flirting with some notions of supranationalism. West Brook<sup>104</sup> examined the possibility of NAFTA's becoming a supranational organisation:

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<sup>103</sup> Horacio 1996 *Sovereignty and Regionalism* 1080.

<sup>104</sup> West Brook 2008 *West Brook 2008 Tex Int'l LJ* 349.

The political and legal structure of NAFTA is very different from that of the European Union. It is far less integrated at the treaty level and lacks anything approaching the institutional supranationalism represented by the European court of justice. On the other hand, the experience in Europe, beginning with the coal and steel communities in the early 1950s, suggests that integration sometimes begins with relatively small and weak steps that nevertheless teach valuable issues and build the necessary confidence for the development of more powerful institutions.

Though the ASEAN Protocol<sup>105</sup> on Dispute Settlement is similar to the dispute mechanism of the World Trade Organisation (WTO), the possibility of ASEAN becoming a supranational organisation like the EU is nil.<sup>106</sup>

We therefore suggest that there should be further support of the supranational regime as provided by the Revised 1993 Treaty, despite its initial and present failures. Retreat from supranationalism back to intergovernmentalism is not the answer to the present problems. Despite the institutional reform, the metamorphosis of an intergovernmental organisation into a supranational one is always gradual, and enough time must be allowed for its full manifestation.

## 6 Conclusion

An attempt has been made in this paper to examine the new structure of ECOWAS. We rationalise the need for this structure in the light of the challenges facing the organisation, which arise largely from the structural defects of the old regime. We share the view that the new structure, which aims to make ECOWAS a supranational entity, is essential to transforming the moribund regional institution into an effective one which is better positioned to attain the region's objectives.

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<sup>105</sup> See *ASEAN Protocol on Enhanced Dispute Settlements Mechanisms* adopted on 29 November 2009.

<sup>106</sup> One reason why ASEAN may not progress beyond a free trade area is because of the region's political history, which shows that there has been envy and antagonism among the member states, particularly between Singapore and Malaysia. See Tan and Samtani 2002 <http://www.bit.ly/18BMhDh>.

The National Governments in Africa have failed to liberate their citizens from the evils of economic mismanagement, misrule and the social evils that plague the people.

It is our position that the existence of supranational institution like European Union in Africa, and specifically in West Africa, could lead to such liberation and the restoration of hope for the region's peoples.

The new structure of ECOWAS is being positioned to achieve the vision of its founding fathers, who believed that regional integration would promote economic development, engender improved standards of living for the people, enhance interstate relations, and contribute to the progress and development of the region.

The problems of underdevelopment, political instability and bad governance in Africa have been a universal concern. In fact some writers have gone to the extreme in their comments and advocated the recolonisation of the African continent as an antidote to the perennial problems. Pfaff<sup>107</sup> argues that a "Cooperative Euro-African trust organisation" should be established and that African countries should assign "a defined (an irrevocable) authority" to it for the purpose of governing them. Helman and Ratner<sup>108</sup> make a case for "conservatorship" to address the problems of "newly non-self governing territories" with the participation of the United Nations on three levels, which are "governance assistance", the "delegation of certain governance functions", and "direct UN trusteeship".

We do not subscribe to neocolonisation or any solution which will put foreigners in control of African governance again. The truth is that the colonial masters themselves contributed to the problems facing Africa today by the way they ruled the territories during the colonial administration.<sup>109</sup>

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<sup>107</sup> Pfaff 1995 *Foreign Affairs* 2.

<sup>108</sup> Helman and Ratner 1992-1993 *Foreign Policy* 3.

<sup>109</sup> See also Rodney *How Europe Undeveloped Africa*.

It is our contention that a strong supranational institution committed to the objectives of ECOWAS can correct the ills in our society and put a smile on the faces of the citizens of the community.

The recent judgments by the ECOWAS Court of Justice are a pointer to the fact that the quest for a supranational entity in the region is not a wild goose chase. In *Dame Hadijatou Mani Koraou v Republic of Niger*,<sup>110</sup> the Court awarded the sum of CFA 10 000 000 against the Niger Republic in favour of the Applicant on the ground that the Republic of Niger should be held responsible for the failure of its administrative and judicial authorities to provide redress to the Applicant, who suffered from slavery and discrimination. Similarly, in *SERAP v The Federal Government of Nigeria*,<sup>111</sup> the court held that the Government of Nigeria violated Articles 1 and 24 of the African Charter on Human and People's Rights and was therefore liable for human rights violations by the Multinational Companies in the Niger Delta. The Government was therefore ordered to hold the perpetrators liable, to prevent such an occurrence in future, and to take effective measures to salvage the damage done to the environment of the Niger Delta.

We conclude that ECOWAS is not yet a supranational entity like the European Union, but there are enough signs that it may soon become one if present efforts are not jettisoned but improved upon.

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<sup>110</sup> *Dame Hadijatou Mani Koraou v Republic of Niger* ECW/JUD/06/08.

<sup>111</sup> *SERAP v The Federal Government of Nigeria* ECW/CCJ/JUD/18/12.

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### List of abbreviations

AFTA	ASEAN Free Trade Agreement
Am U Int'l L Rev	American University International Law Review
ARSEAN	Association of Southeast Asian Nations
CEP	Committee of Eminent Persons
ECOMOG	ECOWAS Peace Monitoring Group
ECOWAS	Economic Community of West African States
ECSC	European Coal and Steel Community
EU	European Union
FDI	Foreign Direct Investment
Harv Int'l LJ	Harvard International Law Journal
IGO's	Intergovernmental Organisations
NAFTA	North American Free Trade Agreement
NATO	North Atlantic Treaty Organisation
NBA	Nigerian Bar Association
OIC	Organisation of Islamic Countries
SMC	Standing Mediation Committee
Tex Int'l LJ	Texas International Law Journal
U Pa J Int'l Econ L	University of Pennsylvania Journal of International Economic Law
WAEMU	West African Economic and Monetary Zone
WAHO	West African Health Organisation
WTO	World Trade Organisation

## **THE QUEST FOR A SUPRANATIONAL ENTITY IN WEST AFRICA: CAN THE ECONOMIC COMMUNITY OF WEST AFRICAN STATES ATTAIN THE STATUS?**

**JO Lokulo-Sodipe\***

**AJ Osuntogun\*\***

### **SUMMARY**

To reflect the growing trends in the international scene and in furtherance of the objective of its Revised 1993 Treaty, the Economic Community of West African States (ECOWAS) summit in December 2006 revolutionised the structure of ECOWAS by re-designating the Executive Secretariat into a quasi-independent commission headed by a President with a Vice President and seven commissioners. The rationale behind the revision was to make ECOWAS a supranational entity. This article considers whether or not a supranational system is essential for the attainment of ECOWAS' objectives. It asks if the conditions for an effective supranational system are in place in the West African sub-region which could provide a solid foundation for its success and why the quest for a supranational system has not yielded any fruitful result in West Africa. It argues that a retreat from the quest for supranationalism and a return to an inter-governmental system would be a retreat rather than the way forward, and expresses the need for the course of action to be sustained courageously till the impact of integration begins to emerge, and the disguised, patriotic impulse of states to protect their national sovereignty gives way to the full manifestation of ECOWAS as a supranational entity.

**KEYWORDS:** Regional integration; ECOWAS Commission; Supranational entity; Intergovernmental organisation; Community Court of Justice

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