# ECOWAS TREATY AND STATE SOVEREIGNTY: REDEFINING CONSTITUTIONAL PARAMETERS OF NATIONHOOD

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**INTRODUCTION**

Regional economic integration[1] can be pursued either through an Intergovernmental[2] or supranational[3] approach. The economic Community of West African States (ECOWAS) was established by the founding Treaty of 1975 (the ECOWAS Treaty) to promote economic cooperation within the region[4].

At its inception, the ECOWAS Treaty adopted an intergovernmental approach to governance of the integration process, ensuring that the Sovereignty of member states was left intact[5]. As a result, there was only a general undertaking in the Treaty that all member states shall make every effort in planning and directing their national policies to create favourable conditions for the achievement of community objectives[6].

However, due to the failure[7] of ECOWAS to achieve its stated goals and objectives, the Community embarked upon a reform agenda in order to accelerate the integration process and contribute effectively to regional development. The outcome of this reform agenda was the adoption of the Revised ECOWAS Treaty of 1993, which introduced a movement away from the 1975 intergovernmental approach to that of supranationality[8].

The 1993 Revised ECOWAS Treaty re-affirmed the establishment of ECOWAS and decided under Article 2, that it shall ultimately be the sole economic community in the region for the purpose of economic integration[9] and the realization of the objectives of the African Economic Community[10]. Under Article 6(2) of the 1993 Revised ECOWAS Treaty, the institutions of the Community established under Article 6(1) shall perform their functions and act within the limits of the powers conferred on them by the Revised Treaty and the Protocol relating thereto.

Consistent with the provisions of the 1975 Treaty and the 1993 Revised Treaty on the realization of Community aims and objectives, a total of 39 Conventions and Protocols were ratified and entered into force between 1978 and 2006. The breakdown reveals a total of 6 Conventions, 17 Protocols and 16 Supplementary Protocols relating to the programmes and projects of economic integration, institutions of the Community, peace and security, democracy, human rights and access to justice in the ECOWAS region[11]. These Community Conventions and Protocol relating to the founding Treaty of 1975 as revised in 1993, also constitute the primary sources of the Regional Economic Community Law in West Africa[12].

ECOWAS as a Regional Economic Community seeks to achieve in phases: - a Free Trade Area/Zone, Market Integration (common market), Customs Union, Financial Integration/Monetary Union and Economic Union by liberalizing trade across borders, encouraging cross border investments, promoting free movement of persons, goods, services and capital.

ECOWAS in Statiscal Terms On Trade (Export, Re-Export And Import): ECOWAS of 15 Member States in West Africa as at January 2021:- the total ECOWAS trade volume has increased by an average of 18% per year between 2005 to 2020: -(The main active countries in trade are Nigeria - accounts for 76% of total trade, followed by Ghana - 9.2% and Cote D'ivoire – 8.64% ).

This volume of trade is dominated by mining commodities (such as oil and gas resources, iron, bauxite, gold etc); followed by Agricultural products (like coffee, cocoa, cotton, rubber, fruits, vegetables, dry cereal, roots, tubers and livestock products etc).

Where Lies the Concentration Of (Export, Import/Re-Export) Trade In West Africa?: -

1. Nigeria, Ghana, Cote D'ivoire and Senegal concentrate 87% of this trade, with 79% of regional imports valued at 55.5 million dollars per year and 94% of Exports and Re-export valued at 77.7 million dollars per year.
2. The total trade volume / value of the ECOWAS region has averaged 208.1 bn dollars; Exports are projected at approximately 137.3 bn dollars, while imports total about 80.4 bn dollars.

It is against this background that this presentation seeks to raise the following fundamental questions for consideration by this colloquium:

(i) Are Sovereign States Above the Law or are Bound by the Law?
(ii) Why do Sovereign States Join Regional Economic Integration Bodies Like ECOWAS, If They Are Truly Independent?
(iii) Any Evidence of the Application of the Concept of Supranationalism in ECOWAS/Under ECOWAS Community Law?
(iv) What Does Redefining the Constitutional Parameters of Nationhood Entails?

## 1. ARE SOVEREIGN STATES ABOVE, OR BOUND BY THE LAW?

The doctrine of sovereign of states was developed for the most part by political theorists who were not interested in, and paid little regard to, the relations of states with one another[13]. And in its later forms, sovereignty not only involved a denial of the possibility of states being subject to any kind of law[14], but became an impossible theory for a world which contained more states than

one and are interdependent for collective survival[15] and sustainable development[16].

Yet if states are the subjects of international law, as Oppenheim admits that they are, international law must surely be above them, and they must be subordinate to it (including its primary source, Treaty)[17].

The American Judge Cardozo warned us that when we treat certain concepts, like state sovereignty, as if they exist and develop them without considering their consequences, these concept become our tyrants rather than our servants. We ought to deal with our concepts, he told us, always as provisional hypotheses to be reformulated and restrained when their outcomes lead to oppression and injustice[18].

Sovereignty[19] is merely a term which designates an aggregate of particular and very extensive claims that states habitually make for themselves in their relations with other states (such as independence and equality as part of their fundamental rights as well as their consent validating the basis of obligation in modern international law)[20].

A state[21], is an institution or a system whereby individuals establish relations among themselves in order to secure certain objectives, the most fundamental being a system of order, welfare, peace and security within which they can carry on their activities[22]. Modern States are territorial, their governments exercise control over persons and things for the most part within their territories, and today, there are about 200 of these states[23].

A state should neither be confused with the whole community of persons living on its territory[24], nor should a state be seen as the same thing as a "Nation"[25], although in modern times, many states are organized on a national basis, and confusingly the terms are used sometimes interchangeably, as in the title "United Nations'" which is actually a league of states; in the trade and investment law expression "most favoured nation,' and even in the term "international law"

It is a moot point to assert as though an independent state had a right to determine its own conduct without any restraint at all; 'independence' does not mean freedom from law, but merely

freedom from control by other states[26]. The equality of states is perhaps best seen as another way of referring some general international rights that all states have accorded to each other. The UN Friendly Relations Declaration, 1970, explains the principle of 'equality of states' as follows: "All states enjoy sovereign equality. They have equal rights and duties and are equal members of the international community, notwithstanding differences of an economic, social, political or other nature[27].

When the doctrine of sovereignty asserts that such qualities as independence and equality are inherent in the very nature of states, it overlooks the fact that such an attribution to states is merely a stage in an historical process. Rather than providing for vociferous assertion of the rights of states, we need to insist on reminding states of their obligations towards one another[28]. And it is certainly desirable that there should be a civil society movement towards the closer interdependence of states for the benefit of all[29].

The claim that nothing can be law unless states have consented to it, does not explain why the law is binding in practical international relations and diplomacy even though this consent may be given expressly s in a treaty[30], or it may be implied by a stat acquiescing in a customary law rule[31]. For consent cannot of itself create an obligation; it can do so only within a system of law which already declared that consent duly given, as in a treaty or a contract will be binding on the party consenting[32].

To say that the rule '*pacta sunt servanda*' (treaties are binding on the parties) is itself founded on consent is to argue in a circle[33].
The fundamental difficulty of subjecting states to the rule of law is the fact that they possess power.

The legal control of power[34] is always difficult, and it is not only for international law that it constitutes a problem. The domestic law of every state has the same problem, though usually in a less acute form[35]. The ultimate explanation of the binding force of law[36] is that individuals and groups in a state are constrained by the fact that in any politically organized society, order[37] and not chaos is the governing principle of the world in which they have to live[38].

## 2. WHY DO SOVEREIGN STATES JOIN REGIONAL INTEGRATION BODIES LIKE ECOWAS, IF THEY ARE TRULY INDEPENDENT?

The benefits of regional integration are gains from new trade opportunities, larger markets, and increased competition[39].

First, regional integration arrangements can help African countries overcome constraints arising from small domestic markets, allowing them to reap the benefits of scale economies; stronger competition and more domestic and foreign investment[40]. Such benefits can raise productivity and diversify production and exports.

Second, the small size of many African countries makes cooperation in international negotiations an attractive option achievable through regional integration arrangements. Cooperation can increase countries' bargaining power and visibility.[41]

Third, the similarities and differences of African countries could make regional integration and cooperation beneficial. Many African countries share common natural resources, such as rivers and problems such as HIV-AIDS and low agricultural productivity. But they also exhibit important differences, particularly in their endowments. Though most have limited resources, some have well-trained workers, some have rich oil deposits, some have water resources suitable for hydro-electric generation, and some have excellent academic institutions and capacity for improving research and development. By pooling their resources and exploiting their comparative advantages, integrated countries can devise common solutions and use resources more efficiently to achieve better outcomes[42].

Fourth, in many African countries regional integration can help make reforms deeper and less reversible. Regional integration arrangements can provide a framework for coordinating policies and regulations, help ensure compliance, and provide a mechanism of collective restraint[43].

Fifth, regional integration arrangements can help prevent and resolve conflict by strengthening economic links among African countries and by including and enforcing rules on conflict resolution. On a continent where political instability and conflict remain major problems, the potential importance of this role cannot be overstated[44].

Economic theory and reliable evidence suggest that the benefits of regional integration are neither automatic nor necessarily large. In this regard, a number of lessons are relevant for African countries: - regional integration is just one instrument for advancing African countries. To be effective, integration must be part of the overall development strategy; the nature and magnitude of the benefits depend on the type of integration arrangement being pursued; realizing the benefits of regional integration requires strong, sustained commitment from member States; regional integration arrangements can create winners and losers, making it essential that members assess the prospective benefits and costs of regional integration to boost gains and minimize losses[45].

Hence Regionalism in Africa can promote multilateralism in several ways: - By, going beyond the narrow issues of trade and global welfare to measures promoting foreign investment; acting as a restraint that locks in welfare-enhancing trade reforms; creating larger political economy units that can bargain more effectively in international fora; building pro-export constituencies to counter domestic protectionist constituencies; increasing competition in domestic markets, lowering prices, improving quality, and making products that are more competitive in global markets[46].

By strengthening regional integration, Africa would move towards being an integral part of the global economy and avoid further marginalization[47]. But much work is needed to ensure that Africa's regional integration arrangements conform to World Trade Organization (WTO) requirement under Article XXIV of the General Agreement on Trade and Tariffs (GATT). So, one challenge for Africa is ensuring a harmonious co-existence of sub-regional economic integration arrangements with the multilateral system to which the majority of African countries now belong. Another

challenge is building the capacity of African countries to compete in the multilateral trading system[48].

## 3. ANY EVIDENCE OF THE APPLICATION OF THE CONCEPT OF SUPRANATIONALISM IN ECOWAS/UNDER ECOWAS COMMUNITY LAW?

The concept of SUPRANATIONALISM[49] refers to a decision making process in a regional integration framework that encourages sovereign member states, that voluntarily established a regional organization for their common benefit, to agree to transfer/cede to or share or jointly exercise part of their sovereignty with, the regional integration body (like ECOWAS) and its established institutions, such that they can take decisions and enact laws that are directly applicable in member states and of binding effect directly on both the Regional Community Institutions, the Member States and their citizens or non-state actors[50]. These twin principles of direct applicability and of binding effect ensure that laws passed at the regional level in those areas where the regional organization is granted competence or power[51], prevails over national legislations and national interest for the collective interest of the regional community[52].

The key issues with supranational arrangements are in ensuring that:

(i) Shared power for decision making processes between the SUPRANATIONAL ENTITY and the Member States are for shared responsibility in achieving the regional integration agenda/economic community objectives[53];

(ii) Democratic participation of stakeholders in regional integration processes, increases the participation of community citizens civil society organizations and the private sector (as Non-State Actors)[54];

(iii) Upholding the Rule of Law in exercising power, transparency in decision making and accountability of Supranational entities to both Members States and their citizens, shall remain of paramount importance[55].

## 4. THE EMERGENCE OF SUPRANATIONAL LEGAL AND INSTITUTIONAL FRAMEWORK[56] IN ECOWAS: 1993 TO 2006

The inherent weaknesses in the decades long practice of Inter-Governmentalism in Africa led to the rise, consideration and adoption of the concept of SUPRANATIONALISM in the 1993 Revised ECOWAS Treaty as amended by the 2006 Supplementary Protocol which gave birth to a new Supranational Legal and Institutional Framework[57] in the ECOWAS region.

Inter-governmentalism has since the early 1960s dominated the process of Regional Integration in Africa, with Member States of each regional economic community retaining and exercising their full sovereign power in their separate decisions on the application and implementation of regional agreements, programmes and policies at national levels[58]. This attitude of political leaders/decision and policy makers created the past roadblocks to regional integration efforts in Africa that weakened or rendered ineffective many Regional Economic Communities (RECs) in Africa[59].

The ECOWAS practiced inter-governmentalism for about thirty years (1975-2006) under both the Founding Treaty as revised in 1993 and their related protocols and conventions. For 30 years, the lofty goals of the founding fathers of ECOWAS were sacrificed at the shrine of state sovereignty: resulting from the lack of political will and commitment to implement regional economic community decisions and economic nationalism as the twin major stumbling blocks to integration efforts[60].

The intriguing question is why did ECOWAS member states agree to come together in 1975, reaffirmed that concourse in 1993, and declared that "By this Treaty, the High Contracting Parties, establish among themselves an Economic Community….", while by their attitude obviously all along, they were jealously guarding their sovereignty[61]. The resultant consequence was that ECOWAS could not gestate a Customs Union, a Common Market, a Free Trade Area, a monetary integration and an Economic Union[62].

Another weakness of inter-governmentalism is that progress is determined by the pace of the slowest member. Particularly as integration widens (i.e the number of participants in a regional trade agreement grows), it can be more difficult to secure agreement on deepening integration[63]. Awareness of this dilemma in the European Union experience in coping with a larger and more

diversified membership has given rise to the concepts of 'variable speed and variable geometry' in designing regional trade agreements[64].

### 3.2 EVIDENCE OF A NEW SUPRANATIONAL LEGAL AND INSTITUTIONAL FRAMEWORK IN ECOWAS: 2006-2021

The New Supranational Legal and Institutional Framework ushered in by the 1993 ECOWAS Revised Treaty as amended by the Supplementary Protocol as amended by the 2010 Supplementary Act reveals the following trends of Community Law reforms. Table one below shows the reform initiative.

***Table 1: 1993 to 2010 New Legal Regimes***

| 1993 Revised Treaty | 2006 Supplementary Protocol | 2010 Supplementary Act |
|---|---|---|
| ➢ The Founding Treaty of 1975 was revised in 1993, in order for the Community to adapt to the changing realities on the international scene, derive greater benefits from those changes, modify the Community's strategies in order to accelerate the economic integration process of the region; and share the benefits of economic cooperation and integration among members states in a just and equitable manner. Accordingly, the 1993 Revised ECOWAS Treaty reaffirmed the establishment of ECOWAS as the sole REC in West Africa; it expanded the aims and objective of the Community; it introduced | ➢ The 1993 Revised Treaty was amended by the 2006 Supplementary Protocol in order to implement effectively the directives of ECOWAS Authority on transforming the Executive Secretariat into a Commission, the Secretary into President, with new Commissioners, and expanded mandate and powers to act for and on behalf of the Community and her citizens. | ➢ The 2006 Supplementary Protocol was amended by the 2010 Supplementary Act in order to further improve the new legal regime of Acts of the Community, and the need to endow the Authority of Heads of State and Governments with genuinely appropriate legal regime that take cognizance of its diverse areas of competence, such as oversight functions, handling request of 3rd parties/states/international community. |

| | | |
|---|---|---|
| fundamental principles to guide the Community. it expanded the scope of the Institutions of the Community by establishing 3 new Institutions: the Community Parliament, the Economic and Social Council, and the Community Court of Justice. | | |
| ✓ The 1993 Revised Treaty introduced the <u>Principles of direct applicability and of binding effect of the Decisions of the</u> Authority of Heads of States/Governments on the Member States and Community Institution; it created an independent Supranational Court of Justice whose Judgments are binding on the Member Sates, the Community Institutions, Individuals and Corporate Bodies, while the Regulations of the Council of Ministers shall be binding on the Executive Secretariat and on members states. | ✓ Accordingly, the 2006 supplementary Protocol changed the character of law and decision making in ECOWAS by introducing the new legal regime of the community to be known as Supplementary Acts, Regulations, Directives, Decisions, Recommendations and opinions.<br>NB: It replaced the abrogated Provisions of Articles 8,9,10,12,17-19,22,79 and 83 with New Articles | ✓ The 2010 Supplementary Act accordingly replaced the abrogated provisions of New Article 9 under the 2006 Protocol with New Article 9 which added Declarations and Enabling Rules to the existing legal character of the Community. |
| ✓ The Revised 1993 Treaty however retained the structure of the Executive Secretariat and Executive Secretary though with an expanded functions. | ✓ The 2006 Protocol however retained the principles of direct applicability and of binding effect on member states, community institutions and other entities. | ✓ The 2010 supplementary Act also retained the twin principles of Direct applicability in member states and of binding effect of member states and community institutions. |

### 3.2.1 NEW LEGAL REGIME AND LEGISLATIVE POWER OF THE COMMUNITY

For the purpose of endowing the Community with modern legal instruments whose interpretation and implementation shall contribute to the acceleration of the ECOWAS integration process[65] and for expanded decision making, the principal instruments of law making will no longer be conventions and protocols[66] (which require the cumbersome process of ratification by member States).

Under the new Article 9 (1) of the 2006 Supplementary Protocol Amending the 1993 Revised ECOWAS Treaty,[67] henceforth, Community Acts (Law) shall be known as Supplementary Acts, Regulations, Directives, Decisions, Recommendations and Opinions.

Notwithstanding the above provisions of new Article 9, all Community, Conventions, Protocols, Decisions, Regulations and Resolutions of the Community made since 1975 and which are still in force shall remain valid and in force, except where they are incompatible with the present 2006 Supplementary Protocol.[68]

To accomplish their missions, the Authority of Heads of State/Government passes Supplementary Acts to complete the Treaty. Such Acts adopted by the Authority shall be binding on the Community Institutions and member States, where they shall be directly applicable without prejudice to the provisions of Article 15 of the Revised Treaty[69].

The Council of Ministers enacts Regulations, issues Directives, makes Decisions and Recommendations[70]. Regulations shall have general application and their provisions shall be binding on both member States and Community Institutions and be directly applicable in member States.[71] Directives[72] are binding on all member States for the realization of the stated objectives. The modalities for attaining such objectives are left to the discretion of member States. On the other hand, Decisions[73] are binding on all those designated therein. Whereas Recommendations and opinions are not enforceable.[74]

The ECOWAS Commission adopts Rules[75] for the implementation of Acts enacted by the Council of Ministers.[76] These Rules have the same legal effect as Acts enacted by the Council.

The Executive Secretary under Article 10 of the 1993 Revised Treaty, was responsible, inter alia, for the execution of decisions by the Authority of Heads of State and application of the regulations of the Council of Ministers; and initiation of draft (legislative and policy) texts for adoption by the Authority and the Council.[77]

For an enhanced legislative role and expansive powers in the promotion and development of the Community integration agenda, Article 1 of the 2006 Supplementary Protocol[78] transformed the Executive Secretariat to a Commission. Article 2 of the same Protocol abrogated the provisions of Articles 8, 9, 10 (2), 12, 17, 18, 19, 22 (1), 79, and 83 of the 1993 Revised Treaty and replaced them with new Articles. Under new Article 9 for example, the Commission's Acts shall have the same legal force as those Acts. Further, under new Article 19, the Commission's President is the legal representative of the Community and responsible for the external relations of the Commission, inter-national cooperation, strategic planning and Policy analysis of regional integration activities within the sub-region. Furthermore, the Commission is empowered to ensure the smooth functioning of the Community and protect the overall interest of the Community, by submitting to the Authority and Council any recommendation necessary to promote the interest of the Community; and by formulating (legislative and policy) proposals that will enable the Authority and the Council to take decisions on matters relating to both member States and the Community.

Moreover, Article 3 of the 2006 Supplementary Protocol provides for new Article 13 which replaced the old Article 13 of the 1993 Revised Treaty on the Community Parliament. Under the new dispensation, the Parliament enjoys greater visibility and involvement in decision making processes affecting the Community.[79] However, having been established, the modalities for its involvement in decision making shall be defined in a Protocol relating thereto.[80]

Although the 1993 Revised ECOWAS Treaty among others, established a Community Parliament as an institution of the Community,[81] it remained a relatively powerless body with mere advisory and consultative role under the 2006 Supplementary Protocol that amended the Revised Treaty to the considerably strengthened institution it is today. On December 15, 2014, the Authority of Heads of State and Government of

ECOWAS finally adopted and signed into law, Supplementary Act on the Enhancement of powers of ECOWAS Parliament, at the 46th ordinary Session of the Authority in Abuja, thereby granting the ECOWAS Parliament a co-decision making status with the ECOWAS Council of Ministers and an enhanced role in the activities of ECOWAS.[82] Itemizing the new competences of the Parliament under the Act, the legislation states that, "the Parliament shall jointly, with Council, approve the Community Budget; exercise Parliamentary oversight functions over activities of the institutions and organs of the Community, as laid down in the Supplementary Act, without prejudice to Article 15 of the Revised Treaty. The Parliament shall also confirm the appointment of Statutory Officers appointed directly by the Authority. In conforming with Article 9 of this Supplementary Act, the Parliament may consider any matter concerning the Community without prejudice to Article 15 of this Treaty, among others."[83]

**NOTE**

**THE ECOWAS COURT OF JUSTICE AS A SUPRANATIONAL COURT AND ENGINE OF REGIONAL INTEGRATION IN WEST AFRICA**

The Court will continue to uphold the supra-nationality[84] of ECOWAS introduced by the Revised Treaty into its decision making for the realization of Community integration objectives.[85] Accordingly, the court has been holding Member States accountable for their Treaty obligations and has refused to be constrained by the domestic laws of Member States, including national constitutions that are inconsistent with their Treaty obligations.[86] The Court's Jurisprudence on the supra-nationality of ECOWAS and the ECOWAS Court of Justice in Musa Saidykhan,[87] SERAP,[88] Mukhtar Ibrahim Aminu[89] and Peter David,[90] is anchored on Articles 9 (4), 12 (3) and 15 (4) of the 1993 Revised ECOWAS Treaty and cemented by the provisions of Articles 1-7 of the Supplementary Protocol Amending the Revised Treaty, especially, the new Article 9 on the new legal regime of the Community earlier discussed above.[91]

### 3.2.2. NEW ARTICLE 9 OF THE 2010 SUPPLEMENTARY ACT ABROGATING AND REPLACING ARTICLE 9 OF THE 2006 SUPPLEMENTARY PROTOCOL THAT AMENDED ARTICLE 9 OF THE REVISED ECOWAS TREATY OF 1993

Under the new article 9 of the 2010 supplementary Act, the Authority shall adopt Supplementary Acts, issue Directives, make Decisions, Declarations and Formulate Recommendations, while the Council of Ministers shall enact Regulations, while the Council of Ministers enact Regulations, issue Directives, adopt Decision or formulate Recommendations and Opinions as well as Enabling Rules[92].

Supplementary Acts and Regulations are of direct applicability in Member States and of binding effect on both Member States and Community Institutions[93]. While Directives are binding on Member States, Decisions are binding on designated persons, Enabling Rules and Declarations have legal force but Recommendations and Opinions are NOT Binding[94].

Table 2 below depicts an expanded Supranational Legal and Institutional framework on matters relating to the progressive realization of Community aims and objectives.

**Table 2: Trade, Investment, Competition and Industrial Supranational Legal and Institutional Framework: 2006-2021**

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|---|---|
| 1. | Trade policy framework: Refers to trade and related regulations and agreements formulated for regulating trade flows (imports and exports).<br>• ECOWAS Trade Policy Objectives include increased competitiveness, overall economic growth, increased market access and integration into the multilateral trading system[95].<br>• ECOWAS Trade Liberalization Scheme (ETLS) adopted in 1979, expanded to cover industrial products between 1990 and 2006.<br>• Common External Tariff (CET) ADOPTED IN January 2006, migrated from 2007 to 2012 version; and on 25 October 2013 adopted CET with the 5-tariff band structure[96]. |
| 2. | ▪ ECOWAS adopted a Supplementary Act on investment in 2008; ECOWAS Investment Code and Policy in 2018/2019 |

| | |
|---|---|
| 3. | o ECOWAS Regional Competition Policy Framework was adopted in 2007<br>o Supplementary Act Adopting Community Rules and the Modalities of their Application within ECOWAS was adopted in 2008;<br>o Supplementary Act on the Establishment, Functions and Operation of the Regional Competition Authority (ERCA) was adopted in 2008;<br>o On May 31, 2019, ERCA was launched as an ECOWAS agency in Banjul, the Gambia[97]. |
| 4. | ▪ The West African Common Industrial Policy was adopted in 2010 with an implementation strategy designed for a globally competitive industrial structure for improved living standards of people by 2030. |
| 5. | ➢ Safeguard measures: Four were adopted between January 2006 and 2010: The Digressive Protection Tax, the Safeguard Tax on Imports, the Compensatory Levy and the Inverse Safeguard Tax |

Another evidence of the application of Supranationalism in ECOWAS is the change of motto/philosophy from the "ECOWAS of states to the ECOWAS of peoples"[98], emphasizing the need for commitment of member states to redefine regional integration in a way that moves the process beyond state-centred approach to people's centred thereby involving community citizens, CSOs and the private sector in regional integration decision making and implementation processes.

## 4.0 WHAT DOES REDEFINING THE CONSTITUTIONAL PARAMETERS OF NATIONHOOD ENTAILS?

Having indicated earlier that a state should not be confused with a "Nation", although states today largely consist of several nations or are organized territorially on a national basis for the common good of all, guided by constitutional supremacy of law and subjection of a state and its organs to the rule of law and the fundamental rights of citizens. Most national constitutions in ECOWAS contain clauses on the Supremacy of the Constitution, primary purpose and obligations of the state (including implementation of treaty obligations as part of foreign policy objectives of the state in question)[99].

Hence, both supranationalism and Constitutional supremacy in Member States' national constitutions aimed at ensuring that sovereign states are

bound by the law and not above the law. Their decisions actions or inactions must reflect the best interest of the people[100].
Supranationalism has several political ramifications demanding complex institutions and structures, extensive political will, unity of objectives and commitments at both national and regional levels. The success of any economic integration effort will depend on the commitment of Member States to redefine regional integration in a way that moves the process beyond state-centred approach to people oriented process that is both inclusive and participatory of relevant stakeholders in Member States (citizens, CSOs the private sector and other non-state actors)[101].

We may wish also to organize our discussion on the possible application of three tested principles in EU:- the principles of subsidiarity, variable speed and variable geometry[102].

The principle of Subsidiarity refers to the how of appropriate division of powers and responsibilities to be undertaken by the regional body and which powers should be retained at the national level. An important constitutional issue is where residual power lies. Residual powers are those not expressly provided for in the Treaty Constituting the Regional Economic Community. An expansive interpretation is that any power can be exercised at the regional level provided Member States agree. A more restrictive arrangement is one where there is a deliberate attempt to constrain these powers to those which can be exercised more effectively at the regional level. This latter interpretation was the intention of those who drafted the subsidiarity principle incorporated in the EU Treaty of Maastricht which foresees the EU exercising powers only in areas where action by Member States alone is likely to be ineffective and where there is reason to believe EU action could be more effective[103]. In west Africa, despite the criticisms that greeted the establishment of ECOMOG in maintaining peace in Liberia, Sierra Leone, etc the fact remains, that for collective security and humanitarian purposes, ECOWAS was the only institutional mechanism that could legitimately and successfully perform that task[104].

The principle of Variable Speed refers to situations where all members agree to be bound by common aims or objectives, but some members are allowed a longer time to meet these objectives. Rather than holding all members back to the pace of integration of the slowest and most reluctant member state, some member states can move ahead to a common policy and the others can catch up when they are ready. On the other hand, variable geometry refers to a situation where different sub-groups of members on different issues, wish to pursue deeper and

more intensive forms of integration and cooperation on specific issues, while others wish to remain outside these initiatives on a permanent basis[105]. These concepts are clearly relevant to developing countries in Africa where there are multiple economic groupings with overlapping memberships and different integration objectives[106]. In West Africa today, each Member State of ECOWAS belongs to, at least, two regional groupings in Africa: ECOWAS and OHADA, or ECOWAS and UEOMA or ECOWAS and CEN-SAD (Sahelian Group) etc[107].

**CONCLUSION**

It is evident from the above analysis that, to the extent that State Sovereignty reminds us that the challenge of subjection of states to law is an aim, though very imperfectly realized, it remains a doctrine which we cannot afford to disregard.

The understanding of Supranationality as a situation where a regional organization is empowered to take decisions that are binding on itself and on all its Member States is quite clear. ECOWAS, with the support of an efficiently run and adequately funded supranational Commission and Supranational Court of Justice, can facilitate and accelerate the process of regional economic integration in West Africa. Member States however, must demonstrate greater commitment to their treaty obligations by addressing the fundamental operational and financial challenges facing the Community Institutions and the capacity deficits to implement Community Laws, Programmes and Decisions at National Levels.

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22. The Constitution of the Federal Republic of Nigeria, 1999, as amended, section 14(2)(b) on the primary purpose of government, "to promote the security and welfare of all peoples".
23. https"//www.worldatlas.com
24. Ibid

25. Abass, A, op. cit.
26. Andrew (2013) op. cit.
27. UN Friendly Relations Declaration, 1970.
28. Brownlie (2008), op. cit, pp. 433-473.
29. Ibid.
30. Ladan, M.T. (2008):- Materials and Cases on Public International Law. ABU Press, Zaria, Nigeria, pp. 11-12.
31. Ibid, at p. 13
32. Ibid.
33. Ibid.
34. Absolute power corrupts absolutely.
35. Section 15(5) of the 1999 Constitution of Nigeria, op. cit, provides that the State "shall abolish corrupt practices and Abuse of Power".
36. Ladan, M.T. (2010): Introduction to Jurisprudence – classical and Islamic. Malthouse Publishers, Lagos, pp. 109-147.
37. Ibid.
38. Ibid.
39. See UNECA, AU, AFDB (2010): - Assessing Regional Integration in Africa Part IV: - Enhancing Intra- African Trade, at pp. 1-496.
40. See ECOWAS Commission, Abuja, Nigeria (2007): - Regional Investment Policy Framework at pp. 1-6.
41. Ibid.
42. See UN Economic Commission for Africa (2005-2006): - Sustainable Development Report on Africa:- Managing Land-Based Resources for sustainable Development, pp. 1-172.
43. See ECOWAS (2007) Investment Policy Framework, op. cit.
44. See ECOWAS Commission, Abuja (1999): - Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security. Done at Lome, on 10 December, 1999.
45. See UNECA (2010) op. cit.
46. See UN Economic Commission for Africa, Addis Ababa, Ethiopia (2012): - Assessing Regional Integration in Africa part V: - Towards an African continental Free Trade Area, pp. 1- 142.
47. See African Economic Outlook 2013 by the African Development Bank Group (Af.D.B.), OECD Development Centre, UNDP and UNECA, at pp. 7- 30.
48. See ECOWAS Commission, Abuja: - ECOWAS Trade Regime, at pp. 51-65. See also UNECA (2012) op.cit.
49. Victor, A (2016):- Principles and Practice of Supranationalism in ECOWAS and the Implications for Regional Integration in West Africa. Political Science Review, Vol. 7, No. 1, pp. 17 – 34.
50. Ibid
51. Articles 9, 12 and 15 (3) of the 1993 Revised ECOWAS Treaty.

52. Ibid, Article 4.
53. Ibid, Article 3.
54. Ibid, Article 4.
55. Ibid, Article 5.
56. Ladan, M.T. (2016), op. cit.
57. ECOWAS, Abuja:- The 2006 Supplementary Protocol Amending the Revised ECOWAS Treaty of 1993, New Articles 8-10, 17 – 19.
58. Victor, A (2016) op. cit.
59. Ladan, M.T. (2021):- Fundamental Legal, Economic and Political Obstacles to Regional Integration in Africa:- Which Way Forward? In Jurispedia, https://muhammedtawfiqladan.substack.com
60. Ibid.
61. National Institute for Legislative Studies, Abuja (2015), op. cit., pp. 1-10.
62. Ibid, at pp. 40-158.
63. FAO (2018):- Institutional Aspects of Regional Integration. www.fao.org/3/y4793e/y4793e07.htm
64. Ibid.
65. See the Preamble to the 2006 Supplementary Protocol, A/SP.1/06/06 Amending the Revised ECOWAS Treaty of 1993.
66. Ibid, New Article 9 of the 2006 Supplementary Protocol.
67. Done at Abuja, Nigeria, on 14th June 2006.
68. Ibid, Article 6.
69. ibid, New Article 9 (2) (a) and (3).
70. Ibid, Article 9 (2) (b).
71. Ibid, Article 9 (4).
72. Ibid, Article 9 (5).
73. Ibid, Article 9 (6).
74. Ibid, Article 9 (7).
75. Ibid, Article 9 (2) (c ).
76. Under new para 2 of Article 10 of the 2006 Supplementary Protocol, op. cit, "The Council of ministers shall comprise the minister in charge of ECOWAS Affairs, the minister in charge of Finance and any other minister where necessary."
77. See Article 10 (3) (a) and (i) of the 1993 Revised ECOWAS Treaty.
78. Op. cit.
79. New Article 13 (2) under Article 3 of the 2006 Supplementary Protocol.
80. Ibid Article 13 (3).
81. See Article 13 of the 1993 Revised ECOWAS Treaty.
82. Reported by the Newswatch Times online on December 16, 2014. See mynewswatchtimes.com
83. Excerpts from chapter 2.

84. In this context, supra-nationality refers to a situation where an international institution is endowed with powers to take decisions binding on Sovereign States either generally or in specific areas of State activity. In effect, most legal instruments adopted by ECOWAS are now directly applicable within member States. See also the Supplementary Protocol Amending the Revised Treaty, op. cit.
85. See ECOWAS, Abuja (1992); - Review of the Treaty, op. cit, p. 16, para 42.
86. See Musa Saidykhan v. Republic of the Gambia (2009) ECW/CCJ/APP/11/07, See paras 48- 50 of the Ruling of 30th June 2009.
87. Ibid.
88. Registered Trustees of the SERAP v. Federal Republic of Nigeria and UBEC (2009), ECW/CCJ/APP/08/08, Ruling of 27th October 2009 at paras 18 – 20.
89. Mukhtar A.I. v. Government of Jigawa State (2011) ECW/CCJ/APP/02/11 Ruling of 7th July 2011 paras 42- 45.
90. Peter David v. Ambassador Ralph Uwechue ECW/CCJ/APP/04/09.
91. See item 3.2 of this paper on analysis of the nature of ECOWAS Community Law.
92. New Article 9 of the 2010 ECOWAS Supplementary Act A/SA.3/01/10 Amending New Article 9 of the ECOWAS Treaty As Amended by the 2006 Supplementary Protocol, Article 9(2).
93. Ibid, New Article 9(3)-(4).
94. Ibid, New Article 9(9)-(11)
95. Ladan, M.T. (2021) op. cit.
96. Ibid.
97. The ERCA became operational with the appointment of an Acting Chief Executive Officer in May 2019.
98. Part of the new vision and mission of the ECOWAS.
99. See Sections 1, 14 (2)(b) and 19 of the 1999 Constitution of Nigeria, op. cit.
100. Ibid.
101. FAO, op cit.
102. Ibid.
103. Victor, A, op. cit.
104. The appropriate division of powers between different levels of governments has been addressed from an efficiency standpoint by economists. Of course, efficiency is not the only value at stake.

Considerations of transparency, accountability, participation and inclusivity are equally important.

105. FAO, op. cit.
106. Ladan, M.T. (2021) op. cit.
107. Ibid.