



Center for European
Integration Studies

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**Understanding Regional
Integration in West Africa –
A Multi-Thematic and
Comparative Analysis**

WAI-ZEI PAPER

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Note: All articles were originally written in English and translated into French and Portuguese.

Ludger Kühnhardt/Djénéba Traoré

Preface

The global proliferation of regional integration is one of the most fascinating aspects of the age of globalization. In recent decades, the phenomenon has spread throughout the whole world. In this context, the European Union (EU) as well as West Africa both play a particular role. Both regions are challenged more than ever to intensify sustainable regional integration. Despite its difficulties, the EU still serves as a reliable partner and a source of inspiration. This is even more important as the West African integration process is still characterized by serious difficulties in fostering more effective and knowledge-based regional policies.

The Center for European Integration Studies (ZEI) at Bonn University and the West Africa Institute (WAI) in Praia have been partners since 2008. The idea behind this cooperation is to initiate a bi-regional exchange of academic views, to help bridge the gap between academia and practice in West Africa with the help of a comparative perspective and to support the further development of WAI. Our project is sponsored by the German Ministry of Education and Research (BMBF). At its Mid-Term Conference, the WAI-ZEI research cooperation looked back on a successful first project phase. During two intensive workshops in Praia and Bonn over the course of 2013, the obstacles to sustainable regional integration in the political and economic sphere were discussed by West African and European scholars. These meetings offered a unique opportunity for exchange between different research cultures with similar concerns. As an outcome, seven research papers and a comprehensive anthology were published as WAI-ZEI Papers. Furthermore, the WAI library was established in the National Library of Cabo Verde in Praia with the arrival of the first stock of books and finally a survey was conducted among decision-makers in West African regional integration.

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Our Mid-Term Conference was held at the right time. The anniversaries of the Revised Treaty of ECOWAS in 2013, of WAEMU in 2014 and of the founding of ECOWAS in 2015, presented an opportunity to reflect on what has been achieved; on the actors and factors of regional integration in West Africa and on challenges for the future. For this purpose, we brought together academics and high-ranking staff from regional institutions to discuss issues of relevance and to jointly develop practical recommendations. In doing so, WAI lives up to its mission to be a close academic partner of ECOWAS. The results of this laudable effort are summarized in this second comprehensive anthology at hand. As partners, WAI and ZEI believe that we can learn a lot from each other. Therefore we thank the authors of this volume, who are part of a growing network of WAI Fellows, for their interest and commitment in joining us in this effort by participating in the Mid-Term Conference in Praia and contributing their research results. We are convinced that this publication can not only provide a general overview over the state of affairs in West African regional integration in different policy fields but can also reveal some useful findings for integration practitioners and encourage further research which contributes to making the integration process more sustainable in the mid and long term.

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Bonn/Praia, July 2014

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Introduction

The years 2013, 2014 and 2015 are of historical relevance for the process of regional integration in Africa in general and in West Africa in particular. 50 years ago, in May 1963, the Organization of African Unity (OAU) was founded in Addis Ababa by all African countries in order to promote Pan-Africanism and to institutionalize defensive solidarity among African states, with the aim of protecting their recently gained freedom and sovereignty against potential neo-colonial approaches by the Europeans. About 10 years later, in May 1975, sub-regional integration took off in West Africa with the creation of the Economic Community of West African States (ECOWAS). ECOWAS was founded to improve the economic development of West African countries and to strengthen their bargaining position towards external actors like the European Community (EC). ECOWAS however was also important for another reason. Its framers were for the first time able to overcome the artificial divide between anglophone, francophone and lusophone countries. However, this did not mean that the struggles between these countries of different imprint were once and for all settled. Quite the opposite, strong post-colonial ties prevailed and had significant influence on political decision-making on the national and on the regional level. Furthermore, there were internal disputes about whether the right integration approach was continental or sub-regional and the development of both organizations was further constrained by the Cold War environment.

Against this background, it was not until the end of the Cold War that regional integration in West Africa could experience a relaunch. ECOWAS not only engaged itself militarily in the devastating civil wars in Liberia and Sierra Leone but also reformed its treaty basis 20 years ago with the ECOWAS Revised Treaty, signed in Cotonou. One year later, in January 1994, the West African Economic and Monetary Union (WAEMU) was formed by the francophone West African

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countries. As ECOWAS, WAEMU strives to create a common market and a customs union. WAEMU countries are held together by their common currency, the CFA Franc.

Since then, the regional integration process in West Africa has gone through ups and downs. Today, the West African sub-region is still experiencing high levels of poverty, armed conflict, fragile statehood and a dangerous vulnerability to natural hazards or pandemics, just to name a few. At the same time, there are promising potentials for growth; an extremely rich natural resource base and some countries that have established resilient democracies with young and digitally literate populations. In the complex environment of asymmetric interdependencies within West Africa itself and between West Africa and the world, the regional level plays an increasingly important role for both dimensions and at the same time builds a junction between them. Nonetheless, it is a long and bumpy path that ECOWAS is taking to deepen the integration process. On the one hand, the implementation of regional projects faces serious difficulties. The long-awaited common currency, the ECO, has been regularly postponed. Only at the end of 2013, West African leaders were able to agree on the implementation of a customs union, which still has to turn into practice. On the other hand, the strategic goals that leaders burden themselves with seem extremely ambitious. Therefore, it remains open if there will be an "ECOWAS of the People" by 2020 as announced in 2007. Likewise, it is unclear what the expansion of the ECOWAS Commission in 2014 to 15 Commissioners (one for each Member State) will lead to. Will it fill an existing capacity gap and strengthen the regional forces in order to overcome national reservations or will it only end up with more complexity and fewer results? Will the regional integration process gain more legitimacy by strengthening the powers of the ECOWAS Parliament as is foreseen?

The responsibility and the pressure to perform well are also true in the wider context of West African external relations. ECOWAS is one of the building-blocks of African continental integration, in the framework of the African Union (AU), which grew out of the OAU in 2000. It is also part of the EU-Africa Partnership. Both require effort and commitment.

All these challenges, questions and insecurities give reason enough to discuss the achievements and obstacles of the West African regional integration process so far and look at tasks for the future. For this purpose, WAI and ZEI brought together West African and European academics and experts at its Mid-

Term Conference on 21st and 22nd of October 2013 in Praia, Cabo Verde. The event took place at the Ministry of External Relations (MIREX). The Mid-Term Conference also completed the first phase of the WAI-ZEI cooperation project “Sustainable regional integration in West Africa and Europe”, which is sponsored by the German Ministry of Education and Research (BMBF) in the years 2012-2016. In its struggle to support knowledge-based policy formulation and a direct connection between the formerly disconnected communities of researchers and their links with practitioners, the WAI-ZEI conference marked a further important step with regard to the institutional development of the West Africa Institute, which started its work in only 2011. Finally, it drew conclusions from the outcomes of the meetings of the study groups in October 2012 in Praia and in March 2013 in Bonn. The discussions in Praia again illustrated the urgency of the topic and the untapped potential of future joint research between West Africa and Europe in the field of regional integration.

The outline of this volume, reflects the Conference program and is published in the three official ECOWAS languages, English, French and Portuguese. It deliberately covers a broad range of categories and policy fields from traditional issues like economics, the development of regional law, institutional development or security policy to more recent topics like renewable energy policy. These are the main thematic pillars of the West African regional integration project. To take the external dimension into account, an analysis of European-West African relations was also included. It is the aim of this WAI-ZEI Paper to provide a general overview and to encourage further debate on the role of regional integration in West Africa by critically looking at the facts.

In this context, the different articles which were written by experienced European and African authors, try to answer the following questions for the respective thematic areas:

1. Which role has the thematic area played in the West African regional integration process so far? How did the regional dimension develop over time?
2. What are the main successes which have been achieved but also the main problems and obstacles that the integration process has had to face especially regarding the relationship between actors, structures and policies?
3. Which instruments help to profit from the opportunities of a deeper regional integration?

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The reasoning of this volume is not to celebrate the anniversaries of West African regional integration but to look back with a critical eye and to draw lessons. To provide a link between the past, the present and the future is a principal task of the WAI-ZEI Cooperation and is reflected in the specific articles which make the following argumentations:

Essien Abel Essien, Director for Strategic Planning at the ECOWAS Commission in Abuja, provides comprehensive insights into the development of the regional integration process in West Africa in all relevant issue areas over the last decades. In his article, he explains how the integration process has intensified and how ECOWAS has learned and adapted to a changing environment. The author presents the so-called Vision 2020, the plan to transform ECOWAS into an “ECOWAS of the People” as a main objective. He sees progress but also lingering challenges, especially in the continuing reservations of Member States to surrender sovereignty to the regional level.

Tony Chafer, Professor of Contemporary French Area Studies and Director of the Centre for European and International Studies Research at the University of Portsmouth, and Edward Stoddard, Lecturer in International Relations at the University of Portsmouth reflect on the multiple dimensions of European-West African relations. They point out that given the multi-faceted nature of the bi-regional relationship with a high number of actors and factors wielding influence, questions of legitimacy are becoming more and more important, especially in Europe. Furthermore, the authors make clear that there are competing interests on the European and on the West African side that can hamper a coherent policy formulation. While indicating the opportunities arising from increasing growth rates in West Africa over the last year, they argue that this growth is a fragile one, due to the West African dependence on its raw materials and phenomena like the “resource curse” and finally, due to the on-going problematic security situation in the Sahel and Nigeria.

Gervasio Semedo, Professor of Economics at University of Tours and Researcher at the University of Orléans, France, analyzes trade liberalization and economic integration efforts in ECOWAS countries between preferential arrangements and a customs union. He argues that to build comparative advantages for global exports, member countries need more strategic cooperation for alimentary self-sufficiency, temporary infant industry protection and economies of scale, while establishing clear rules of industry competition and opening up to international trade at the same time.

Samuel Priso-Essawe, Professor of Law and former Vice-President of the University Avignon, France, presents the development and relevance of primary and secondary law in the context of ECOWAS and WAEMU. Comparing their interdependence to experiences of other integration organizations, including the European Union, he offers an overview of the legal instruments applied by regional institutions in order to implement integration law. He analyzes the methods by which regional law can achieve its goals and the prerequisites regional law imposes on private actors, as well as on national and regional public institutions.

Kenneth Omeje, Senior Visiting Research Fellow of the John and Elnora Ferguson Centre for African Studies (JEFICAS), Department of Peace Studies, University of Bradford, UK, analyzes the evolution of the ECOWAS' Peace and Security Architecture. He argues that deep economic crises at the end of the Cold War, resulting from bad governance compounded by the implementation of ill-suited IMF/World Bank economic policies, led to the proliferation of structures and incidents of violent conflict in West Africa. To resolve these conflicts, regional peacekeeping and the politics of security regionalism evolved. After an analysis of the causal factors of armed conflicts in West Africa, the author gives an overview of these conflicts, traces the history of the ECOWAS Mechanism, its achievements and limitations, and concludes with a discussion on persisting challenges.

Providing an overview of the regional energy integration efforts in the sub-region, Mahama Kappiah, the Executive Director of the Centre for Renewable Energy and Energy Efficiency of ECOWAS (ECREEE) analyzes the potential and the challenges of sustainable energy development in West Africa. Faced with weak domestic energy markets with low levels of electricity access and low electricity prices, the author considers the efforts to integrate the energy sector and the establishment of a regional market as crucial for tapping into the high energy potentials and resources that exist in the region. However, he takes into account that huge investments are needed to achieve diversity and energy security in West Africa. Although a prominent role is given to natural gas because of its competitiveness and availability, from the author's point of view, renewable energy remains the vector for sustainable energy development.

Overall, the contributions show an intensification and deepening of regional integration in West Africa in terms of actors, institutions and policies over the last 20 years. However, they also reflect that ambitions are often difficult to realize

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in the short term and even the mid-term given the developmental and political problems the West African sub-region is facing. Hence, what is needed to make the regional integration process more sustainable is not only patience, but a continuous commitment. Especially by actors on the regional level that are not only free from vested national interests but that also have the ability to make the added-value of regional integration visible for potential agents of change. The second phase of the WAI-ZEI Cooperation project from 2014-16 will also try to contribute to this effort in a critically constructive way, through utilizing research.

Essien Abel Essien

20 Years of the Revised Treaty and 40 Years of ECOWAS – A Record of Regional Integration in West Africa

Economic and Monetary Integration represents a least-cost way for countries to achieving rapid economic development. The West African experience has been a journey plagued with several problems. The realization of the ultimate objective has been obfuscated by incessant political and civil crises, often leading to a slowdown of intent.

This paper is a tour d'horizon of the history of ECOWAS over the 20 years of the Revised Treaty and the 40 years of its existence, describing its pathway and cataloging experiences. The paper notes how much has been accomplished, but important challenges remain in achieving West African economic integration. The process is, however, irreversible.

Introduction

Background

The establishment of a network of treaty ports by the Western powers during the 19th century built the foundation for regional coalition. The establishment of the European Economic Community (EEC) through the Treaty of Rome in 1957 was however, the most prominent phenomenon in the new international economic order. Economic cooperation and integration is part and parcel of this global economic order. The phenomenon has gathered momentum to the extent that there is a proliferation of economic cooperation and integration arrangements around the world. No continent is exempted and all of them

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are working assiduously towards strengthening the economic cooperation and integration mechanism and architecture to make them more effective in delivering the desired objectives.

The reasons for this development are apparent. First, economic integration is seen as a veritable instrument for faster, all-encompassing, least-costs way to achieve rapid economic development. This is essentially because strong regional economies facilitate the pooling of risks between otherwise vulnerable economies, reduce wars, promote intra-regional trade, and enable countries within the region to exploit complementarities and entrench competitiveness, thereby attracting investments required for the development of modern industries, while ensuring better access to markets and technology. The wave of globalization and its unintended externalities have brought to the fore the reality that no individual country can go at it alone.

The Creation of ECOWAS and the Revised Treaty

Regional cooperation and integration has been, and will most likely continue to be highly relevant to West Africa. The strong domestic and regional demand in trade and finance, expanding cross-border infrastructure, and increased factor mobility provide tremendous scope and imperative. In West Africa, this phenomenon pre-dates the independence era. The evolution of regional cooperation was driven by the need for the colonial powers to facilitate exchange with each other (Britain and France) and with their colonies as well as exploit the resources of colonies. Several institutions in the form of monetary arrangements were established. From Banque du Sénégal (1855-1901) through La Banque de l'Ouest or Bank of West Africa (1901-1955) to the West African Currency Board (WACB) in December 6, 1912, which issued the West African pound for The Gambia, Ghana, Nigeria, Sierra Leone under the British colonial authority and finally, L'Institut de l'Afrique Occidentale Française et du Togo or Institute of French West Africa and Togo (1955-1959). These mechanisms were to bring about monetary integration and to create interdependent markets.

Conscious that the wave of economic cooperation around the world, the overriding need to foster and accelerate economic and social development, and the promotion of harmonious growth of the contiguous states of West Africa called for effective economic cooperation and integration; convinced that the integration of the Member States presents a viable option for self-reliance, the

Heads of State and Government of 16 West African countries, on 28 May 1975, signed a treaty for the creation of the Economic Community of West African States (ECOWAS).

This treaty was known as the Treaty of Lagos, as the meeting to sign it took place in Lagos. Considered one of the pillars of the African Economic Community, the main aim was to promote co-operation and development in all fields of economic activities in Member States. In other words, it was founded in order to achieve “collective self-sufficiency” for its Member States by creating a single large trading bloc through an economic and trading union. The treaty was couched in the context of a gradual progression from a free trade area via a customs union to a common market.

A few members of the organization have come and gone over the years. In 1976 Cape Verde joined ECOWAS, and in December 2000 Mauritania withdrew, having announced its intention to do so in December 1999. Currently, the ECOWAS Community comprises the following 15 Member States: Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

A Committee of Eminent persons was set up and requested to submit a proposal for the review of the 1975 treaty. This led to the adoption of a Revised Treaty in Cotonou, Benin on 24 July, 1993, known as the Revised Treaty of 1993. The Revised Treaty re-affirmed the 1975 Treaty but recognized some challenges. The new treaty extended economic and political co-operation among Member States, designating the achievement of a common market and a single currency as economic objectives, while in the political sphere providing for a West African parliament, an economic and social council and an ECOWAS court of justice to replace the existing Tribunal and enforce Community decisions. The treaty also formally assigned to the Community the responsibility of preventing and settling regional conflicts. It also extended the common market program to incorporate the adoption of common economic, socio-political and cultural policies.

The revision of the treaty was prompted by several factors such as the need to:

- Adapt to changes in the international economic environment,
- Modify its strategies in order to mitigate the externalities arising from globalization,

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- Extend the common market program to incorporate the adoption of common economic, socio-political and cultural policies,
- Include the principal provisions of the AEC Treaty,
- Recognize that its integration policies and programs were influenced by the prevailing economic conditions in its member countries.

It was in this new treaty that a definitive statement on the creation of a monetary union was made. A monetary co-operation program, known as the ECOWAS Monetary Co-operation Program (EMCP) was adopted in June 1987. The EMCP was a logical component of the economic integration scheme that would create a harmonized monetary system through the observance of a set of convergence criteria.

In order to achieve the tenet of the new treaty, ECOWAS undertook several programs. They include: the harmonization of regional and sectoral policies, development of regional infrastructure, abolition of trade restrictions in the form of tariff and non-tariff barriers, removal of obstacles to free movement of persons, goods and services, etc. However, the overriding objective remained the establishment of a common market and the creation of a monetary union that would be characterized by a single currency and a common central bank.

The Main Programs of ECOWAS

The principle underlying the cardinal programs of ECOWAS was founded on achieving policy and structural convergence. Principal among them were:

- Free movement of goods and persons,
- Trade liberalization and the establishment of a custom union (ECOWAS Trade Liberalization Scheme (ETLS) and Common External Tariff (CET)),
- ECOWAS Monetary Co-operation Programme (EMCP),
- Development of infrastructure,
- Implementation of common policies in agriculture, environment, management of water resources,

- Consolidation of Peace, Democracy and the promotion of good governance.

This framework was expected to boost intra-regional trade and factor mobility, enhance investment/growth, and create the necessary conditions for the operation of a monetary union.

Free Movement of Persons and Goods

One of the fundamental areas the region paid great attention to is its integration agenda. In line with this, the ECOWAS protocol provides for free movement of its citizens and the right to live, and settle, and do business in any part of its territory. This is predicated on the theory that migration aids development, and mobility of persons, goods and capital is a vital component in promoting trade, product, labor and financial markets integration. ECOWAS has therefore been busy putting together various initiatives in this area. The abolition of visas, introduction of the ECOWAS passport and ECOWAS brown card, the planned introduction of a single visa for third countries, are some of them. Continuous dialogue with key stakeholders, security services, civil society, road transport workers and conduct of research and studies to achieve this objective have also been promoted.

Several factors have impeded the achievement of the goal on free movement of persons and goods. These, among others are:

- The existence of non-tariff barriers,
- Absence of a common trade policy,
- Poor sensitization,
- Political will to implement the protocols.

The reports of difficulties experienced by ECOWAS citizens across the region's borders call for sustained effort at policy strengthening and coherence in this direction.

Trade Liberalization and the Creation of a Customs Union

The two main programs under this framework were the ECOWAS Trade Liberalization Scheme (ETLS) and the Common External Tariff (CET). It was believed that these programs would provide the basis for the establishment of a common market. Considerable progress has been made in these areas. For instance, ECOWAS has been engaged in creating a common trade zone through unification of tariffs and tariff exemption. It is also noteworthy that ECOWAS in this commitment has finalized its Common External Tariff (CET) negotiations which will shortly become operational, barring any impediment.

ECOWAS has also been committed to the process of creating a common market in the region and has advanced its negotiation on the Economic Partnership Agreement (EPA) with the European Union (EU) on the principle of using trade to drive the development of the region. It has also been engaged in international trade and trade governance to maximize the opportunity for boosting regional trade and mainstreaming itself into the global trade environment. In line with this, ECOWAS has engaged in the promotion of bilateral, multilateral and regional trade agreements, trade sensitization across the region as well as advocacy for consumer protection rights while putting the issues of quality control, collation of data on cross border investments and rules on the front burner.

The ECOWAS Trade fair and Business Forums, periodically organized in different parts of the region are fast gaining prominence in West Africa and beyond. ECOWAS has engaged in economic reforms in line with international reality and policies. It is also working towards creating favorable environment for the promotion of international trade and better positioning for international negotiations on trade matters and related issues. Several challenges still persist. They include:

- Absence of an effective mechanism for an integrated approach to trade promotion,
- Low value addition and poor quality of products emanating from the region,
- Poor state of infrastructure in the region, which remains regrettable, disastrous and production-reductive,

- Large informal goods and financial markets side by side with rudimentary formal markets,
- Lack of strong political will to implement the ECOWAS CET.

ECOWAS Monetary Co-operation Program (EMCP)

The aim was to facilitate the achievement of the objectives of integration and enhance intra-regional trade and payments transactions between Member States. The program involved the adoption of collective measures for the purpose of setting up a harmonized monetary system and common management institutions for the achievement of the objectives of monetary co-operation through a phased approach. In this case, Member States of ECOWAS were expected to individually and collectively, take all the measures required for the implementation of the Monetary Co-operation Program, while the Executive Secretariat of ECOWAS, as it was known then, in collaboration with the Committee of Governors of the Central Banks of Member States of the Community, would be responsible for the co-ordination of the implementation of the program. The Committee was responsible for examining and resolving the problems that may be encountered and then report to the competent authorities of the Community.

The major requirements under the EMCP were compliance with agreed convergence criteria, harmonization of regulations on exchange rate and adoption of a market driven exchange rate regime, harmonization of fiscal, monetary and financial policies. In a bid to ensure policy convergence, common macroeconomic convergence criteria which Member States were expected to attain were set as a precondition for the introduction of a common currency.

Harmonization of economic policies of Member States will be an arduous task if not impossible without the harmonization of statistics, the unit of accounts and of standards of measure. Therefore, an aggressive process of statistics and account harmonization for common ECOWAS region is going on under the ECOSTAT project.

Considerable progress has been made in this area. The establishment of a second monetary zone and the joint multilateral surveillance framework are

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cases to note. However the introduction of a single currency for the region has been dragging owing to a number of reasons, which include:

- The existence of a monetary zone, the UEMOA with a different exchange rate regime,
- The postponement of the introduction of the common currency (eco) by the second monetary zone,
- Slow macroeconomic convergence owing to economic crisis that has combined to frustrate this effort,
- Absence of common economic policies as well as common legal, accounting and statistical frameworks,
- Lack of coherence and synergy in the multilateral surveillance mechanisms of the various ECOWAS agencies responsible for implementing the ECOWAS Monetary Cooperation Program (EMCP),
- Paucity of research on socio-economic development issues to aid the preparation of position statements and policy briefs to evaluate the status and depth of regional integration,
- Non-achievement of primary and secondary convergence criteria on a sustainable basis.

The promotion of economic policy harmonization and monetary co-operation as a means of achieving macroeconomic convergence and eventual attainment of a single currency within the region becomes a compelling strategy.

Implementation of Common Policies in Agriculture, Environment and Management of Water Resources

ECOWAS, just starting from the experience of food shortage and food price crises, and understanding that the economy of the region is agrarian, has not compromised its intention to make agriculture the main stay of the region's economy. ECOWAS embarked on the development of a regional policy on agriculture to maximize the opportunity agriculture offers for regional economic development. Food security lies in the development of the agricultural sector not only to meet the food demands of the region but also in providing a meaningful

source of employment for its teeming population and as a foundation for the region's agro-technological take-off.

The ECOWAS Agricultural policy (ECOWAP) in line with the Common African Agriculture Development Program (CAADP) is committed to a modern and sustainable agriculture based on the effectiveness and efficiency of the family farms and the promotion of agricultural enterprises. These and several other efforts such as measures to preserve the environment and conserve the region's water resources have earned the confidence and support of developing partners. Despite this progress, the development and implementation of common policies are not without some lingering challenges.

These are summarized below:

- The design of a medium term regional investment program in agriculture,
- Organization & management of shared natural resources in a sustainable manner,
- Development of agricultural product chains and promotion of vibrant product markets,
- Prevention and management of food crises and other natural disasters in the area of agriculture,
- Development of an appropriate water policy and a regional framework for shared water resources,
- Development of the capacity to manage the forest and wildlife resources by developing a convergence plan for the sustainable management and utilization of forest ecosystems,
- Promotion of environmental governance by strengthening adequate capacity in the area of multilateral agreements and development of cooperation and coordination in environmental management,
- Management of the environment and prevention against risks and various forms of pollution, nuisance and hazardous chemicals that could affect human and animal health.

Consolidation of Peace, Democracy and the Promotion of Good Governance

The importance of peace, good governance and the entrenchment of democratic values are critical to a meaningful economic and sustainable development. The chequered political history and the instability that has characterized the region for so long can be traced to the absence of good governance, democracy and the rule of law.

In the 90s more than any time in its history, the region was a hot bed of conflicts and crises of varying dimensions, leading to destruction of lives and properties, grave humanitarian crises and stalling economic growth and development. Thereafter, ECOWAS has engaged in activities to promote regional peace and development and has notably intervened in crisis situations in a number of countries in West Africa. ECOWAS has strongly pursued the promotion of good governance, peace and security, free, fair and credible elections in Member States through a combination of direct involvement and diplomacy in the region.

However, these initiatives require a rethink in certain areas such as:

- The need to mainstream conflict prevention into stabilization and post conflict-interventions,
- The need to improve the mechanism to manage multiple tasks efficiently and effectively,
- The need to improve the structural and operational architecture, such as social infrastructure, election management, diplomacy and humanitarian issues for conflict prevention and post-conflict stability.

The requisite strategy to be adopted should be geared towards mobilizing resources and enhancing all other strategies required to fulfill the region's mandate of maintaining peace, stability and security in the region.

Development of Infrastructure

ECOWAS has made progress in creating a conducive environment for the attraction of private investments and private sector development, working in partnership with various organizations and Member State institutions. ECOWAS

Business Forums have provided a platform for public-private dialogues, national and international trade and business visits, bilateral and multilateral trade agreements and benchmarking of database and index for Member States.

The West African Power Pool (WAPP), the West African Gas Pipeline, renewable energy and energy efficiency, transport facilitation projects, among others, have strengthened the development of economic and technological infrastructure. Investments and participation of various regional financial institutions, such as ECOWAS Bank for Investment and Development (EBID), Ecobank, etc., in the different aspects of infrastructure has contributed to viable regional infrastructure development.

The main challenge for the region lies in the expansion of the physical infrastructure projects and the mobilization of required resources for financing them in order to create the requisite conditions for competitiveness. Thus, the need to:

- Provide basic economic and technological infrastructure,
- Create a conducive business and work environment,
- Educate and develop the skills of Community citizens,
- Promote entrepreneurship and enterprise development, innovation and creativity.

Overall, significant progress has been made in the region towards economic cooperation and integration, in line with the objectives under the Revised Treaty. The challenges that bedevil the integration process provide the needed catalyst for a quantum leap to economic prosperity through a carefully designed action plan that would derive from a carefully crafted regional strategy.

Institutional Development Process

Institutional Arrangement

To ensure the success of Community objectives, ECOWAS functions under a defined institutional architecture. This architecture is categorized into organs,

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institutions and specialized agencies, and the coalition of non-state actors. The organs of the Community are; Authority of Heads of State and Government, Council of Ministers, Sectoral Ministerial Committees, and sectoral technical/expert Committees. The main institutions of ECOWAS are the ECOWAS Commission, Community Parliament, Community Court of Justice. There are also specialized technical institutions and agencies.

The Authority of Heads of State and Government is the highest policy-making body and is made up Heads of State and Government of Member States. The body is responsible for the general direction of activities in the region and has the powers to take all measures to ensure the progressive development and achievement of the goals of the region in line with the provisions of the 1993 Revised Treaty. The Authority of Heads of State and Government meet at least once in a year. There is also a provision for the conveyance of an extraordinary session by the Chairman, elected yearly. An extraordinary session may also be conveyed at the request of Member States or a Member State, provided such a request is supported by a simple majority.

The next policy-making arm of the region is the Council of Ministers. These are the Ministers in charge of ECOWAS affairs, Ministers of Finance and Ministers of Foreign Affairs. The Council serves as a governing board for the Commission, responsible for the functioning and development of the Commission by virtue of Article 10 of the Revised Treaty of 1993. Therefore, except where otherwise provided in the treaty or protocols, the Council of Ministers makes recommendations to the Authority of Heads of States and Governments on any action aimed at achieving the region's objectives and appoints statutory staff below the office of the Vice-President at the Commission and other ECOWAS Institutions. The Council also makes recommendations on the appointment of External Auditors to the Authority of Heads of States and Governments, prepares and adopts its rules of proceedings, approves staff regulations, the organizational structures of the institutions of the region, as well as the work programs and budgets of the Commission and its institutions. It also requests the Court of Justice, where necessary, to give advisory opinion on any legal questions and carry out all other functions assigned to it by the Authority of Heads of States and Government.

The Council of Ministers meets at least twice in a year at ordinary sessions, one of which must precede the Ordinary Session of Heads of States and Governments. However, an extra-ordinary session may be convened by the

Chairman of the Council of Ministers. The Council acts through its regulations, adopted by unanimous decision, consensus or two-third majority, which makes them binding on all the institutions of the region. The proceedings of the Council of Minister's meetings derive from reports of the sectoral Ministerial meetings and the reports of ECOWAS institutions.

The decisions of the Heads of States and Governments of ECOWAS are implemented by the ECOWAS Commission, headed by a President and appointed by the Conference of Heads of States and Government. Initially known as ECOWAS Secretariat, it was transformed into a Commission in 2007. Thus, the President of the Commission is the Chief Executive Officer of the Community. He is assisted by a Vice-President and seven Commissioners, and is responsible for the preparation and implementation of the decisions of the Conference of Heads of State and Government and the rules of the Council of Ministers.

The responsibility of the leadership of ECOWAS Commission in relation to its mission and the task assigned to it by the Member States is to translate the decisions into planned and implementable programs that would support the transformation of the region. In doing this:

- The Commission must play a central role to ensure that decisions of the Community are effectively implemented and lead to the building of strong institutions,
- It must maintain knowledge of the dynamics of transformation and meet the aspirations of the people,
- It must be complemented by efficient administrative and effective communication between the Community's institutions and the Member States,
- It must ensure an all-inclusive involvement of various stakeholders within and outside the region.

There is also the institutional and policy process that supports the promotion of democratic ideals and justice. For instance, the ECOWAS Parliament was established under Article 6 and 13 of the Revised Treaty of 1993 as an assembly of the people of the Community to promote democratic values. Its main responsibility is to enact laws. However, under the present dispensation,

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the power of the Parliament to enact laws that are binding on all its citizens is not yet enforceable. This is because full democratization of the Parliament through election and universal suffrage is yet to take effect. A timetable for the transformation of the Parliament into a fully functional organ of the Community is being vigorously pursued. A 2010 deadline was set for completing this process, which has obviously elapsed. Parliamentarians are seconded to it from the National Parliaments of the Member States. In the meantime the role of the Parliament in the ECOWAS integration process remains advisory, pending the conferment of a legislative status, with the statutory powers to make laws that are binding on all the citizens and institutions of ECOWAS. Nevertheless, the President of the Commission works in close collaboration with the Parliament and always seeks the advice of its members on the ECOWAS integration process.

Similarly, for effective administration of justice, the ECOWAS Court of Justice was established under Article 15 of the Revised Treaty of 1993. The ECOWAS Court is the organ of the Community for dispensing justice on all matters concerning integration in the Community and its judgments is binding on all Member States, the Institutions of the Community, individual citizens and corporate bodies. The status, composition, powers, procedure and other issues concerning the Court of Justice is set out in the Protocol that creates it. The Court carries out its functions independent of the Member States and institutions of the Community.

Because the policy process supports economic and social activities, an Economic and Social Council (ECOSOC) was established under Article 14 of the Revised Treaty of 1993 of the Commission. A largely advisory Council, its composition, functions and organization are defined in the protocol that established this council. The ECOSOC is yet to be physically established.

The institutional development process has undergone significant transformation since the revision of the treaty. New institutions and agencies have been established. They include: the ECOWAS Center for Renewable Energy and Energy Efficiency (ECREEE), ECOWAS Electricity Regulatory Agency (ERERA), Government Action Against Money Laundering (GIABA), West African Monetary Institute (WAMI), West Africa Institute (WAI), just to mention a few. The rationale for establishing the new agencies is basically to strengthen the architecture for deepening regional economic integration.

There have been new organs established to deal with the pertinent issues of peace and security in the region. The Eminent Persons Group has been set up to undertake advocacy for peace, while the Security Council is also in place as a sectoral Committee of Ministers of Foreign Affairs and the Defense of the region.

Currently, discussions are on-going to enhance the powers of the ECOWAS Parliament to progressively attain a legislative status and co-decision responsibility from the advisory status it presently enjoys. The ECOWAS Commission is also carrying out preparatory activities towards a holistic institutional reform. This reform targets its processes, procedures, and systems as well as the human resource re-alignment. Furthermore, the Authority of Heads of State and Government has directed that the nine-member Commission be expanded to a 15 member Commission. These developments are all intended to make the Commission indeed a model in regional economic integration management in Africa.

Institutional Capacity

From its modest beginnings in 1975, ECOWAS has expanded over the years into a set of complex institutions. The expansion has been dictated largely by the evolution of the original mandate, the dynamics of the global economy, and the changing structure of the West African economy. Consequently, the Community has evolved into a more inward-oriented organization that is effective and sustainable. It has forged alliances with external development partners and synergy with regional governmental and non-governmental organizations (business associations and professional bodies).

This organizational development has been fostered by a high degree of institutional capacity. Recall that ECOWAS was established to enhance, through regional cooperation and integration, the quality of life in West Africa, by leading and facilitating the sustainable development of the 15 national economies as an integrated and competitive regional economy. A complementary institutional architecture was put in place to provide the framework within which the regional integration process would be achieved. However, the capacity of the institutions established to facilitate regional economic integration has been critical to its success. It is therefore safe to conclude that institutional capacity is the major driver of regional cooperation and integration in ECOWAS.

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Institutional capacity includes the processes related to governance system, organizational systems and procedures, staffing and equipment. It encompasses the capacity to raise the knowledge, skills, and attitudes of staff, thereby creating a knowledge-based organization where internal conflicts and frustrations are reduced to the barest minimum and productivity, institutional culture and diversity are enhanced.

The Community hinged its development process on building new capacities, honing existing ones, and adapting capacities. Thus, more attention is now being paid to the capacity requirements necessary for managing the priority programs such as customs (free trade area and common external tariff), monetary (second regional currency and macro-economic policy convergence), energy (WAPP, ECREEE and Gas Pipeline Project), consolidation of regional peace and security (ECPF), agriculture (ECOWAP) within the context of food security, rural development and poverty alleviation), and a comprehensive strategic framework to support the policy process.

A number of studies conducted to assess the institutional capacity needs and to formulate strategies for guiding the institutional reforms and capacity development have proved useful. This development is well supported by donor partners in the area of technical assistance, staff recruitment and training, review of administrative and financial rules and regulations, modernization of procedures and systems, including computerization and results-based budgeting system, and improved inter-institutional collaboration and coordination.

The transformation of the Executive Secretariat into a Commission and the restructuring of the ECOWAS Parliament, Community Court of Justice and the EBID are further evidence of the enduring nature of the institutional capacity building process.

Despite these developments, the institutional capacity building has not enjoyed considerable ownership within the institutions of the Community. Indeed, the many capacity building initiatives have not been fully implemented. Consequently, their desired impact is yet to be felt. Within the Commission, work methods and processes of both technical and support departments, including the use of ICT applications, have not improved significantly. A planning and programming system is yet to be instituted and the budgetary program is not aimed at a result-based management system. Entrenching strategic thinking to resolve these problems is a necessary condition for making progress on

the economic integration process within the Community and integrating the Community itself into the global market.

In the years ahead, a more coherent and comprehensive package is envisaged to support institutional capacity development process. It would be guided by the following:

- Recognition that the process is a long-term and continuing one, and must be conceived within the framework of the overall strategic plan and medium-term action plan,
- Recognition that governance, transparency and accountability in the area of institutional capacity building remain critical to the successful implementation of regional programs,
- ECOWAS institutional capacity development to entrench strategic thinking and set strategic direction will lead to effective implementation of regional programs,
- Institution of a culture of excellence as an essential platform for transforming these institutions into a knowledge-based one and turning the staff to beacons and instruments to spearhead the regional development process,
- Introduction of an objective and participatory approach to the institutional development process to make it enjoy ownership, acceptability and sustainability,
- Prioritization and phasing of institutional capacity development to meet the challenges of the new transformation,
- Development of team-work, inter-departmental relations, time-management and computer skills to achieve greater operational efficiency,
- Sustenance of the institutional capacity by making material and other logistic supports a vital element of the capacity building process,
- Clarity and consistency in management policies and procedures, these being major strategic issues that would promote institutional development.

Current Status of Regional Economic Integration

An assessment of the current status of the march towards regional economic integration following the ECOWAS Vision would be done along the line of the common market program, monetary integration, peace and security and goal of sustainable development.

Common Market Program

The decision in 2006 concerning the adoption of a Common External Tariff was a decisive step in putting the Common Market Program on course. The tariffs were set in 4 categories. Nigeria requested for a 5th band, and discussions are almost concluded for the establishment of a customs union that would precede the common market. When completed, there would be complete freedom of factors of production and common policies on product regulation.

With boundaries of Member States determining the limit of national financial systems in the region, financial intermediaries across the Community suffer from diseconomies of scale. If domestic banks of Member States remain isolated and operate only in their domicile economies, they are unlikely to survive the heightened competition that the entrance of foreign banks is currently introducing into the region. Regional financial markets integration, supported by appropriate institutions and implementation strategies, would enhance exchange of goods and services, mobilization of resources (both domestic and international), efficient allocation of factors of production, and diversification of risk across financial instruments of Member States.

ECOWAS is developing a cross-border payment and settlement mechanism, credit information facility and credit rating data base. Efforts are equally underway to integrate the capital market and insurance of companies.

The abolition of Visas and Entry Permit for intra-community travels has been in force with great success. This is geared towards facilitating trade and labor market integration. The introduction of biometric passports is a new initiative that would facilitate free movement.

The regular organization of a regional trade fair, exhibitions and similar events have aided the deepening of trade integration. EPA Negotiations between West Africa and the European Union are on-going, covering trade partnership for sustainable development, trade policy and trade related issues. There is an up-scaling of infrastructural development in all areas to support intra-community trade.

Monetary Integration

A two track-approach to monetary integration was proposed by the Heads of State and Government in Lome, Togo in December 1999. By this approach, a second monetary zone, the West African Monetary Zone (WAMZ), comprising The Gambia, Ghana, Sierra Leone, Guinea, Nigeria, and recently Liberia, was established. An interim institution known as the West African Monetary Institute (WAMI) was set up to carry out preparatory activities that would lead to a monetary union for its members. This monetary union would be characterized by a common central bank and a single currency.

The launch of the single currency of the WAMZ suffered three postponements, in 2003, 2005 and 2009. The major reasons for these postponements were basically the same. They include:

- Poor macroeconomic performance: persistence of fiscal dominance, high inflation, and low levels of foreign exchange reserve accumulation,
- Inability of countries to meet the convergence criteria,
- Absence of requisite infrastructure (payment system),
- Weak policy harmonization,
- Significant variations in statistical standards,
- Lack of trade integration agenda,
- National economic policies remain at variance with WAMZ objectives.

The ECOWAS Convergence Council, comprising Ministers of Finance and the Governors of Central Banks of Member States, on 25th May, 2009, approved a revised road map for the realization of a single currency for West Africa by

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2020. The approval followed the adoption of the report of the inter-institutional working group on the ECOWAS single currency that articulates a clear, concise, comprehensive strategy for realizing a single currency for the region. The roadmap outlined activities to be undertaken ahead of the new date, including the review and harmonization of the convergence criteria, the harmonization of statistics, domestic policies and the legal, accounting and statistical frameworks of public finance.

Beginning from 2009 and the first quarter of 2013, the road map envisaged the harmonization of the regulatory and supervisory framework for banking and other financial institutions, the establishment of a payment system infrastructure for cross border transactions, the completion of the payment system infrastructure in Guinea, The Gambia and Sierra Leone and the completion of the ongoing integration of the financial markets of the region.

By 2014, it is expected that the legal instruments for the creation of the West African Monetary Zone (WAMZ) would have been ratified, and followed the same year with the creation of a Central Bank for the WAMZ zone, the WAMZ Secretariat and the West African Financial Supervisory Agency. A monetary union would then be realized on or before 2015 and the common currency introduced in January 2015. This would be followed by the withdrawal of the national currencies of the constituent Member States.

Subsequently, the processes for the merger of the two currencies to create a single currency will begin, including the introduction of a Supplementary Act to the Revised ECOWAS Treaty to provide a legal instrument for the preceding monetary union, three years before the launching of the single currency. This will culminate in the introduction of a regional currency by 2020, preceded by the launching of monetary union, the establishment of a regional central bank and finally the withdrawal of zonal currencies.

To achieve these objectives and stay on course within the roadmap, Member States were urged to implement prudent economic and financial policies aimed at cushioning the impact of global economic and financial crises on their economies, particularly, the vulnerable financial sector, and pursue appropriate monetary and fiscal policies while implementing rigorous structural and institutional policies under the aegis of the ECOWAS Multilateral Surveillance Mechanism.

ECOWAS Commission was directed to continue to collaborate with other regional institutions and Member States involved in the EMCP to ensure the timely and effective implementation of the road map and to assume ownership of the single currency initiative, prescribe minimum standards within the common strategy that will involve the harmonization at a sub-regional level of the various components. Cape Verde and Liberia, the two Member States that are neither member of the CFA zone nor in WAMZ, were urged to join one of the two monetary zones

The new dates of 2015 for the single currency in WAMZ and 2020 for ECOWAS are predicated on a macroeconomic policy convergence program that is being implemented within the framework of a multilateral surveillance mechanism. There have been limited improvements in meeting the set criteria, though some countries improved their performance on the convergence scale.

Regional Peace and Security and Sustainable Development

The restoration and sustenance of peace and security in the sub-region through ECOMOG, newly established Zonal Bureaux and other peace and conflict resolution mechanisms are major achievements of note in ECOWAS.

The sustenance of democratic governance and values in all ECOWAS Member States are being vigorously pursued, except for a few cases of constitutional crisis.

The promotion of sustainable development, particularly in the economic and social context has concentrated to enhance competitiveness, diversification and boosting growth. The development/interconnection of infrastructure to support the economic integration and enhance the competitiveness is also receiving considerable attention.

A regional approach to mitigating the food crisis is being put in place around the following three axes: accelerated and sustainable increase in food production; restructuring and regulation of the agricultural market; and ensuring food safety and nutrition especially for the vulnerable segments of the population.

Improving the Business and Investment Climate Necessary for Integration

ECOWAS continues to hold policy dialogues with relevant stakeholders as a means of improving the business and investment climate in the region. ECOWAS Business Forum is providing the private sector the opportunity to show-case their products and to network. The regional investment rules, and policy framework, the Community Investment Code have been adopted. Harmonization of business laws is on course to improve business climate. The investment climate data collection, reporting and monitoring as well as the investment guaranty and re-insurance infrastructure is being put in place.

In order to mitigate the adverse impact of the energy crisis, access to sustainable and affordable energy supply remains a priority of the Community's Energy Program.

The implementation of priority generation and interconnection projects through the West African Power Pool (WAPP) and the ECOWAS Centre for Renewable Energy and Energy Resources (ECREEE) were created in recognition of the region's considerable energy resources and the extensive opportunities for improving its efficiency. These institutions will design projects that would mitigate the interrelated challenges of energy access, security and climate change.

Re-thinking the ECOWAS Cooperation and Integration Agenda

Learning and Adaptation during the Process

ECOWAS as a regional grouping of 15 Member States has faced several challenges. However, it has continued to learn from other regional groupings through a continuous program of assessment and benchmarking. This facilitates knowledge of the gaps to be bridged and provokes thoughts on the necessary action steps/strategies to achieve its objectives.

The areas of concentration are many and varied and include assessing the ECOWAS capacity to manage:

- Regional cooperation and integration,
- Co-ordination, collaboration and co-operation governance, conflict prevention, management and resolution,
- Economic performance, economic and monetary integration and business environment competitiveness,
- Social and human development,
- Infrastructure.

The major lessons have been the recognition that the activities of ECOWAS transcend several borders, institutions and interest groups; that the external and internal environment will continue to change; and that there is the need to innovate, stretch and extend the range of its capabilities and functions.

Peace and security will continue to be the basis for sustainable development and thus considerable improvement in its architecture, design of policies, practices, processes, and implementation frameworks that would allow activities in the region to be conducted in a peaceful and secured atmosphere is paramount. The promotion of dialogue as a means of conflict resolution and the respect for the fundamental principle of good governance are some principles that need to be entrenched.

Economic and Monetary integration proceed along its classical steps and follow the logical phase proposed by theory. The pursuit of a customs union, single market and a monetary union simultaneously might put a lot of strain on available resources. A necessary condition for the sustainability of a monetary union remains the attainment of structural and policy convergence, in a sustainable manner.

Institutional capacity is a major driver of regional integration. All processes related to governance systems, organizational systems and procedures, capacity development for and the empowerment of ECOWAS institutions, particularly the Commission, will breed efficiency in the management of regional cooperation and integration programs. The region must revisit its institutional architecture to make it more effective and enduring.

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The region enjoys bilateral relationships with other countries and relies on the goodwill and participation of multilateral institutions, regional groupings and other development partners in ensuring that its plans and programs have depth in terms of coverage, content, and financing. It is therefore important that these programs enjoy international acceptability and that they ultimately will have positive effects on the region.

The ECOWAS Vision 2020 and the Community Strategic Plan

Notwithstanding these regional undertakings, development continues to elude the region. ECOWAS remains one of the poorest regions on the globe with pervasive human misery and endemic and seemingly intractable poverty. Many of national and regional programs have not yielded appreciable impact on the development or improvement of the living conditions of Community's citizens. This poor outcome has been compounded by the absence of discernable efforts to internalize and incorporate regional dimensions in the national development agendas, thus reducing the growth impacts of regional initiatives. For instance, there is very little visible evidence at the national level of a conscious effort to adapt and apply the regional policies and instruments as complements to national policies. Equally troubling is the absence of any sustained attempt at a regional long-term development planning. A regional dimension or framework is almost completely absent in any of the national development agendas.

Convinced of the disadvantages of tiny balkanized economies in the 21st century in an increasingly competitive global village, ECOWAS leaders continued to search for more feasible ways of incorporating regional approaches to achieve and sustain development. It is argued that, among the numerous factors holding policy-makers from identifying with and proactively committing to the regional approach is the absence of a common regional frame of reference to guide and give regional scope to the articulation and preparation of national development plans. This vital framework has now been provided by the ECOWAS Heads of State in the form of a common shared vision of the future of West Africa.

ECOWAS Authority of Heads of State and Government reaffirmed its commitment to improve the regional integration process and enhance its effectiveness with a resolution to introduce, in June 2007, a transformational ECOWAS Vision 2020, which envisions by 2020, "a borderless, peaceful, prosperous and cohesive ECOWAS sub-region built on good governance where all the people have the

capacity to access and harness the region's abundant resources through the creation of equal opportunities for sustainable development and environmental preservation".

In moving to adopt a common people-oriented regional vision, ECOWAS leaders recognize that past and unsuccessful development efforts have been dominated by governments and its agents. Believing strongly that West Africa's development can best be achieved by working together within an ECOWAS of people framework, the ECOWAS Heads of State have expressed a common regional will by adopting a vision that replaces the current "ECOWAS of States" with an "ECOWAS of People".

The ECOWAS Vision 2020 is aimed at setting a clear direction and goal to significantly raise the standard of living of the people through conscious and inclusive programs that will guarantee a bright future for West Africa and shape the destiny of the region for many years to come. The Vision recognizes the imperative to make the integration process people-centered. In this connection, the President of the ECOWAS Commission was directed to mobilize the citizens of the region to the vision, and help to achieve it by 2020. It is gratifying to note that the visioning process has achieved remarkable progress, culminating in the formulation and preparation of a Vision Document that sets out a long-term strategy for the regional integration.

The Community Strategic Plan (CSP) that defines the strategies to achieve the tenets of the Vision has also been developed. The strategic plan is built on the pillars set out in the treaty. The pillars are that the region must remain peaceful, stable and secure, with fair competition and equity within and between its members. The policies that create this stable, competitive system are in turn achieved through sustainable development, cooperation, and an integration process that have a global outlook, reinforced by a strong institutional capacity and promoted through the recognition and observance of good governance so that the region can equitably and justly enjoy the benefits of economic cooperation and integration. These core pillars require the region to have a greater outreach, sustain dialogue and cooperation, be independent and deliver efficient service. It also requires the ECOWAS institutions to facilitate the entrenchment of regional principles in the minds of the citizens of the Community.

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It may be too early to assess the performance of the region under the new plan. However, a critical analysis shows improvements in the following areas:

- Program design and implementation,
- Renewed optimism that the program for integration is achievable,
- Clarity in the organization's objectives,
- Awareness of the organization's resources and resource mobilization strategies,
- Being consciously responsive to a dynamic environment while implementing the Vision and the CSP,
- In-depth knowledge of the gaps in economic development that need to be bridged,
- Provoked thoughts on necessary action steps/strategies to achieve the tenets of the Vision.

Lingering Challenges and Concluding Remarks

Lingering Challenges

The regional economic cooperation and integration journey can be described as tortuous. While significant gains have been recorded, there have been challenges; some of the challenges can best be described as lingering ones, refusing to go away despite the efforts put in place to address them.

The existence and persistence of non-tariff barriers to trade has weakened trade intensity in the region, and as such ECOWAS intra-regional trade has lagged behind other regions in Africa. Trading with each other more, creating larger, more attractive markets and reaping economies of scale are conditions for deepening trade integration. The promotion of regional currency convertibility will give the needed boost to intra-regional trade.

Infrastructure deficit is prevalent. Alternative sources of financing infrastructure and a clear and innovative financial strategy is needed to bridge the gap.

Despite the fact that there exists a protocol on free movement and right of establishment, this protocol has often been casually contravened. New instruments and institutions are needed to come up with a workable mechanism to operationalize the content entrenched in the protocol.

The quest for a monetary union continues to be elusive; the year 2015 set for the launching of the Eco, the currency of the second Monetary Zone, known as the West African Monetary Zone, is at the corner. However, it has been difficult for the Member States of the WAMZ to meet the convergence criteria on a continuous basis. Despite high growth rates recorded in the last three years, fiscal dominance and high inflation have indeed combinedly led to divergence.

The harmonization of macroeconomic policy and statistics are still a project in the future, while the payment system infrastructure is still rudimentary. Structural convergence, a necessary condition for the introduction of a single currency has not been given much attention.

The existence of two monetary zones with two monetary policy regimes is another constraint to the realization of a single currency. Consequently, the new convergence criterion that stipulates an inflation target of five per cent is receiving a lot of questioning from the countries outside the CFA zone. This is with good reason as the realization of a five per cent inflation by the non-CFA countries may be difficult to achieve. It also brings to question the issue of optimum or threshold rate of inflation necessary for the sustainability of a monetary union.

It is important for ECOWAS to continue to work towards policy and structural convergence and desist from being too concerned about meeting the set dates. In the absence of structural convergence, a monetary union can only be sustainable when the necessary conditions are met ex-ante.

A genuine willingness to surrender some level of sovereignty and protectionism that can truly integrate a region is absent. The passion for territorial and colonial identity has failed to give way to pan-territorialism and regionalism. ECOWAS Member States must realize that as members of a regional grouping, they have bound themselves in agreements, implicit or explicit, that provide a check on policy and constrains profligacy all in order to ensure that the goals of the region supersede national goals.

Concluding Remarks

A vibrant informal sector where real economic integration is taking place is blossoming in the region. A mechanism to formalize the informal sector would go a long way to deepening trade integration. More private sector involvement in the integration process will make it more enduring.

The region needs to develop a model of economic recovery that works, while thinking through its institutional architecture, bearing in mind that institutions are the means through which regional policies are administered and transmitted.

Regional economic integration holds out the promise for achieving poverty free, prosperous, and peaceful West Africa. Much has been accomplished in recent years, but important challenges remain in achieving West African economic integration.

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Tony Chafer/Edward Stoddard

The EU, ECOWAS and the Multiple Dimensions of European - West African Relations

Until 2000 the Lomé Accords with the African-Caribbean-Pacific (ACP) countries provided the framework for European Union (EU) cooperation with Africa; the focus of these accords was on trade and development cooperation, although the political dimension, with its emphasis on human rights, good governance and political conditionalities, had become increasingly prominent under Lomé IV (1990-2000). Until 2000 EU relations with the Economic Community of West African States (ECOWAS) were thus rooted within this framework, which was supplanted by the Cotonou Accords in 2000. However, following the first Africa-EU Summit in Cairo in 2000, the Cotonou Accords no longer provided the sole EU framework for its interaction with Africa. The Cairo summit launched a comprehensive framework for political dialogue between the EU and Africa and put in place a plan of action relating to a wide range of issues. These were: regional integration in Africa; integration of Africa into the world economy (trade, private sector development, investment, development resources, industrial infrastructure, research and technology, debt and cooperation in international fora); human rights, democratic principles and institutions, good governance and rule of law (including the role of civil society, migration, refugees etc); peace-building, conflict prevention, management and resolution (including Disarmament, Demobilization and Reintegration (DDR), terrorism, small arms and light weapons, anti-personnel mines, non-proliferation and post-conflict reconstruction) and development issues (including sustainable development challenges, poverty eradication, health, environment, food security, drug consumption and trafficking). The Cairo agenda set the priorities along which the EU-Africa partnership would develop. It translated into an increasing convergence of interests, although there have been, and continue to be, differences between the EU and African states and regional organizations concerning the primacy given to the identified priorities, with Europeans

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attaching increasing importance to peace and security issues while Africans have tended to place greater emphasis on the trade and economic aspects of the partnership.

As a result security issues have, since the end of the 1990s, been at the heart of EU policy towards Africa. This departure was given added momentum by the creation of a new European security architecture in the context of the European Security and Defence Policy (ESDP), following the landmark declaration on Anglo-French defence cooperation at Saint-Malo in 1998 and the adoption of the European Security Strategy in December 2003.¹ The Strategy, over which the UK and France had a determining influence (see below), provides the conceptual framework for the Common Foreign and Security Policy (CFSP), which would later become the Common Security and Defence Policy (CSDP). It identified five new threat scenarios – terrorism, proliferation of weapons of mass destruction, regional conflicts, state failure and organized crime – and singled out West Africa as a particular area for concern. This was followed in 2004 by the creation of the African Peace Facility (APF), which enables the EU to use European Development Fund (EDF) monies to strengthen the ability of the African Union and the continent's sub-regional organizations such as ECOWAS to engage in peace support and peacekeeping operations. The UK and France played a key role in the negotiations that led to its introduction.²

In parallel to these developments the revised Cotonou Agreement³ and the European Consensus on Development (2005),⁴ in the drawing up of which the UK and France, together with Germany as the largest contributor to the EDF, played a leading role, underline the importance of the links between security, development and governance. Specifically on the question of peace and security, in 2006 the Council of the EU published its 'Conclusions on

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2 Personal communication, UK official, Brussels, 2009.

3 *ACP/European Union, 2010. The Cotonou Agreement (Revised Version)* [PDF]. Available at: http://ec.europa.eu/europeaid/where/acp/overview/documents/devco-cotonou-consol-europeaid-2012_en.pdf [Accessed 9 August 2013].

4 *Joint statement by the Council and the representatives of the governments of the Member States meeting within the Council, the European Parliament and the Commission on European Union Development Policy: 'The European Consensus'. (2006/C 46/01)* [PDF]. Available at: http://ec.europa.eu/development/icenter/repository/eu_consensus_en.pdf [Accessed 9 August 2013].

Strengthening African Capabilities for the Prevention, Management and Resolution of Conflicts’, which underlined the ‘need for activities financed under the APF to be complemented by *and coherent with* activities undertaken under other appropriate EU instruments, including the CFSP/ESDP instruments’ [emphasis added].⁵ The need for the EU to coordinate its efforts in this area is thus explicitly recognized. These links between security, development and governance were further reinforced by the subsequent adoption of EU regional strategies, such as the one for West Africa which establishes the priority action areas for the disbursement of EDF funds. Within the 2008-13 regional budget a key priority was accorded to the ‘deepening of regional integration’, the consolidation of good governance and regional security and support for non-state actors.⁶ The EU also adopted in 2011 its ‘Strategy for Security and Development in the Sahel’, which states in its opening paragraph that ‘security and development in the Sahel cannot be separated, and that helping these countries achieve security is integral to enabling their economies to grow and poverty to be reduced [and] secondly, that achieving security and development in the Sahel is only possible through closer regional cooperation’.⁷

Historically, regional integration has been promoted by the EU as a way to establish more secure, liberal and prosperous systems of states in the international sphere and is seen as essential for both security and economic development. West Africa is in this respect no exception, with the EU actively engaged in promoting an Economic Partnership Agreement (EPAs) with ECOWAS. The EU views cooperation with regional organizations in Africa as a way to boost trade with and between African states, reduce poverty, support economic development and ensure peace and security. Moreover, the regional dimension of cooperation with the ACP countries is increasing. Revisions to the Cotonou Agreement in 2010 added “regional organizations” to the set of core actors officially recognized as involved in ACP-EU relations and noted specifically the role of “*sub-regional* organizations” [emphasis added] such as ECOWAS. In West Africa in particular, the EU views cooperation with ECOWAS

5 Council Conclusions of 13 November 2006 on Strengthening African Capabilities for the Prevention, Management and Resolution of Conflicts [PDF]. Available at: http://www.consilium.europa.eu/uedocs/cmsUpload/Capabilities_Africa_20.11.pdf [Accessed 19 August 2013].

6 Communauté Européenne – Afrique de l’Ouest, 2008. Document de stratégie régionale et programme indicatif régional 2008-2013.

7 European Union Strategy for Security and Development in the Sahel, 2011 [PDF]. Available at: http://www.eeas.europa.eu/africa/docs/sahel_strategy_en.pdf [Accessed 9 August 2013].

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as a means to achieve several interlinked policy objectives, including increased economic and political integration, good governance and regional stability.

From a scholarly point of view however, analysis of the multi-faceted and dynamic interaction of two regional blocs incorporating 43 states and over 800 million people represents an intellectual challenge. Such a challenge calls for keen attention to historical dynamics and unfolding trends in the interaction between these two regions and a set of conceptual references to help analyze this complex empirical reality. In this article we briefly analyze a number of issues concerning the EU's relations with the ECOWAS region and offer a series of such conceptual reference points, focusing on the core actors involved in different dimensions of ECOWAS-EU relations, legitimacy and EU action, European and West African objectives and the major challenges that face the EU in its engagement with the region.

Actors

One of the first questions to arise in the analysis of interaction between regional configurations such as ECOWAS and the EU concerns the relevant actors. Of course, relations between the EU and ECOWAS, *senso strictu*, refer to the engagement of the respective institutions of each regional body in the areas of policy on which the Member States have agreed to pool sovereignty. However, in practice, EU-ECOWAS relations exist in the context of broader European-West African relations focusing on the interaction of a number of Member States (notably but not exclusively France and the UK) with the states of the region. The EU itself notes the complex of different actors involved in EU-West African regional interaction, including states, regional organizations and non-state actors such as private companies and civil society (Cotonou Agreement, art. 16). One could add to this list the sets of un-sanctioned actors that impact on EU-West African relations, including insurrectionist movements, smuggling and piracy groups and terrorist organizations. Indeed, interaction between the two regions refers to a highly complex *mêlée* of different actors, with different and often competing interests.

A core area of tension relates to the balance between respective supranational actors (for example on the EU side between the European Commission and the European External Action Service) and Member States. Here the concept of *relative autonomy* can prove useful. In Marxist political science, relative

autonomy refers to the autonomy that a national political executive enjoys from the capitalist base within a given state. However, in the context of inter-regional interaction it is fruitful to question the degree of autonomy that supranational institutions possess from their Member States in given policy areas. The level of this relative autonomy is likely to vary quite considerably from policy sector to policy sector. On the EU side for example, Parello-Plesner and Ortiz de Solórzano (2013) point out that the European Commission has a high degree of autonomy and input to policy-making in matters of trade and development policy. On security and defence matters, by contrast, the interests of (and cooperation between) France and the UK are of central importance (Chafer and Cumming, 2010). Such issues matter firstly, as they address the 'Kissinger question' of who foreign policy actors should speak to and secondly, because divisions between Member States and between Member States and supranational institutions may prove to be weaknesses that can be exploited by the other side. The role of EU institutions is thus only part of the story; the EU's involvement in West Africa cannot be considered without focus on the actions and interactions of – particularly – the major EU Member States.

France and the UK in West Africa: Towards Convergence

In West Africa, the UK and France found themselves, from the 1970s, confronted by two rival regional organizations, one francophone and the other grouping together all the states in the region, which coexisted and competed with each other for influence. The Union Economique et Monétaire de l'Afrique de l'Ouest (UEMOA) is a direct descendant of the colonial federation of Afrique Occidentale Française. The Member States, all francophone (Côte d'Ivoire, Haute-Volta [present-day Burkina Faso], Mali, Niger, Senegal and Togo, later joined by Benin in 1984) subsequently signed a treaty in 1973 creating the Union Monétaire Ouest-Africaine (UMOA). These countries were all members of the Franc zone, whose currency, the CFA franc, was pegged to the French franc at a fixed rate and guaranteed by the Bank of France. Then, in 1975, a new regional organization was created, at the instigation of Nigeria, in the aftermath of the Biafran civil war. With its headquarters in Nigeria, ECOWAS grouped together all the states – francophone, anglophone and lusophone – of West Africa, including the Cape Verde islands and competed for influence with the UMOA (which became UEMOA in 1994), promoted by the region's other major economic power, Côte d'Ivoire. This historic legacy of competing regional

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institutions represented a major obstacle to Anglo-French convergence; France invested considerable effort into supporting the francophone UEMOA grouping, while both countries had very limited linkages with ECOWAS. This was clearly illustrated by the way that the UK and France were largely bystanders when ECOWAS became involved in Liberia in the 1990s.

Up to the end of the last century, therefore, the focus of UK engagement with West Africa had largely been with Nigeria,⁸ while French political engagement focused on the UEMOA countries.⁹ France's decision to drop its support for Charles Taylor and the increasingly serious situation in Côte d'Ivoire from 2002, where the French government needed the support of the wider international community in its efforts to contain and resolve the crisis in that country, opened the door to coordination with the UK and other external actors, such as the US, in the region. At the same time the British government was engaged in a far-reaching reform and reconstruction programme through its British Peace Support Team (BPST) in Sierra Leone. The way in which the Liberian crisis had spilled over into Sierra Leone and threatened to destabilize the whole region led to the realization that a regional, rather than a single country, approach was needed in order effectively to address the problems of peace and stability in the region.¹⁰ There was thus a shared understanding that a regional approach was needed if the threat of 'regional contagion' was to be contained.

France for the first time now sought actively to engage with ECOWAS, partly because it alone groups together all the region's Member States, rather than just the francophones in UEMOA,¹¹ but also because ECOWAS is dominated by the regional hegemon, Nigeria, and, of the two regional organizations, it alone has a security dimension, having adopted a conflict prevention, management,

8 Nigeria is one of only two African countries included in the top three tiers of UK priority countries, personal communication, FCO official, London, 2011. It is no surprise therefore that Nigeria has been, and remains, the primary conduit for UK relations with ECOWAS.

9 It should be pointed out, however, that France has, since the 1970s, had significant, and growing, commercial and business interests in Nigeria, which is now, along with South Africa, its most important trading partner in Africa, see Bach, D., 1982. Dynamique et contradictions dans la politique africaine de la France. Les rapports avec le Nigeria (1960-1981). *Politique africaine* 2(5), p.53.

10 Personal communication, FCO official, London 2011.

11 Personal communication, French official, Abuja 2009.

resolution and peacekeeping protocol in 1999.¹² Since France wanted to move away from unilateral military interventions and share the costs – and political risks – of its interventions, engagement with ECOWAS was essential. Crucially, this meant supporting Africans to play a greater role in conflict management and maintaining peace and security in the region. The UK and France thus converged in terms both of wanting to stabilize the region and at the same time not wanting, as far as possible, to deploy their own troops to fulfill this role. Consistent with this objective, they both now sought to provide capacity-building support to ECOWAS in the peace and security field by helping to train its peacekeepers, undertaking joint training exercises, seconding military liaison officers to the organization and – in the case of France in Côte d'Ivoire – jointly undertaking peacekeeping operations. We return to this point below.

In keeping with their wish to see Africans take greater responsibility for peace and security, the UK and French governments have supported the establishment of a 9000-strong ECOWAS peacekeeping standby force.¹³ The commitment to enhancing African peacekeeping capabilities also led the UK and French governments to provide a range of support to ECOWAS: for example, they jointly supported a map exercise, Blue Pelican, at the ECOWAS Executive Secretariat in November 2000; the UK has provided British Military Advisory Training Teams (BMATTs) with a regional remit to Ghana;¹⁴ the two governments co-funded an ECOWAS military training exercise in 2007, with the UK providing 25 per cent of the funding and France 50 per cent;¹⁵ and in 2008 they participated, alongside the EU and others, in the first ECOWAS exercise to assess the readiness of the standby force. They also supported the establishment of the region's first three ECOWAS-designated centres of excellence for peacekeeping training, in Accra, Bamako and Abuja. The UK and France have thus played a key role in supporting ECOWAS capacity-building for peacekeeping. In addition, the UK

12 A summary of the text of the protocol can be found here: M. Toure and C. A. Okae. ECOWAS Mechanism for Conflict Prevention, Management and Resolution, Peace-Keeping and Security. Abuja: The Observation and Monitoring Centre. ECOWAS Commission. [online] Available at: http://aros.trustafrica.org/index.php/ECOWAS_Mechanism_for_Conflict_Prevention,_Management_and_Resolution,_Peace-Keeping_and_Security (Accessed 2 August 2013).

13 The ECOWAS standby force is one of five such regional forces planned as part of the African Union's African Peace and Security Architecture, see Engel, U and Gomes Porto, J., eds. 2010. *Africa's New Peace and Security Architecture*. Aldershot: Ashgate.

14 Berman, E., 2002. *French, UK, and US Policies to Support Peacekeeping in Africa: Current Status and Future Prospects*. Oslo: Norwegian Institute of International Affairs, p.37.

15 Personal communication, MoD official, Abuja 2009.

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has a regional conflict adviser, based in Abuja, who supports the British High Commission's work on ECOWAS peace and security issues. The UK's Africa Conflict Prevention Pool (ACPP) programme for West Africa also attaches increasing importance to working across the region with ECOWAS on thematic issues such as maritime security and countering small arms and light weapons proliferation. For instance, the ACPP funded a seminar in Abuja in early 2013 that brought together ECOWAS Member States and civil society organizations to help prepare their Common Position on the Arms Trade Treaty, ahead of March's UN-backed conference in New York.¹⁶

However, the UK has not – with the exception of Sierra Leone – deployed troops in a combat role to the region. France, in contrast, with its long tradition of maintaining military bases on the west coast of Africa at Dakar, Abidjan and Libreville, was well placed to take on such a role. To be sure, France has had to adjust its military means to its capacities due to budgetary restrictions. It has sought to reduce the political risks of its military operations by seeking UN and regional approval for its operations and by working in partnership with other external actors such as the EU.¹⁷ It has also reduced its personnel on the ground. Yet its military presence remains substantial. The instruments and resources at France's disposal for military cooperation with Africa are thus quite different from those available to the UK. In addition to the more than 1500 troops stationed at its three military bases on the west coast of Africa, France has one hundred military *coopérants* (advisers and support officers) embedded with the defence ministries and national armies of mainly francophone ECOWAS Member States, with 21 in Senegal alone.¹⁸ France is unique in using this system, which is distinct from the more traditional system of military advisers, as the French officers are, for the duration of their posting, members of the host nation's armed forces. Before 1998, France pursued a policy of what was called '*coopération de substitution*', whereas the new policy of partnership ('*partenariat*') is presented as evidence of France promoting 'African ownership'.¹⁹

16 Personal communication, FCO official, London, 2013.

17 The French intervention in Côte d'Ivoire from 2002, when France (Operation Licorne) alongside the UN and with ECOWAS' blessing, sent several thousand troops to the country to separate the belligerents, was a 'laboratory' for this new French approach. ECOWAS, jointly with France and the UN, also played a key role in the final resolution of the conflict and capture of former president Laurent Gbagbo in 2011. See also Darracq, V., 2011. Jeux de puissance en Afrique: le Nigeria et l'Afrique du Sud face à la crise ivoirienne, *Politique Etrangère* 2011(2), pp.361-74.

18 Personal communication, French official, Dakar 2010.

19 Ibid.

Outside the peace and security field, convergence in terms of a shared understanding of the links between security and development has not led to cooperation or joint working on development issues. Although the British government under New Labour was in principle becoming more open to broadening its approach to Africa, as its Department for International Development (DfID)-led focus on poverty reduction and tackling the Millennium Development Goals (MDG) meant engaging with Africa beyond the UK's traditional sphere of influence, not least because some of the poorest countries in Africa lay in francophone Africa. However, France, unlike the UK, has not engaged bilaterally with ECOWAS on development issues *per se*. It has no equivalent of DfID and the development aid directorate within the Ministry of Foreign Affairs was in 2009 subsumed within the globalization directorate. Moreover, former President Sarkozy was an enthusiastic supporter of 'trade not aid';²⁰ it was therefore consistent with this approach that, in 2009, France left the ECOWAS donors' pool fund due to lack of bilateral aid money. Nor have the UK and France cooperated on working with ECOWAS to promote regional integration, although this is, as we saw above, a key objective of the EU's regional strategy and is seen as conducive to each of the three elements of the development-good governance-security triangle.²¹ France, as one of the two largest contributors to the EDF, seems content to leave this policy area to the EU. The UK, in contrast, has undertaken various initiatives to build up ECOWAS' organizational capacity, believing that, by improving its capacity to plan and manage projects, the ECOWAS Commission would be better placed to take over the roles of donor coordination and strategic planning for regional integration.²² With this objective in mind, DfID has since 2006 undertaken various bilateral initiatives in support of regional integration and in 2010 launched its 'Support to West African Regional Integration Programme' (SWARIP), with a view to scaling up support to West African regional integration in collaboration with other development partners. This approach of building up organizational capacity in the ECOWAS Commission ran into difficulties when the mandate of ECOWAS commissioners ran out in 2010 and new commissioners were only appointed in February 2012. Until these political problems were resolved, the UK government did not see it as possible to make plans for the handover of the donor coordination and strategic planning functions to the Commission.

20 *Le Point* 2010, 30 May.

21 Nivet, B., 2006. Security by proxy? The EU and (sub-)regional organizations: the case of ECOWAS. *Occasional Paper* No. 63. Paris: European Institute for Security Studies, p.7.

22 Personal communications, FCO and DfID officials, London 2011.

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However, it is important to point out that the lack of progress also reflects a political lack of commitment within ECOWAS to the reform program as conceived by DfID and the program was substantially revised and scaled down, following extensive consultation with regional stakeholders, in 2012.²³

France also works bilaterally with the ECOWAS Commission, but in a different way by seconding advisers to the Commissioners' offices. Thus in 2009, for example, France had advisers working in the Political Affairs, Peace and Security, Economic, Trade, Agriculture and Energy commissioners' offices in Abuja. This is significant because the francophone countries often dominate the key positions in the Commission's offices: for example, in the same year all the key posts in the Trade office were occupied by francophones and officials of some other Member States were heard to complain that the Political Affairs, Peace and Security office was dominated by a 'Senegalese mafia'.²⁴ Whether or not this latter point is true, it is widely recognized in Abuja that the francophones often act as a bloc within the organization and French officials put a good deal of effort into cultivating good relations with Commissioners through both formal and informal channels.

Legitimacy

The question of which actors speak for, and act on behalf of, the EU raises the issue of legitimacy. While scholars have only relatively recently started to focus on legitimacy as a core variable in international relations (and European foreign policy more specifically), questions of legitimacy dominate the EU's external relations in practice. The post-colonial history of European interaction with African states is deeply affected by the legacies of colonialism and the legitimacy of contemporary actions of European powers is often assessed in light of their allegedly post-colonial ambitions. As Chafer and Cumming note (2011), French desires to overcome the 'Fashoda Syndrome' and cooperate with the UK and others on Africa policy since 1997-8 were driven, at least in

²³ Personal communication, FCO official, Abuja 2013. The redesigned program will work: (a) with the World Bank to develop better data on West African trade, for example in food staples; (b) with USAID to improve the information available to private sector traders crossing borders in the region; and (c) with the ECOWAS Commission and Member States in negotiations about the African 'Continental Free Trade Area' and d) identifying trade facilitation interventions in the longer term. Budget: £8.7m.

²⁴ Personal communications, French and ECOWAS officials, Abuja 2009.

part, by a desire to restore France's image in Africa. Indeed, France has been keen to multilateralize its Africa policy as a means of overcoming the various scandals associated with *'la Francafrique'*. EU foreign policy scholars, such as Wood (2009), have used the notion of 'institutional camouflage' to refer to how EU Member States can upload politically difficult policy areas, such as human rights, to the EU. The benefit that Member States derive from this is that the more neutral and legitimate perception of the EU (relative to Member States) allows national capitals to overcome negative perceptions of their foreign policies deriving from political disputes or colonial legacy in third-party countries. EU policy may thus reflect the interests of the larger Member States, but simultaneously enjoy more legitimacy than it would if it were proposed and administered by these Member States directly.

Focusing on legitimacy also draws attention to the basis for EU cooperation with West Africa. Indeed, one can consider the extent to which the legitimacy of the EU's actions in the region derive from a *cosmopolitan and universalistic legitimacy*. That is to say, does EU legitimacy rest on a set of abstract morally-rightful principles pertaining to human rights, democracy and political order that are 'just' or 'correct' in absolute terms? The EU institutions in Brussels certainly *self-legitimize* the EU as being a distinct type of actor with a certain claim to substantive legitimacy based universal ethical principles of foreign policy action and the exceptionalism of Europe's foreign policy mission (Tonra, 2011, p.1197). This in turn is based on the EU's perceived capacity to have overcome the divisions between European states and to thus present both a 'model' for other states to follow and 'lessons' for the EU to export (Tonra, 2011, p.1195). In this sense, the EU is sometimes perceived to be the pinnacle of international cooperation and a fundamentally different kind of actor in its international relations, at least when compared with other major international state actors such as Russia, the US or China. Many of the debates surrounding the evaluation of the EU as an "ethical power" or "a force for good in the world" are indeed concerned with the appraisal of the EU in light of certain transcendent and universalistic moral principles (Aggestam, 2008). Manners (2002, p.241) describes for example how the EU puts "universal norms and principles at the center of its relations with its Member States and the world". Likewise, Bengtsson & Elgstöm (2012, p.105) discuss how the EU's "own role conception rests on a set of central abstract [normative] elements irrespective of empirical content". The debates surrounding normative, universalistic views of legitimacy reflect a cosmopolitan (self) perception of ethics within the EU that

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sees certain moral values as *transcending cultural boundaries*, including those with West African states (Aggestam, 2008, p.6). Scholars concerned with the normative or ethical aspects of EU foreign policy recognize that the norms of EU external relations are conceptualized in cosmopolitan, universal terms (Eriksen, 2006; Tonra, 2011). Eriksen (2006), for example, suggests (with some caveats) that the EU pursues a foreign policy based on the promotion of “human rights, democracy and the rule of law ... hence underscoring the *cosmopolitan* law of the people” [emphasis added] (p.253 & p.260-264).

Equally important, however, is the question of whether (or rather to what extent) the EU is actually seen externally as legitimate in West Africa, as a matter of *empirical fact*. One needs to ask what meaning the norms and policy practices that Europe seeks to export to African states have in the West African regional context and the consequent degree of divergence between European and West African understandings of notions such as ‘democracy’ or ‘good governance’, for example. Post-colonial approaches, such as that of Inayatullah and Blaney (2004) that focuses on Western states’ alleged Euro-centric discomfort with international cultural ‘differences’, would no doubt draw attention not to the universality and perceived ‘developed’ status of European norms, but rather to the extent to which European norm-promotion reflect a desire to limit and reduce the pluralist differences between African and European states that Europeans perceive as dangerous or threatening. While the EU’s Euro-centrism is benign in the sense that it generally wishes other states well and is broadly ‘other-regarding’ (see below), it often nonetheless denies cultural specificity and presents European norms and policy as superior, at least temporally and developmentally, if not intrinsically.

Furthermore, focusing on legitimacy also raises the question of whether the EU’s action in West Africa is seen as *procedurally legitimate*. The EU’s external policy actions and programs in West Africa are only likely to be perceived as legitimate if they derive from a process of negotiation where West African states enjoy equal input into the development of EU policy. This is true both in terms of the broader strategic ‘macro’ frameworks that guide the EU’s engagement with African states (such as the EU-Africa Strategy) and in terms of more regular development policy programing.

The EU's Internal-External Legitimacy Tensions

These questions of legitimacy are also important because European foreign policy sometimes suffers from a tension between third party states' external perceptions of what constitutes legitimate practice and the perspectives of core internal EU constituencies that influence EU policy. Internally, the EU is often thought to suffer from a legitimacy deficit (particularly in terms of *input legitimacy*) deriving from the fact that "the EU's institutional arrangements and practices fail to conform to any one conception of democracy" (Greenwood, 2007). This perception of a legitimacy deficit has been exacerbated by the seeming breakdown of the so-called 'permissive consensus', referring to the role that European policy *output effectiveness* historically played as a basis for EU legitimacy (Føllesdal, 2006, p.442).

To reduce (the perception of) this internal legitimacy deficit the European Commission (and now the External Action Service) has turned to strong participation of interest groups from civil society, academia and business in the policy formulation process. This representation is thought to boost internal legitimacy in two senses. Firstly, organized groups are seen as a way to offset some of the structural deficiencies inherent to the EU's models of representation (Greenwood, 2007, p.340). Indeed, the focus on interest group representation as a form of *input legitimacy* in the EU developed at a time when the European Parliament was without extensive powers and where interests groups acted as a set of checks and balances both on EU institutions and each other, thus providing "another contributory avenue of popular legitimation" (Greenwood, 2007, p.340). However, organized interests are also thought to improve internal legitimacy through the provision of expert knowledge. As Bouwen notes (2002, p.369), the institutions of the European Union are dependent on civil society actors and private business interests for information that is crucial in the formulation of policy. The provision of this expert information has a number of effects in terms of legitimacy. To begin with, it allows the EU institutions to claim their policy-making is based on the best available expertise. Furthermore, the provision of expert information from key organizations is also thought to improve *output legitimacy* as it "provides the EU institutions with the necessary expertise to deal with their problems in an efficient way" (Bouwen, 2002, p.371).

In terms of legitimacy, these interest groups (or coalitions of groups) are also important in an additional, third, sense. Whereas the two factors of participation and expertise mentioned above attest to the ways civil society involvement

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can boost the EU's internal legitimacy, these actors can also *damage* the EU's legitimacy standing if they so desire. Many of the EU's interest group and civil society interlocutors (such as human rights NGOs working on West Africa, energy companies, trade associations etc) are highly prominent actors in their own right, sometimes holding a certain degree of veto power over certain issues and frequently holding considerable influence over veto-playing Member States. Major international energy companies - a number of which are active in West Africa - provide such an example. Often these interest groups are very prominent, well-funded, vocal and media-savvy players who can do considerable damage to the EU's reputation (both with the European public and Member States) if their interests are not thought to be reflected in EU policy. Indeed, criticism from these groups can be directed at both the input processes of EU policy if they feel they are not being represented adequately in the policy-making cycle and at the output and effectiveness of EU policy if they feel their interests are not actually reflected in the product and application of EU policy-making, or if they feel that others' interests are better represented.

However the external dynamics of legitimacy are also of fundamental importance to the effective conduct of EU foreign policy. There are at least two broad reasons why this is the case. Firstly, as noted above, the EU is a broadly 'civilian power' that *ordinarily* relies on co-optation and positive incentives rather than coercion. This results in a reliance on the perceived external legitimacy of EU policy to enact change in West African countries. Unlike its intellectual and geo-political 'others' (those major international actors such as the United States, Russia and China to whom the EU is most often compared) the European Union has a limited capacity and willingness to exert influence through the use of hard sanctions. Rather, while Europe does have certain non-military 'hard' power tools at its disposal, the EU tends to demonstrate positive conditionality, rewarding policy convergence rather than overtly sanctioning third party states (Youngs, 2009, p.897; Schimmelfennig, 2012, p.8).

Indeed, as Barbé *et al* argue (2009, p.836), "either directly or indirectly, neighboring countries play a critical role in determining which externally promoted [by the EU] rules may be adopted and how". Whether the EU's external promotion of policies will be accepted by third party countries rests, according to Barbé *et al* (2009, p.837), on "mutual perceptions of legitimacy". Barbé *et al* (2009, p.837), place significant stress on the "inter-subjective character of legitimacy" and assert that "the resonance between the rules that can shape policy convergence and the normative context in the neighboring

country is of critical importance”. This reluctance/inability to use hard sanctions, the reliance on positive conditionality and the ability of third party countries to shape or limit the normative character of cooperation with the EU, means that the effectiveness of EU foreign policy is more intrinsically entwined with external third party perceptions of EU legitimacy than may be the case with other regional powers such as China or the USA that have a greater capacity to use harder forms of power (or that share a common inter-subjectivity with the neighbors they seek to influence).

Secondly, the EU’s desire for stability in the EU periphery, one of the EU’s core foreign policy objectives in West Africa, is predicated on the establishment of a *legitimate order*, which in turn requires acceptance by the states (and peoples) in the region. Indeed, ensuring a stable ring of countries in the EU’s wider neighborhood is one of the key challenges of European foreign policy (EC, 2003; 2012, p.2). International orders that enjoy a high degree of perceived legitimacy amongst members are often thought to exhibit higher levels of stability than those that do not (Clark, 2005, p.15-17). Indeed, Jervis, Nau and Schweller avers that “when legitimacy standards converge, [in international orders] all other things being equal, the level of threat among states is reduced” (Jervis, Nau and Schweller, 2002, p.180). This stability is possible because, convergence of legitimacy standards produces a form of “constitutional order” between adherents that mimics to some degree the kind of legitimate order and common understanding seen within domestic settings (Jervis, Nau and Schweller, 2002, p.180). In the context of the EU’s foreign policy therefore, a legitimate international order in West Africa, accepted by both the EU and West African states, should lead to a more stable EU periphery.²⁵

As such, the EU faces strong pressures to foster both internal and external legitimacies in its relations with countries in the EU periphery. Internally, the EU faces a perceived legitimacy deficit and turns to civil society and business interest organizations both to offset the apparent deficiencies in its models of representation and to obtain the expert knowledge needed for input and output legitimacy. However, many of these groups also present legitimacy risks for

²⁵ However, some of the most significant instability seen recently in North Africa and the Middle East stems directly from political structures and elites in the MENA countries that were/are seen as illegitimate by their populations. Consequently, when considering that international orders (such as those the EU tries to establish) need to be seen as legitimate to be stable, the EU faces a dilemma between balancing between forms of legitimacy of as understood by state elites with whom they must cooperate and those understood by populations. Between elite and public, perceptions of legitimacy are likely to be divergent.

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the EU in that they can very easily damage the EU's standing if they do not feel the EU lives up to their, often exacting, standards. External legitimacy is however also very important to EU foreign policy, firstly as a necessary basis for the export of EU policy (given the EU's limited ability to coerce) and secondly because the core EU foreign policy objective of ensuring regional stability in the EU periphery (and West Africa more specifically) is predicated on the establishment of a regional order that is perceived to be broadly legitimate by external third party states (and their populations).

In promoting certain forms of governance, on which it is lobbied by all sides, the EU faces a situation of being pulled between these divergent poles and thus between legitimacy in the eyes of powerful constituencies inside the EU and efficiency in terms of presenting policy externally to actors whom the EU has little power to compel and to whom the legitimacy of EU policy is all important in determining cooperation. These dynamics can leave the EU torn between, on the one hand, internal legitimacy and external efficiency and on the other, its view of itself as a legitimate and moral authority and its desire to establish a legitimate order in its periphery. In terms of policy impact, the greater the antagonistic character of the underlying relationship, the higher the degree of influence of the relative lobbies inside the EU and the greater the reliance on external legitimacy rather than other sources of power, the higher the likelihood of a divergence between EU internal legitimacy and external efficiency. Furthermore in these circumstances, the greater the importance of managing that particular policy area for the EU's security and prosperity, the bigger a problem this tension creates for the overall effectiveness of EU foreign policy and the more serious risk it presents to the EU's all-round legitimacy as a foreign policy actor.

EU and West African Objectives

Following this discussion of legitimacy, when considering the relations between the EU and ECOWAS, an additional consideration that must be borne in mind is the respective objectives of each party. Two competing descriptions of EU foreign policy are of particular note and draw attention to the potential overlapping and conflicting interests of the EU in West Africa. Indeed, As Smith (2012, p.701-703) has argued, the politics of European foreign policy has often revolved around efforts to integrate and accommodate a series of (sometimes

conflicting) EU foreign policy roles – notably, the EU’s efforts to be a ‘normative’ power, a trade-promoter, a security-enhancer and diplomatic actor.

Firstly, the EU has a reputed standing as a *civilian/normative power* that entails a different kind of behavior in international politics. From this perspective, the EU is seen as seeking to ‘normalize’ international relations based on EU norms of democracy, human rights and the non-military nature of dispute settlement between states. A second, but related notion is that of ‘ethical power’ Europe that is concerned with investigation of the ostensibly ethical character of European policy. Such perspectives may contradict quite strongly post-colonial views of the EU and European states’ involvement in Africa. Keukeleire (2003) offers an additional and perhaps more helpful conceptualisation of EU foreign policy, noting how the EU pursues a form of “structural foreign policy” and “structural diplomacy” in its external relations. This refers to a “process of dialogue and negotiation by which [the EU] seeks to influence or shape *sustainable* external political, legal, economic, social and security structures at different relevant levels in a given geographic space” [emphasis added]. Indeed, Keukeleire argues that the EU in this way seeks to promote models of governance that are well-established within the EU such as “democracy and good government, human rights, the various Organization for Security and Co-operation in Europe (OSCE) principles (such as peaceful resolution of conflicts), regional political and economic integration and cooperation, free market principles and so on”. Presenting the EU in less benign terms, Hyde-Price (2008) suggests that the EU operates as a means for the EU’s dominant powers (notably the UK, France and Germany) to shape Europe’s regional milieu in line with their (collective) foreign security and economic/trade objectives. Rather than consider any of these conceptualizations as a definitive description of European foreign policy however, it is perhaps best to think of them as highlighting the potential tensions that exist between the EU’s “other-regarding interests”, such as the promotion of democracy, and the EU’s “self-regarding interests” such as those concerned with commercial objectives or security prerogatives.

Similarly, questions can be asked of ECOWAS states’ interests in engagement with the EU. Are West African states predominantly concerned with gaining access to international aid whilst defending their domestic political structures and economies from inevitable European predations (a view that, in line with many post-colonial approaches, denies these states much agency of their own)? Or are West African states motivated by more ambitious agendas, such as the attraction of investment and high technology industry, gaining international

legitimacy and military cooperation (and perhaps military advantage *vis-à-vis* others). Or do they see attracting investment and interaction with external powers as a means of garnering legitimacy and supporting domestic rentieristic state structures. Given the heterogeneous make-up of ECOWAS, it is quite conceivable that different states in the region will present quite differing degrees of emphasis on these issues and that normative objectives may sit alongside, or indeed compete with, interests.

Opportunity, Risk and Growing Areas of Engagement in West Africa

A comprehensive account of EU-ECOWAS relations would not be complete without a discussion of the joint ongoing challenges and opportunities that face both European and West African leaders. The West African region burgeons with both opportunity and risk for European actors. In terms of opportunities, the region is experiencing a boom in economic growth, with the *African Economic Outlook* (OECD, 2013) suggesting that West Africa will continue to grow rapidly over the next few years, achieving the fastest regional growth in Africa. This is an impressive prediction given that sub-Saharan Africa as a whole is expected to be one of the fastest growing world regions, second only to 'developing Asia'. Sierra Leone, Niger, Cote d'Ivoire and Burkina Faso were amongst the world's six fastest-growing economies in 2012. Clearly the region presents itself as a potential location for European foreign direct investment (FDI) and increased European exports.

However, some caution is needed. Firstly, many African countries have continued to grow at excellent rates compared to other regions partly because they have been relatively insulated from the global financial crisis. Secondly, most sub-Saharan countries have been growing from a low base. As such, advances may seem more impressive than they are in that the gains made represent low hanging fruit. Thirdly, economic growth in the region has risen on the back of commodity price rises that may reflect global price trends rather than indigenous value creation in West African countries. Most of the countries in West Africa are rich in some (or numerous) natural resources and growth in these sectors has played a very important role in West African economic development over the past decade (in particular, forest reserves, marine resources, diamond, gold, manganese, phosphate, petroleum, iron ore, uranium, bauxite, manganese, tin

and columbite) (Jalloh, 2013, p.67). However, global increases in resource and commodity prices do not necessarily bring long-term increases in economic output in natural resource-rich states (Collier, 2010, p.41-44). Indeed, while international price rises bring a short-term windfall for states, they can over time lead to a reduction in economic output. Growth from rent-based sectors (such as oil and gas) frequently fails to develop forms of inclusive growth that benefit societies as a whole. Indeed, economic growth from natural resources can sometimes crowd out other sectors and result in diminished overall productivity. This is particularly problematic as the natural resources sectors do not, proportionately, employ large numbers of people compared with other sectors such as services and manufacturing. Collier (2010, p.41) suggests that a doubling of the oil price over 25 years would lead to a fall in overall economic output in an oil-rich country like Nigeria of around a third. This, as he states, is a missed opportunity. While it is beneficial to encourage growth from natural resources, one can only imagine how many jobs are not created, schools and roads not built as a result of a one-third fall in overall economic output. These economic effects say nothing of the detrimental role that natural resources can play in fueling conflicts such as those seen in Sierra Leone, Nigeria, Guinea-Bissau, Liberia, Mali and Cote d'Ivoire (Jalloh, 2013, p.67).

African countries are often thought of as being afflicted by the so-called 'resource curse' (that is to say, the failure to turn natural resource wealth into socio-economic and political development). A number of ECOWAS states certainly produce natural resources in sufficient quantities (and without sufficient diversification) to be at risk from the resource curse. Niger for example produces \$91 million worth of uranium annually – constituting 74% of its total export revenues (Revenue Watch, n.d.). Likewise, in Nigeria, natural resource exports made up 88% of total exports in 2011 and 70% of total government revenue (Revenue Watch, 2013). It is thus crucial that West African countries use natural resource endowments to develop and diversify their wider economies so as to avoid the risks of the resource curse. Indeed, while rising prices present risks of over-concentration on certain economic sectors, falling energy prices are also a threat for resource-rich states that are dependent on natural resource revenues to maintain national budgets. Given the cyclical nature of the commodity market and unpredictable prices, neither rapidly rising nor rapidly falling prices can be ruled out (especially in light of the instability in the Middle East, the degree of investor speculation in these markets and recent developments in shale gas and oil technology).

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One of the options for mitigating the resource curse risk in West Africa is increased accountability and transparency. The Extractive Industry Transparency Initiative (EITI), coupled with recent EU efforts to increase transparency in the extractive sector, are positive developments in this regard. The EITI (which is not an EU institution but is strongly supported by the EU) promotes transparency in the sense of accountability, good governance and anti-corruption in regard to government revenues and business practices. Likewise, recently, the EU agreed amendments to the EU Accounting and Transparency Directives that cover financial reporting in the EU and that now compel companies listed on EU stock exchanges (including, of course, those active in West Africa) to disclose payments to resource-rich states, increasing the scrutiny of company payments.

The European Commission participates on the board of the EITI and in the EITI's Multi-Donor Trust Fund administered by the World Bank (EITI, 2010). Likewise, a large number of European countries (UK, France, Germany, The Netherlands, Spain, Belgium, Denmark, Finland, Italy, and Sweden) are active members and supporters of the EITI "providing political, technical and financial support" (EITI, 2013, p.4). Some European Member States are also *signatories* (including the UK and France) meaning they have to adhere to the same rules as resource-rich EITI signatories in other parts of the world. The West African region is one of the most successful world regions in terms of EITI membership and compliance. Mali, Niger, Nigeria, Togo, Mauritania, Ghana, Côte d'Ivoire, Burkina Faso and Liberia are recognized as complying fully with EITI standards, while Guinea is a candidate country (Sierra Leone is currently suspended). As a region, West Africa outperforms all other regions such as the Gulf, Southern Africa and Central Asia in this respect.

The form of transparency required by the EITI was traditionally 'country-level reporting'. This form of transparency required both companies and natural resource-producing states to account for the totality of the payments made and received within a country in a given year. This allows public knowledge and scrutiny of government revenues derived from the oil and gas sector and provides civil society groups with some of the information needed to hold governments to account. However, the new EU Accounting and Transparency Directives, like the Dodd-Frank Act in the United States, goes further in requiring 'project-level reporting', entailing the opportunity for greater levels of scrutiny of company payments by entailing that companies report payments for each project (over 100,000 Euro) they are involved in rather than the overall sum for the country (Ruby, 2012). Likewise, at the May 2013 EITI Global Conference in Sydney,

the EITI decided to adopt an updated standard on transparency that includes project-by-project reporting, increased scrutiny of national mining companies and more scrutiny of beneficial ownership (i.e. who ultimately benefits from the ownership of assets) (Moberg, 2013). Doing this is likely to increase revenue transparency in signatory states as breaking down the payments received by governments to individual project-level makes it easier to monitor exactly what monies have been received, from whom and when.

Interestingly, European countries have proven willing to confront domestic energy lobbies on transparency issues. Indeed, the shift to project-level reporting faced resistance from the commercial sector because of disagreement over the definition of a 'project', fears of prosecution in states where there are rules prohibiting the reporting of payments and fears of competition with companies that do not have to meet these more stringent requirements, such as Chinese companies (Westenberg, 2012). Furthermore, as both EU officials and company officials note, these transparency requirements are still limited in that they do not shed light on what happens to money once it has been handed to governments.²⁶ Nonetheless, with support for the EITI and the new directives (mentioned above) the EU has taken positive steps in terms of promoting transparency in the extractive industries.

Beyond these questions of resource development and transparency mentioned above, energy and natural resources present an obvious area of strategic European interest in West Africa. In 2010 67% of EU imports from West Africa (by value) were made up of mineral fuels largely in the form of oil from Nigeria (EU, 2013). While this figure is a relatively small percentage of overall EU energy supply (4.2% for oil and 3.6% for natural gas), these volumes are significant at the margin (in terms of prices) and Nigeria represents a core market for a number of major European businesses such as Shell, Total and Eni that employ large numbers of EU citizens, pay large amounts of tax in the EU and support numerous other service companies. As such Europe has a keen interest in both the risks of supply disruptions and the general investment climate in the region. Similarly, Niger supplies a large proportion of the EU's total uranium imports (12.7%). The French nuclear industry, in particular, is dependent on Nigerien nuclear imports.

26 Interview EU Official, Brussels, Summer 2011.

Security

The region's potential for economic growth and future prosperity is challenged by a precarious security situation. The states of the region experience varying levels of security threats and risks, including (*inter alia*) people trafficking, smuggling, piracy, terrorism, insurrection, political instability and full-scale conflicts, such as that seen in Mali earlier this year. The region has been affected considerably by fall-out from the conflicts and turmoil in North Africa, notably Libya. These issues raise security concerns both from a European perspective and from the point of view of human security in the region itself. With North and West Africa increasingly seen by the EU as the source of significant threats to its own security, it is likely that EU engagement on peace and security issues in the sub-region, in particular by its major military powers such as France, will not diminish over the next decade. Indeed, recent interventions in Mali and the Central African Republic highlight the willingness of France to engage militarily in African states, albeit often with international or EU endorsement and assistance so as to reduce the neo-colonial perception (and costs) of these interventions.

One particular security concern in West Africa is the growing presence and activity of jihadi Islamist terrorist and insurgent organizations in the region. The fall of the Gaddafi regime in Libya led to an increased flow of jihadist fighters, local Tuareg rebels and arms into the already volatile Sahel region (and northern Mali in particular). Mali has seen the most extreme level of Islamist activity, most notably when Jihadi fighters aided local Tuareg separatists returning from Libya in their conflict with the central Malian authorities. The most active groups in Mali include Al Qaeda in the Islamic Maghreb (AQIM), Movement for Unity and Jihad in West Africa (MUJAO), and the Salafist Tuareg group Ansar al'Dine. AQIM however plays a dual role as an organization in the region. Firstly, AQIM presents the most recent manifestation of a legacy of jihadism in Algeria (starting with the GIA and the Groupe Salafiste pour la Predication et le Conflit), where the group is locked in a conflict with the Algerian state. Secondly, AQIM operates as a form of umbrella organization in the Sahel loosely uniting and cooperating with a series of other groups, which have benefited from AQIM's experience and contacts. At the same time these newer groups emerging in the Sahel have reinvigorated AQIM in their conflict with the Algerian government (Brahimi, 2012). However, the split between the southern and northern manifestations of AQIM may reflect broader divisions within AQIM itself. MUJAO has an opaque

organizational structure and appears to be made up of both Tuareg from Mali and other fighters from across the region (Welsh, 2013). MUJAO claims to be an offshoot from AQIM but the group also asserts that it cooperates closely with AQIM (and the families of the leaderships are intermarried). Ansar al-Dine is by contrast a local Tuareg jihadist movement that cooperates loosely with AQIM and MUJAO in northern Mali. Al Jazeera Journalist May Ying Welsh (2013) (who has spent time in Northern Mali) likens the relationship between MUJAO and AQIM and Ansar al-Dine to that between the Taliban and Al Qaeda in Afghanistan. While the parallel is imperfect, it does draw attention to the different nature of these organizations (one local the others regional, perhaps global in outlook if not strategic orientation).

The Movement for Unity and Jihad has also been active in Niger. The presence of Nigerien troops in Northern Mali combined with the relatively soft nature of targets in Niger has precipitated a rise in Jihadist violence in the country. In May 2013 MUJAO conducted simultaneous suicide bombings against French nuclear mining interests and the Nigerien military. The close links with France and the use of Niger as a staging post for the Malian intervention make Niger a symbolic and strategic target of jihadist groups in the region.

In Nigeria, there are two main groups, Boko Haram and Ansaru. One of the most interesting questions surrounding these groups is the nature of their objectives. It is important to note however that these groups are not a homogeneous entity and differences exist between them. Some appear to have more local objectives, whilst others reputedly have an interest in spreading their jihad globally and cooperating with other groups internationally. Nonetheless, their strategic objectives are likely to remain local (to the region) with international terrorist attacks coordinated for legitimacy and tactical reasons. One should not discount as well the extent to which these groups' actions are also spurred by financial motivations, given their roles in hostage taking and the smuggling of illicit products.

Indeed, the nexus between criminal activity and terrorism is strong in West Africa. In the absence of centralized state control and well-enforced borders, trafficking of various products is commonplace across the Sahel, as indeed are kidnappings. Most of the trafficking in the Sahel is relatively innocuous. However, the presence of existing trafficking networks and regional states' limited capacity to impede them present significant opportunities for the movement of illicit material, in particular drugs, that can be of benefit to terrorist

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organizations. There are two main drug routes through the region: 1) the flow of hashish from Morocco into Mauritania and then on to Europe and the Middle East via Libya; and 2) Cocaine, transported to Guinea-Bissau, Guinea, Senegal and Mauritania by boat from Latin America and then shipped through West Africa to Europe and the Middle East both by land and plane (UK FCO, 2013).²⁷ Equally, drug consumption in the region is itself rising, further fueling inflows of narcotics.

This drug smuggling activity is of considerable benefit to terrorists operating in the region. However, as the UK Foreign Office has noted, drug smugglers and terrorists in West Africa are not necessarily the same people, but rather “useful to each other” (UK FCO, 2013).²⁸ MUJAO in Mali, for example, has close links with local drugs traffickers, and AQIM in Algeria is known to request transit fees from smugglers for safe passage.

However, an additional important criminal revenue source for terrorist groups is kidnappings. Groups such as AQIM are thought to be heavily involved in the recent spate of kidnappings across the Sahel. This kidnap-for-ransom activity is reputed to have earned the organization as much as \$40 million since 2003 (UK FCO, 2013). Indeed, kidnapping is likely to earn Sahelian jihadi groups more income overall than drug smuggling and has the benefit of providing groups with propaganda value (through the execution of kidnap victims) if ransoms are not paid. However, it should be noted that kidnap money is intermittent and riskier than relying on drug smuggling proceeds, which provide a relatively constant and low-risk form of income (UK FCO, 2013).²⁹

27 UK FCO (UK Foreign and Commonwealth Office) Research Analysis Paper, 2013. *Traffickers and Terrorists: drugs and violent jihad in Mali and the Wider Sahel*. [online] Available at: <https://www.gov.uk/government/publications/trafficking-and-terrorism-in-the-sahel>.

28 Ibid.

29 Ibid.

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Samuel Priso-Essawe

The Development and Relevance of Regional Law in West Africa

Introduction

Regional integration has developed in Africa mostly on the basis of former colonial areas. In the French part, the former French Equatorial Africa and French West Africa were transformed into the Central African Customs and Economic Union (UDEAC) on one side and the West African Economic Community (WAEC/CEAO) on the other side.¹ Following their independence, the new nation states took up the idea and accommodated it into the new political context. Regional integration was usually related to the building of African Unity, as most national Constitutions mentioned (Priso-Essawe). Thus, as African countries are celebrating 50 years of independence, this anniversary is also that of the regional integration process. It is important to mention that regional integration has been *completely* appropriated by the Continent. Firstly, regional organizations have been emancipated from the colonial framing; the Economic Community of West African States (ECOWAS) for example gathers French speaking, English speaking and Portuguese speaking Member States. Secondly, the building of regional integration has been rationalized across the whole continent; the Lagos Action Plan adopted by the (then) Organization of African Unity (OAU)² decided the creation of only five Regional Economic

1 The UDEAC was transformed in 1994 into the Central African Economic and Monetary Community (CEMAC), and the CEAO into the West African Economic and Monetary Union (WAEMU/UEMOA).

2 Organization of African Unity, 1981. *Lagos Plan of Action for the economic development of Africa. 1980-2000*, Organization of African Unity: Addis Ababa. Resolutions of the Twenty-Sixth Ordinary Session of the Council of Ministers, Addis Ababa, Ethiopia, 23 February – 1 March 1976 AHG/Res. 453 – 472 (XXVI), CM/Res.464[XXVI] Resolution on the Division of Africa into Five Regions.

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Communities. Some decades later, regional integration in West Africa has come a long way. And the path has been drawn both politically and on the basis of law. Integration objectives were supposed to be achieved through the application of regional legislation adopted by the institutions of the different organizations. This paper intends to *evaluate* to what extent law has helped in pursuing the goals fixed by the treaties.

Relevance and *Development* of law are two different and important questions. The analysis of the relevance of the legislation raises the question as to how *efficient* legislation has been in relation to the goals assigned to it. Development leads to the consideration of the continuing adaptation of legislation; it is an *on-going* process. Thus, analyzing the relevance and development of regional law in the frame of this presentation will necessarily be limited to a general view. Efficiency may be studied in a *mechanical* or an *instrumental* way, as well as from a *substantial* view. The latter requires the review of each legal act and its application to determine how far it helped to reach its objectives. The first is more adapted to the scale of this study; the question will be to determine to what extent the legal tools used by the organizations are adapted to the action planned. Rather than *efficiency*, we'll look at the *effectivity* of the legal instruments.

A final and important consideration concerns the place of the law, generally, in social relations. Law is neither the beginning, nor the goal. It is a tool, a means for the organization of the social relations. And, for that purpose, and at the (international) level, there is never a unique course of action; there are several patterns. But any pattern has specific consequences, specific implications, that are logical. This means that in the regional integration process, Member States, through the regional institutions, have different options in organizing and planning the process and their actions in the legal field; but any legal choice will raise the obligation of taking what has been decided into consideration, unless otherwise stated. The use of law in the framework of regional integration in West Africa may be considered at three levels.

The first is "*architectural*"; two main organizations tend to achieve the integration objectives in this region, namely ECOWAS and WAEMU.³ The first's legitimacy is founded on the Lagos Action Plan; the second may be considered as

3 Others exist, but their importance is still residual, particularly regarding their actions, or their size or ancientness. These are the Mano River Union (established 1973) and the Community of Sahel-Saharan States (established 1998).

historical and *pragmatic*. As there is a cross over of membership between the two, as well as a cross over of objectives, the question of the link between the two organizations is capital. The law has been used to shape this link between the regional organizations (I). The second level is the formal structure of the law, particularly the way conventional or unilateral acts are used (II). The third and final issue concerns the substantive dimension, in considering the way the content of different legislation is articulated (III).

Shaping the Framework: The Link between WAEMU and ECOWAS

Overlapping regional economic organizations are neither an African specificity, nor a neutral issue. The so-called “*Spaghetti-bowl*” effect is present in Africa as well as in Latin America.⁴ In Europe, this is less of a problem, as it is observed that the entry into European Union (EU), most of the time goes together with the withdrawal from other organizations.⁵ However, the EU itself (Rome and Lisbon Treaties) has always recognized the pre-existing agreement between Belgium, Luxembourg and the Netherlands: “The provisions of the Treaties shall not preclude the existence or completion of regional unions between Belgium and Luxembourg, or between Belgium, Luxembourg and the Netherlands, to the extent that the objectives of these regional unions are not attained by application of the Treaties.”⁶ This stipulation clearly qualifies the relationship between these different organizations: there is primacy of the EU Treaty, as long as it covers the aims of the smaller regional unions. The links are not so

4 See for example: Commission économique pour l’Afrique, 2004. *État de l’intégration régionale en Afrique*, Commission économique pour l’Afrique: Addis-Abeba, pp.41-45. MM. Placade, J.-P. and Soulage, D. 2005. *Libéraliser les échanges commerciaux: quels effets sur la croissance et le développement?*, Délégation du Sénat pour la planification. Rapport d’information n° 120, 7 December 2005, p.72. Estevadeordal, A., 2002. Regional Integration and Regional Cooperation in Latin America, *Latin America/Caribbean and Asia/Pacific Economics and Business Association Annual Meeting, ADB Institute and Inter-American Development Bank*, Singapore, February 2002.

5 Particularly, European Free Trade Agreement (EFTA) lost most of its Member States to the benefit of the EU (UK, Denmark, Portugal, Austria, Finland and Sweden...). In the same way, the Central European Free Trade Agreement (CEFTA) saw its founding States (Poland, Hungary, Slovakia, Czech Republic) and Slovenia withdrawing and joining the EU in 2004 (four other States left CEFTA for EU in 2007 and 2013).

6 Consolidated Version of the Treaty on the Functioning of the European Union art. 350, 2008 O.J. C 115/47, [hereinafter TFEU].

clear in West African regional integration treaties (A), and therefore it is the institutional practice that shapes them. (B)

The Treaty Provisions

Neither the ECOWAS Treaty nor WAEMU's mention each other specifically in their *substantial* provisions.⁷ Despite WAEMU Member States recognizing their commitment to the objectives of the *African Economic Community* and *ECOWAS*,⁸ this provision has no similar practical effect, as the provision of the EU Treaty mentioned above. The Treaty of ECOWAS allows Member States to conclude other economic agreements: "Member States may conclude agreements among themselves and with non-Member States (...) provided that economic agreements are not incompatible with the provisions of this Treaty."⁹ Therefore it is within the law that eight of the ECOWAS Member States signed the Treaty of Dakar establishing the WAEMU in 1994. Under this agreement, the Member States of the new organization made the clarification that "to achieve the [common market], the Union takes into consideration the experience of African *sub-regional* organizations to which its Member States participate"¹⁰. However, this provision does mainly concern the former WAEC. A comprehensive interpretation may nevertheless consider the broader nature of the provision and extend it to ECOWAS.

Although the issue is important, the primary laws of the two organizations do not clearly and specifically organize the relations between them, regarding the similarities of the aims, the juxtaposition of the actions, the juxtaposition

7 Obviously, the ECOWAS Treaty could not do this, being signed and revised before the creation of WAEMU.

8 *Traité de l'Union Economique et Monétaire Ouest-Africaine (UEMOA)*, adopted in Dakar on 10 January 1994 [hereinafter *WAEMU Treaty*], Preamble.

9 Revised Treaty of the Economic Community of West African States, concluded in Cotonou, 24 July 1993, published by the Executive Secretariat of ECOWAS [hereinafter *ECOWAS Revised Treaty*]. "In the context of realising its regional objectives, the Community may enter into co-operation agreements with other regional Communities." (Art. 79, §.1), "subject to prior approval by the Council upon the proposal of the Executive Secretary" (Art. 79, §. 2).

10 *WAEMU Treaty*, supra note 8, art. 100.

of membership, and thus possible clashes between rules.¹¹ In 1983, in its “Decision” on the “Liberalization Scheme,” the ECOWAS Authority called on “the Authorities of WAEC to merge the aims, aspirations and programs of WAEC 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 under the ECOWAS Treaty.”¹² That was probably the beginning of political will to rationalize the integration process in West Africa and which continued in the practice of the two organizations through secondary law and diplomacy.

Political Will and Political Practice

In their practice, ECOWAS and WAEMU have moved progressively together, in their mutual relations¹³ as well as in their relations with third organizations.

Relations between the Two Organizations

The institutions of the two organizations created different common structures to discuss common interest matters. A bilateral cooperation agreement was signed in May 2004, that established a Joint Technical Secretariat.¹⁴ Composed at a high level, the STC has widespread competence, it meets twice a year and coordinates the work and discussions of the technical levels.

The two organizations also have common legislative actions. The most important example is the Common External Tariff (CET). ECOWAS takes into consideration the experience of WAEMU, where the CET has been in effect

11 The fact that the ECOWAS Member States – among which the WAEMU’s – reaffirm that this organization “shall ultimately be the sole economic community in the region for the purpose of economic integration and the realization of the objectives of the African Economic Community” may provide a legal basis to solve this problem. This is less a legal issue but rather a political objective, which means that at a time that is not specified, the other integration organizations will be replaced by ECOWAS.

12 *ECOWAS Decision A/DEC.119/83 of May 20th, 1983 (article 1)*.

13 On this question, see the interesting synthesis of Rolland and Alpha. Rolland J.P. and Alpha A., 2011. *Analyse de la cohérence des politiques commerciales en Afrique de l’Ouest. Agence Française de Développement. Document de Travail Juin 2011/114*, pp.129-132.

14 Known under its French acronym STC (Secrétariat Technique Conjoint).

since 2000, and is trying to extend it to all its Member States through long and difficult negotiations¹⁵.

Relations with Third Organizations

The relations between ECOWAS and WAEMU and other international organizations are the domain in which coordination is able to be seen. Their mutual action vis-à-vis the EU and the World Trade Organization (WTO) are good case-studies.

The (still) on-going negotiations of the Economic Partnership Agreement (EPA) with the EU are conducted by ECOWAS and Mauritania together as one party to the agreement, namely West Africa. The presence of this latter state is an anachronism, as Mauritania withdrew from ECOWAS in 2000. However, it shows the influence of the EU in the discussions. Against this background it could be considered that “the EPAs had been thought as a means to strengthen African integration process”, but finally “appear[ed], reference made to the actual geographical configuration of the negotiations, like a factor of fragmentation of the integration initiative.” (Ibriga 2010, p.431) This problem is also relevant for some of the other regions like Central Africa.¹⁶ However, in West Africa, the role played by WAEMU within these negotiations shows that the EPA has been an occasion for the two West African organizations to strengthen their collaboration. WAEMU Member States, as members of ECOWAS, still have obligations under the Treaty of Dakar, which provides for a common trade policy and the necessity to negotiate trade agreements in accordance with the decision of the Council. It is therefore according to the treaty that the EPA is negotiated by ECOWAS and WAEMU together, which is all but a fragmentation of the integration process.

Within the WTO, WAEMU and ECOWAS are *ad hoc observers* at the Committee on Trade and Development, which is a meeting-by-meeting status.¹⁷ However, neither is member of the WTO as a whole. Nevertheless, the ECOWAS Treaty

15 See *World Trade Organization. RESTRICTED WT/TPR/S/266 from 25 May 2012 Trade Policy Review. Report by the Secretariat. Côte d'Ivoire, Guinea-Bissau and Togo*, pt.20.

16 The “Central African” party to the negotiations with the EU is a group composed of all the CEMAC Member States, and some of the CEEAC Member States, the other CEEAC States left without logical reason (Burundi and Angola for example).

17 The Central African Monetary and Economic Community, for example, is a permanent observer to that Committee.

(article 85) stipulates that “Member States undertake to formulate and adopts common positions within the Community on issues relating to international negotiations with third parties in order to promote and safeguard the interests of the region.” WAEMU, in the frame of its common trade policy, generally adopt “Directives” to coordinate and fix a common negotiation position, taking into consideration ECOWAS.¹⁸ On this stage, the relationship between ECOWAS and WAEMU is still weak, which is understandable as there is a considerable gap between the degree of integration of both organizations.¹⁹

Even if the efforts of the two organizations towards useful coordination are genuine, there is still a long way to go, especially in relation to determining respective areas of competence. Coordination should be at the highest level and objectives determined in the treaties. Another revision may be done, creating for example a common preamble which identifies the respective roles and place of ECOWAS and WAEMU. The text may go further than the EU recognition of Belgium, Luxembourg and the Netherlands; as it should determine what each organization does. This might lead to further coordination, as well as the recognition of the fact that each organization may contribute to the other’s development.

The harmonization between the two regional organizations has found its way into the treaties. The ECOWAS Treaty was revised to insert elements taken from WAEMU, especially in relation to the typology of Community acts.

18 See for example *Directive N°02/2005/CM/UEMOA Fait à Ouagadougou, le 16 septembre 2005 Relativ aux Positions Communes de Negociation des Etats Membres de l’UEMOA pour la Sixième Conférence Ministerielle de l’OMC à Hong Kong*. It stipulates in article 3 that WAEMU will take into consideration the necessity to safeguard the interest of ECOWAS, among other organizations.

19 Some interesting remarks on this point may be found for example in the Joint Reports of WAEMU Member States to the Trade Policy Review at the WTO: Cote d’Ivoire, Bissau Guinea and Togo (op. cit.). *World Trade Organization. RESTRICTED WT/TPR/S/266 from 7 October 2009 Trade Policy Review. Reports by Niger and Senegal. World Trade Organization. RESTRICTED WT/TPR/S/236R1 from 2010 Trade Policy Review. Report by the Secretariat. Benin, Burkina Faso, Mali*. WAEMU is in fact more advanced on several integration points, such as customs union or monetary policy.

The Formal Architecture of Regional Law

Integration by the rule of law is the model followed by ECOWAS as well as WAEMU. Their organs are vested with legislative power, and define the orientations and furthermore the rules that shall be applied for the aims to be achieved. The *tools* used are therefore relevant elements to measure the on-going process.

As international organizations, ECOWAS and WAEMU have been enabled to take decisions on behalf of the Member States, under different models which we will analyze hereafter. But the Member States retained the possibility to formally express their will in agreements that amend the treaty provisions. This can be done by revising the treaty, but also by adopting specific protocols afterwards to implement different aspects of the treaty.²⁰ These solutions have been used by both WAEMU and ECOWAS, each with different consequences on the implementation of treaty objectives. While ECOWAS mostly resorts to the agreement model, using protocols to implement the treaty, WAEMU's action is almost entirely based on unilateral acts of the Union's organs.

The Use of Protocols by ECOWAS

In August 2010, the Commission of ECOWAS held a meeting with the representatives of 10 Member States; it was the first and only²¹ occasion for the partners to examine together the situation of Community Law, through a review of the "Protocols" that had not been ratified by the Member States.²² The opportunity was important, and it highlights the fact that the formal aspect is linked to the substantial.

From the beginning of the Community until October 2012, ECOWAS Member States have adopted 54 "Protocols". Some of these "Protocols" just revise initial

20 The ECOWAS in article 1 treaty defines the Protocol as "an instrument of implementation of the treaty having the same legal force as the latter". ECOWAS Revised Treaty, *supra* note 10, art. 1.

21 The online ECOWAS sources do not mention any other meeting of this kind (ECOWAS. *Schedule of meetings*. [online] Available at: <http://events.ecowas.int/>. The schedule does not function optimally, and has to be checked both in French and English, to have a complete view). The information should then be confirmed.

22 Another report was elaborated by the ECOWAS Commission on the year 2012, but no joint meeting has taken place again since August 2010.

protocols; some others have a *simple* institutional objective.²³ Therefore, among the 54 “Protocols”, we may focus our analysis on “Protocols” that deal with matters directly related to the integration activity or legislation; all the “Protocols” related to a previous (revision or complement) will be taken as one. On this basis, 28 “Protocols” are of interest.²⁴ An important remark has to be made here; two periods must be distinguished in the analysis of ECOWAS “Protocols”, before and after the revision of the treaty in 1993. The treaty, as adopted in 1975, conferred to the Authority of Head of States and the Council the power to take “Decisions” and “Directives”. These acts were binding for the institutions of the Community.²⁵ However, nothing was indicated relating to the effects of the “Directives” and “Decisions” on the Member States. At this stage, we may consider that the “Protocols” were the principal or only means of decision-making in the Community. The revision of the treaty in 1993 brought new rules: the Authority of Head of States acted by “Decisions”, while the Council took “Regulations,” and both were binding for the Member States, enforceable 60 days after their publication in the official journal of the Community.²⁶ Thus, the difference is very important; if the use of “Protocols” has been maintained in many cooperation fields, there is no general clause prohibiting the Community institutions from taking decisions on matters covered by the “Protocols”. Of course in some cases, the “Protocols” are specifically referred to in the treaty. Article 38§2 stipulates for example that “the rules governing products originating from the Community shall be as contained in the relevant “Protocols” and “Decisions” of the Community”; article 59§1 states that “Citizens of the community shall have the right of entry, residence and establishment and Member States undertake to recognize these rights of Community citizens in their territories in accordance with the provisions of the “Protocols” relating thereto”²⁷. It is also true that the treaty generally still uses impersonal formulas like “Member States shall...”²⁸,

23 For example: creation or organization of a Community organ, provisions on the Community budget, etc.

24 Cf. table annexed („Annex“); the “Protocols” concerned are highlighted. The list of protocols chosen may be questionable; but we think the number will not change significantly, as we have also considered some of the institutional “Protocols” in the number (e.g. the “Protocols on the Court of Justice”, or the “Protocol on the West African Monetary Agency”) whose effects on the integration process are relevant.

25 ECOWAS Treaty (1975), *supra* note 9, art. e 5§3 and 6§3.

26 ECOWAS Revised Treaty, *supra* note 9, art. 9 §§.1, 4 and 6, art. 12 §§.1, 3 and 4.

27 Also, among other provisions, article 45 on the re-exportation of goods within the Community, or article 47 on the drawback. *Ibid.*, art. 45 and 47.

28 *Ibid.*, art. 36§1 and 46.

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“Member States undertake to...”²⁹, or “Member States agree to...”³⁰ However, Community organs are not always excluded. Concerning, for example, the rules on origin of products, article 38§2 mentions rules “contained in the relevant “Protocols” and “Decisions” of the Community” and, as there is no precision on the use of either “Protocols” or “Decisions”³¹, the interpretation leads us to understand that this matter may also be subject to a “Decision”. Therefore, the reference to “Protocols” in the treaty, and the use of this mode of legislative production when it is not compulsory, reveals the reticence of Member States to comply with the idea of a supranational organization.

The issue raised by the use of “Protocols” is their international agreement statute: their application is subject to acceptance by Member States.³² This generates uncertainty or, at least, important delays in the entry into force and implementation of the “Protocols”. As pointed out in the report of the Commission³³ the average is around 2 or 3 years, and some of the “Protocols” entered into force more than 4 years after their signature.³⁴ Most of the recent “Protocols” provisionally entered into force with their signature. The practice thus shows that the use of “Protocols” is not the most effective modality.

The last important revision of the treaty in 2006 led ECOWAS to reproduce the nomenclature of the WAEMU. This system of unilateral decisions by the Community, which do not require ratification by the States, is added to the existing system of “Protocols”. The quest for a solution for more efficient

29 Ibid., art. 36§3 and 55§1.

30 Ibid., art. 37§1.

31 Article 72, for example, related to the Community levy, stipulates clearly that the regime of the levy is determined by a protocol, and the level of taxation is fixed by the Community’s Council. Ibid., art. 72.

32 “This Treaty and the Protocols which shall form in an integral part thereof shall respectively enter into force, upon ratification by at least nine signatory States, in accordance with the constitutional procedures of each signatory State.” Ibid., art. 89.

33 Cf. table in „Annex“.

34 The “Protocol on the Court of Justice entered into force five years after being adopted (July 1991-November 1996), and the “Protocol on Democracy and Good Governance” six years (December 2001-February 2008).

secondary law remains, as the choice between the different unilateral acts has yet to be clarified.

The Use of Unilateral Acts

Since the beginning, the WAEMU Treaty has clarified the nomenclature of the acts the Union's institutions may take. The system presents four kinds of acts, most of them inspired by the EU categories:

- *Supplementary Acts*: taken by the Conference of Head of States, they complete the treaty to which they are annexed.
- *Regulations*, which have general application, and are binding on Member States in their entirety.
- *Directives*, binding upon Member States as to the result to be achieved.
- *Decisions*, binding upon the persons or States to which they're addressed.

The substantive use of these different legal acts is an important issue, considering their different *binding* characteristics. However, reference in the West African treaties to "Regulations" or "Directives" in particular, is not always clear. The revision of the ECOWAS Treaty in 2006 did not include any provision of this kind. In the WAEMU, the Council may sometimes act by "Regulation" or "Decision": that's the case concerning the implementation of free movement and residence,³⁵ right of establishment,³⁶ free movement of capital³⁷ and more unexpectedly, the harmonization of legislation.³⁸ In other cases however, the provisions are clear, the Council acts by "Regulations", such as: elimination of customs duties and charges having equivalent effect,³⁹ mutual recognition of technical and sanitary norms,⁴⁰ common trade policy,⁴¹ safeguard measures,⁴²

35 WAEMU Treaty, supra note 8, art. 91.

36 Ibid., art. 92§4.

37 Ibid., art. 98.

38 Ibid., art. 61.

39 Ibid., art. 78.

40 Ibid., art. 81.

41 Ibid., art. 82.

42 Ibid., art. 86.

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rules on competition.⁴³ In circumstances where there is a lack of precision, this may have consequences regarding implementation, as “Regulations” and “Directives” do not have the same legal effects for the Member States. In the EU, where there is no specification of the type of acts that shall be used by the Union’s organs, the treaty states that they will act “on a case-by-case basis, in compliance with the applicable procedures and with the principle of proportionality.”⁴⁴ No such solution is provided in the West African treaties.

Nevertheless, the WAEMU system is more efficient politically and in practice, because it minimizes the obstacles for the implementation of regional law by Member States or, at least, it gives local actors elements to rely upon for that purpose. The said local actors, individuals or corporations, are obviously those whose activity justifies the Community Law. Therefore, the relevance of regional law also raises the issue of what that law is for, and how it improves these objectives.

The Substantial Dimension

Talking about the substantial dimension of the regional law will not lead us here to examine the content of law produced by ECOWAS or WAEMU; this would be at least superficial. We will focus on the relationship between the different law systems involved in the integration process, namely national laws and regional law (A). This relationship is also based on the executing force the users find in the norms adopted within the integration process (B) and finally, the possibilities they are given to enforce these legal promises (C).

The Link between National Laws and Regional Law

The regional integration process, when based on the rule of law, often needs to make the legal provisions homogeneous within Member States. It is necessary for economic partners in the region to have the same rights and obligations wherever they operate in the Community. The integration process will then lead the regional organization to develop a legal *atmosphere*, by creating rules directly at the regional level and also by articulating national laws in different

43 Ibid., art. 89.

44 TFEU, supra note 8, art. 296.

ways (1). The regional rules, operating together with national laws, also need to be linked to them (2).

Convergence of National Laws

For the aims of regional integration to be fulfilled, the Member States have to make their national laws compatible with each other. This convergence, which is necessary for the effectiveness of regional objectives, may be achieved in different ways. The national laws can be brought from diversity to unity, but may also maintain their diversity within the framework of the regional rules, leaving each State the possibility to bring its legislation closer to that framework. This can be achieved by different concepts: achievement of uniformity, harmonization, coordination and approximation. The concepts differ in their meaning. Ricardo Monaco (1960, pp.61-74) who tried a classification some decades ago, noted that they all refer to systems that, with different intensity, will be applied between legislations that are different. For him, coordination is the basic stage, which tends to eliminate material or logical contrasts existing between different norms. The next level is harmonization, which leads to different norms producing similar effect in their application. Another stage is the approximation, which differs from the first two by its larger scope: approximating applies to legislative acts, “Regulations” and administrative acts and practices adopted by a Member State (Monaco 1960, pp.64-65). But even between scholars, the comprehension of these different concepts is not univocal. More recently, it has been stated that harmonization is a negative term which comprehensively means what is not unification: “it is more juridically conform to see in the harmonization a certain idea of approximation rather than a specific form of a policy aimed at approximating legal systems.”⁴⁵ As an echo of these divergences, these different words are often used as synonyms in treaties. The WAEMU Treaty, for example, sometimes presents uniformity as a part of harmonization,⁴⁶ sometimes seems to assimilate approximation and harmonization.⁴⁷ In other

45 See Porta, J., 2007. *La réalisation du droit communautaire. Essai sur le gouvernement juridique de la diversité*, Paris: LGDJ, p.330 : “(...) il est plus juridique de voir dans l'harmonization une certaine idée du rapprochement que véritablement une forme déterminée de politique de rapprochement des droits”.

46 The Union “Elle assure aussi l'harmonisation des comptabilités nationales et des données nécessaires à l'exercice de la surveillance multilatérale, en procédant en particulier à l'uniformisation du champ des opérations du secteur public et des tableaux des opérations financières de l'État.” WAEMU Treaty, supra note 9, art. 67§1 al.2.

47 Ibid., art. 60.

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cases, unification appears as the method; for example, the legislation on competition has been neither harmonized, nor subject to approximation, but has been effectively unified. The Council has adopted “Regulations” on competition law and the Court of Justice has stated that there is an exclusive competence of the Union, enforced by the fact that “Regulations” are directly applicable in Member States.⁴⁸ Within ECOWAS, the treaty only refers to harmonization, but in one case it stipulates that harmonization must lead to unification.⁴⁹ Finally, it appears that the intent behind these words is to ensure the *compatibility* of national legislation, in one way or another. Therefore, the former Judge of the European Community Court of Justice, Nicola Catalano, was correct when he wrote that interpretation must take into consideration the fact that the terms may have been used precisely as synonyms: “it seems more correct, instead of starting by an abstract definition based on pure legal logic, to examine, on the basis of the usual interpretation criteria, the signification that the authors of the text wanted to give to the words they used. The result of this analysis may reveal that choosing these words was a mistake, but it is anyway unwise to grant more importance to an abstract notion rather than to the authors’ effective will.” (Catalano 1961, pp.5-6) Thus, we will keep in mind that beyond the words, there are three concrete realities or situations:

- Member States may be requested to abandon their legislation and to apply common legislation; this implies *substitution* of national rules with common rules.
- Member States may have the obligation to bring their national norms into *conformity* with regional law; there’s no substitution, but the application of national laws of all the Member States must “*produce similar effect*,” defined by the common institutions.
- no conformity may be required from the Member States; keeping their competence on issuing national rules, they may just have to ensure their

48 WAEMU Court of Justice, 27th June 2000, Advisory Opinion on the Interpretation of articles 88, 89 and 90 of the treaty (related to competition law).

49 ECOWAS Revised Treaty, supra note 9, art. 3§2-i : “the harmonization of national investment codes leading to the adoption of a single Community investment code”.

compatibility with that of the other Member States, so as to facilitate regional objectives.

On this basis, it is useful to clarify these situations or at least their use in the treaty, as their impact on the respective roles of the regional organization and the Member States is not the same if one talks about substitution, conformity or compatibility. The regional community has an absolute pre-eminence in the case of substitution,⁵⁰ while it procures *assistance* only where compatibility is requested; the Member States still have a margin of appreciation of the situation where conformity is looked after. Therefore, the lack of precision may be a source of uncertainty in implementing regional objectives. From this point of view, the more precise the treaty's stipulations are, the easier the identification of the rights and obligations of the different actors will be. However, this is not the case in our context, especially within ECOWAS. The WAEMU Treaty, as we mentioned, uses different concepts but confusion may be clarified by identifying the type of unilateral act that is used by the Council.⁵¹ We should however mention that this is not always the case. For example, the WAEMU Council's "Regulation" *harmonizing* rules and procedures applicable to the weight of trucks within the Union precisely *unifies* the norms at a regional level and substitutes the regional rules to national regulations.⁵²

The impact of other organizations may also be important. WAEMU takes into consideration the role of other organizations which act in "approximating national laws." Although article 60 (2) does not mention any organization in particular,⁵³ the case of the Organization for the Harmonization of Business Law (OHADA) is evident as a reference.⁵⁴ All WAEMU Member States are members of that organization which, despite the name, ensure the uniformity of business

50 See the case of competition law within WAEMU (op. cit.).

51 See above, Part II.

52 UEMOA. *Conseil de Ministres. Règlement N°14/2005/CM/UEMOA Relatif à l'Harmonization des Normes et des Procédures du Contrôle du Gabarit, du Poids, et de la Charge à l'Essieu des Véhicules Lourds de Transport de Marchandises dans les Etats Membres de l'Union Économique et Monétaire Ouest Africaine (UEMOA)*, art. 17 and 18. [hereinafter *Règlement N°14/2005/CM/UEMOA*].

53 Article 60 al.2 stipulates that in its harmonization program, the Head of States Conference "tient compte des progrès réalisés en matière de rapprochement des législations des Etats de la région, dans le cadre d'organismes poursuivant les mêmes objectifs que l'Union." WAEMU Treaty, supra note 9, art. 60 al. 2.

54 The Organization for the Harmonization of Business Law in Africa was created by the Treaty of Port-Louis (Mauritius, October 17th 1993).

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law rather than just the harmonization of national laws. This is an important complement to the aim of regional integration as considered in the WAEMU and ECOWAS Treaties, although some ECOWAS Member States are not parties to the OHADA Treaty.

The regional integration process, as a legal system, also includes distinction between the rules adopted at the regional level and national norms.

Articulating Regional and National Laws

The homogeneity of regional law throughout the community economic area requires a defined relationship between regional law and national laws. This relationship will depend on the above classification between substitution, conformity and compatibility. It seems obvious that substitution and conformity imply the primacy of regional law, where compatibility supposes the complementarity of the two levels.

Primacy

Generally, regional integration organization treaties do not include a general clause of primacy; however, the Treaty establishing a Constitution for Europe stated in its article I-6 that “the Constitution and law adopted by the institutions of the Union in exercising competences conferred on it shall have primacy over the law of the Member States.”⁵⁵ Neither the ECOWAS nor WAEMU Treaties include such a clause. However, article 6 of WAEMU Treaty states that “Acts adopted by the Union’s organs for the implementation of the treaty and in accordance to the rules and procedures settled by it are applied in each Member State notwithstanding any inconsistent anterior or posterior national legislation.” This provision provides a legal basis for the primacy of regional law, but may also be interpreted as setting Union law as derogating national laws and not necessarily implying the cancellation of inconsistent national laws. It is then practice and case-law that brings precision concerning the hierarchy between regional and national rules. Inspired by European law, no doubt ECOWAS and WAEMU Courts will consider the issue of primacy in the same way.⁵⁶ The status

⁵⁵ The text never entered into force, as some of the Member States ratification processes failed (France and Netherlands).

⁵⁶ The two courts usually refer to the European Union Court of Justice case-law and methods.

of treaty provisions will also depend on the national Constitutions and the place and role of international treaties in national law.

Complementarity

To some extent, complementarity will appear as the general situation. The WAEMU Treaty includes a general clause by which the Union commits itself to giving Member States a margin of freedom in implementing the integration objectives: "In exercising the normative powers conferred to them by the treaty, and in accordance with the objectives of the treaty, the Union's organs will favor the adoption of minimal prescriptions and framework regulations that Member States will complete if necessary."⁵⁷ Through this article, there is a position of the Union favoring self-restraint⁵⁸ in exercising its legislative competence. Therefore, within the framework of the common objectives, Member States and Community institutions are partners in the implementation of the aims of the integration process, each to contribute in a complementary way to the realization of integration.

Finally, there is no particular pattern in the convergence of national law and regional rules, but the need for effectiveness; no matter how the relationships are organized between the two systems, the most important seems to be the clear identification of the role of different partners, and the existence of mechanisms that can ensure that each follows its obligations. The Court of justice is one of these institutions, but some of the rules provided for by the treaties are also relevant here, particularly the question of the executing force of commitments.

57 WAEMU Treaty, *supra* note 8, art. 5.

58 This may also be understood as a particular version of the EU's principle of subsidiarity.

The Executing Force of Conventional Commitments: Available Techniques and their Use

Preoccupation with the executing force of Member State commitments in regional integration is present in both the ECOWAS and WAEMU Treaties. One of the ways to deal with this problem is to look at the legal characteristics of the different acts taken by the regional institutions: ECOWAS Council's "Regulations", for example, "shall be binding (...) on Member States after their approval by the Authority"; the WAEMU Treaty goes further, stating that they "shall be directly applicable in all Member States." The treaties also provide that the community's legal acts should enter into force on a date they determine and following their publication in the regional official journal. These are important formal conditions for the community acts to produce effects. But furthermore, taking the content into consideration, two particular techniques are used in Community Law to assess the executing force of the norms adopted by the regional institutions. They are both related to time: some of the provisions provide for delayed-action objectives (1), while others determine a transitional period (2) before entry into force.

Delayed Coming into Effect

Two hypotheses concerning a delayed coming into effect of legal acts can be highlighted in West African Community Law. The first is that of the "Directives". "Directives" usually state a period after which it produces effect, subject to measures Member States have to take to implement it. If we refer to EU case-law, the fact that a Member State has taken no implementation measures does not deprive the "Directive" of any effect.⁵⁹ Therefore, once the deadline set by the "Directive" is over, the content of the text produces effect, subject to its capacity to be directly applicable. Neither the Court of the WAEMU, nor ECOWAS have had occasion to apply this principle, but we find it a logical conclusion considering the provisions and the context of the treaties.

Trickier is the situation where the treaty fixes an objective with a deadline for its application. Several treaty provisions provide this kind of rule. In the ECOWAS Treaty, article 54 states that "Member States undertake to achieve the status of an economic union within a maximum period of fifteen (15) years following

⁵⁹ Yvonne van Duyn v Home Office, Case 41/74 [1974] E.C.R. 133; Ursula Becker v. Finanzamt Münster-Innenstadt, Case 8/81, [1982] E.C.R. 53.

the commencement of the regional trade liberalization scheme, adopted by the Authority through its Decision A/DEC.119/ 83 of 20 May, 1983 and launched on 1st January, 1990.” That is to say, since 1st January 2005, ECOWAS “is” an economic union (...)⁶⁰! On this basis, article 35 stipulates that “[t]here shall be progressively established in the course of a period of ten (10) years effective from 1st January, 1990 as stipulated in Article 54, a Customs Union among the Member States”. Furthermore (article 40) “Member States shall eliminate all effective internal taxes or other internal charges that are made for the protection of domestic goods not later than four (4) years after the commencement of the trade liberalization scheme referred to in Article 54 of this Treaty”, that is to say no later than the end of 1994. In the same way, article 41 states that “[e]xcept as may be provided for or permitted by this Treaty, Member States undertake to relax gradually and to remove over a maximum period of four (4) years after the launching of the trade liberalization scheme referred to in Article 54, all the then existing quota, quantitative or like restrictions or prohibitions which apply to the import into that State of goods originating in the other Member States and thereafter refrain from imposing any further restrictions or prohibitions.”

Article 88 of the WAEMU Treaty stipulates that “one year after the entry into force of the treaty”, attempts to hamper free competition (concerted practices, public aids, agreements between undertakings, abuse of dominant position, decision by association of undertakings) “are automatically forbidden.” Concerning the Union’s own resources, provided by indirect taxes including value added tax, the institutions had to adopt a two year delay in the modalities of the VAT, the transitional system could not exceed three years during which the financing of the Union was to be made by the Central and the Development Banks.

The question, from a theoretical view, is therefore that of the value of such delays and the impact of the deadline in the implementation of the objective. The principle may be summarized as follow: after the deadline, either the rules become applicable (whatever the action of the institutions or the Member States have been), or the lack of implementation implies the impossibility of application; the beneficiaries of the expected rules may therefore have a basis for claiming.

60 Furthermore, the Authority had the possibility to accelerate the process. Article 55§2 provides that “[t]he Authority may at any time, on the recommendation of the Council, decide that any stage of the integration process shall be implemented more rapidly than otherwise provided for in this Treaty”. ECOWAS Revised Treaty, *supra* note 9, art. 55§2. *Ibid.*, art. 41§2.

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The case of WAEMU's financing was not too difficult; the end of the transitional period within which the resources of the Union were provided for by regional banking institutions (the Central Bank and the Development Bank) *just* allowed these institutions to stop financing the budget of WAEMU. In practice, the Central and Development Banks contributed to the budget of the Union until 1997⁶¹ and the "Directive" related to the Valued-added tax (VAT) was adopted in 1998, which was within the period defined by the treaty.⁶²

Substantial deadlines raise more difficulties. In fact, the question is what can beneficiaries of a rule do when the deadline expires? The WAEMU's competition law "Regulations" have been adopted in 2002,⁶³ eight years after the treaty entered into force.⁶⁴ In ECOWAS, a Customs Union is supposed to have been effective since the 1st of January 2000; all the obstacles to the free movement of goods and persons were supposed to be eliminated at that date, and a Common External Tariff in force.⁶⁵ This is not yet effective within the Community: the Council adopted on the 30th of September 2013 a draft "Regulation" to be confirmed by the Authority in October 2013, and "suggesting"

61 According to the WAEMU Commission. Commission de l'UEMOA. *Les Activités jusqu'en 2000*. [online] Available at: <http://uemoa.99k.org/commission/president/Activite2000.htm>.

62 UEMOA. Conseil de Ministres. *Directive N°02/2009/CM/UEMOA Portant Modification de la Directive N°02/98/CM/UEMOA du 22 décembre 1998 Portant Harmonization des Legislations des Etats Membres en Matière de Taxe sur la Valeur Ajoutée*.

63 UEMOA. Conseil de Ministres. *Règlement N°2/2002/CM/UEMOA Relative à la coopération entre la Commission et les Structures Nationales de Concurrence des États Membres pour l'Application des Articles 88, 89 et 90 du Traité de l'UEMOA*. UEMOA. Conseil de Ministres. *Règlement N°3/2002/CM/UEMOA Relatif aux Procédures Applicables aux Ententes et Abus de Position Dominante à l'Intérieur de l'Union Economique et Monétaire Ouest Africaine*. UEMOA. Conseil de Ministres. *Règlement N°4/2002/CM/UEMOA Relatif aux aides d'Etat à l'Intérieur de l'Union Économique et Monétaire Ouest Africaine et aux Modalités d'Application de l'Article 88 (c) du Traité*. See, among others, Coulibaly, A. S., 2003. Le droit de la concurrence de l'UEMOA. *Revue Burkinabé de Droit*, N° 43 et 44; Priso-Essawe, S., 2004. L'émergence d'un droit communautaire africain de la concurrence: double variation sur une partition européenne. *Revue Internationale de droit comparé*, Vol. 56(2), pp.329-354.

64 In Central Africa, the two "Regulations" were adopted by the Council in 1999, respectively 16 and 18 months after the treaty entered into force (although the deadline fixed by article 23 of the treaty was one year...).

65 Article 35 al.2 of ECOWAS Treaty stipulates that: "Quota, quantitative or like restrictions or prohibitions and administrative obstacles to trade among the Member States shall also be removed. Furthermore, a common external tariff in respect of all goods imported into the Member States from third countries shall be established and maintained." ECOWAS Revised Treaty, supra note 10, art. 35 al. 2.

that the Common External Tariff become operational on 1st January 2015.⁶⁶ That is fifteen years after the deadline fixed by the treaty! What can a foreign corporation (for example), whose exports to ECOWAS are taxed differently in the Member States, do on the basis of this deadline?

The answer depends obviously on the details of each case. In the case of the implementation of the Common External Tariff and in the absence of common decision, no claim can be raised asking for uniform taxation at each Member State border; the customs services would like to know the category and the applicable rates. On the other hand, concerning the interdiction of customs duties or other equivalent charges, a person or a corporation can refuse to pay any charge requested to him as custom fares, as soon as the deadline is over; the same principle would have been applied in the case of the WAEMU competition law. Otherwise, the provisions of the treaty are of no interest. This position is easy to defend, as no intervention is needed for the national administration or even regional institutions for the rule to be effective. However, the question remains of how community citizens or companies will manage to ensure that their rights are respected and will be examined further.

A main characteristic of delayed-action objectives is that before the deadline, the prescriptions are not applicable, unless the authorities decide otherwise. The theory of a transitional period is different.

The Transitional Periods

Within a transitional period, the text is in force, but it only allows Member States to take some legal or administrative measures to enforce Community Law. While within the deadline of implementation of “Directives”, Member States have “the choice of form and methods”, “Directives” are not effective as long as Member States have not taken these implementation measures, and/or as long as the delay is not over. Different is the situation where the text is not a “Directive”, the question being therefore that of the influence of this delay in the application of the regional act.

Let us discuss for example the WAEMU’s “Regulation” on truck weighing. It stipulates that Member States have two years, *after the entry into force of the*

66 ECOWAS Press release n° 281/2013 of 30th September 2013 on the Implementation of ECOWAS Common External Tariff to start on 1st January 2015.

regulation,⁶⁷ during which they shall prepare their road control materials and areas.⁶⁸ But this preparation is clearly not a condition for the “Regulation” to be either in force or applicable; the “Regulation’s” binding effect is not conditioned by the forthcoming national measures. Therefore, a haulier whose trucks are not in conformity with the Union’s “Regulation” won’t be admissible in contesting any penalty or fine decided against him, on the basis of the on-going transitional period. On the other hand, what would be the answer to a haulier, whose trucks are in conformity and claims a penalty for his “outlaw” competitor? The issue is all the more complicated as the said “Regulation” provides for a moratorium in some other matters.⁶⁹ This is evidence of the fact that the regime of a transitional period is different from that of moratorium and does not suspend the application of the “Regulation”. The problem concerning transitional periods will remain, as long as there is no mechanism to control and enforce application and the respect of the principles settled by Community Law.

The Implementation of Rights

This aspect raises two obstacles to the implementation and development of regional law in West Africa.

The first is the coherence of Community Law vis-à-vis national law and vis-à-vis the objectives of the community. The report of the ECOWAS Commission⁷⁰ mentions for example that, community rules are sometimes less advanced than national laws, as far as regional objectives are concerned; an example is the “resident card,” established by the “Protocol” of 29th May 1979⁷¹ and maintained since then, while in the meantime some of the Member States have abolished it in their legal system.

67 *Règlement N°14/2005/CM/UEMOA* was adopted on 16th December 2005, and entered into force at its signature date (article 20).

68 *Ibid.*, art 18.

69 A twelve-month moratorium concerning the fines that may be applied by the Member States is provided for by article 19 of the regulation. *Ibid.*, art. 19.

70 ECOWAS Commission, 2010. *Final Report. Annual consultative meeting on sensitisation of Member States on the implementation and application of ECOWAS conventions, protocols and supplementary acts*. Abuja, 25th August 2010, Abuja: ECOWAS.

71 The “Protocol” was amended in July 1986 and May 1990.

The second question concerns the implication of national actors (public and private) in the defense of their rights, as well as the instruments awarded to them for this purpose. ECOWAS and WAEMU have established Courts of Justice, to control the application of Community Law by regional institutions and by Member States. The organization of these Courts is well settled and quite similar to what is done in other integration organizations. This may well be considered as a great development in the West African integration process. However, the reality is, as usual, more complex, as the efficiency of judicial control depends on many factors related to the Courts functioning and to the national context in which individuals and corporations act.

The regional Courts have jurisdiction to ensure the compliance of Member States with the rules adopted by the regional organization; they are thus entitled to state on “the failure by Member States to honor their obligation under the treaty, “Conventions” and “Protocols”, “Regulations”, “Directives” or “Decisions” of ECOWAS.”⁷² The Courts also have the competence to control the legality of the different acts adopted by the regional institutions, which might violate the rights of individuals or corporations, as well as to interpret Community Law provisions. In a *classical* way, there is also a cooperation process between regional Courts and national jurisdictions; the latter may refer matters concerning the interpretation of Community Law to the regional Courts for interpretation.⁷³ Access to the Courts is widely granted to Member States, Community organs, and individuals or corporations whose situation is affected by regional law. From this point of view, there is no particular comment to make, as the system has been drawn in a classical way.

72 ECOWAS *Supplementary Protocol A/SP.1/01/05 Amending the Preamble and Articles 1, 2, 9 and 30 of Protocol A/P.1/7/91 Relating to the Community Court of Justice and Article 4 Paragraph 1 of the English Version of the Said Protocol*, art. 9 §.1.c. *UEMOA Protocole Additonnel N°1 relatif aux Organes de contrôle de l'UEMOA*, art. 5 and 6.

73 Article 10 f of the ECOWAS revised Supplementary Protocol, op. cit. Articles 12 to 14 of the *Protocole Additonnel*, op. cit. This kind of procedure is inspired from the EU, and is also established, for example, in the Central African Monetary and Economic Community, or in the Andean Community. For a general overview, see Thornton, J., 2012. Courts and Tribunals established by Regional Economic Integration Agreement. In: Giorgetti, Ch. ed., 2012. *The Rules, Practice and Jurisprudence of International Courts and Tribunals*. The Hague: Martinus Nijhoff, pp.487-511. Concerning the intense activity in this field of the Andean Community Tribunal, see Helfer L. and Alter, K., 2009. The Andean Tribunal of Justice and its interlocutors: understanding preliminary reference patterns in the Andean Community. *N.Y.U. Journal of International Law and Politics*, Vol. 41, pp.871-930.

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The only important innovation is the competence of the ECOWAS Court over the protection of fundamental rights, even when they are not related to the regional integration process. Following the “Protocol on democracy and good governance”, Member States extended the competence of the Court to this field, complementing the role of the African Court of Human Rights, whose jurisdiction and case-law has primacy. Paradoxically, this innovation highlights the difficulties of the judicial activity regarding the integration process itself, as the case-law of the ECOWAS Court is more important in the field of human rights than concerning the substantial implementation of economic regional law.

Difficulties arise in the observation of the activity of the Courts. They have an increasing but still low level of activity regarding regional commercial law. Although some of the WAEMU Court’s decision (or advisory opinions) have had an important impact on the implementation of Community Law and integration,⁷⁴ the Court’s docket still offers mostly cases concerning *internal* affairs, between the Union or the Community and their employees.⁷⁵

This shows that the efficiency of judicial control also depends on the interest of the persons concerned (individuals or corporations) and the confidence they have in the role of the judicial institution. Regional justice is more often seen as a justice for States coupled with the perception that any decision of the regional courts will not be applied in the national legal order. Therefore, the regional system cannot be analyzed without connection to the way judicial decisions are generally followed (or not) within Member States. Thus, the question is widely that of the role of the law in the Member States and the confidence the different actors have in the judicial system to enforce their rights. What would have been European integration without the famous decisions of the Court of Justice, in the *Van Gend en Loos* and *Costa vs. ENEL* cases at the beginning of the 1960’s and the European integration process? (Lecourt 1991, pp.349-361; European Court of Justice 2013) There was a *confluence* of three elements:

74 For example the advisory opinion on competition law mentioned above, which formulated the principle of the Union’s exclusive competence on the adoption and survey of rule. See also the decision (related to competition law) on the request of the Senegalese Conseil d’État. *Cour de Justice de l’UEMOA. Arrêt n° 01/05 du 12 janvier 2005 : la Compagnie Air France C/ le Syndicat des Agents de Voyage et de Tourisme du Sénégal (recours préjudiciel)*.

75 It is however important to notice that some of these affairs have given the Court the opportunity to (re)affirm important principles of the regional legal order (e.g. The statute of the supplementary acts regarding the legality. *Cour de Justice de l’UEMOA. Arrêt n° 01/06 du 05 avril 2006, relatif à l’affaire Eugène YAI à la Conférence des Chefs d’Etat et de Gouvernement et la Commission de l’UEMOA*).

the determination of a corporation to protect rights it had from an international agreement, the commitment of judges to apply the law in its pure logic and justification, and the compliance of a State with the rule of law, in general. The development of European integration law also benefited from the activism of specialized lawyers.⁷⁶ From this model, the harmonization of business law in Africa since the early '90s is supported by an important movement of the *civil society* through a network of national OHADA Clubs, as well as a well-built website,⁷⁷ which has more detailed and better information and data than the official OHADA website.⁷⁸ Maybe these are, finally, the key-elements for the West African integration law to grow.

76 It has been argued that the CJEC's activity development benefited from the action of the Euro-law associations, "formally constituted member organizations that planned activities related to European law". K. J. Alter, 2008. Jurist Advocacy Movements in Europe and the Andes: How Lawyers Help Promote International Legal Integration, *Center on Law and Globalization Research Paper N° 08-05*, esp. pp.4-11, as well as the sources she refers to.

77 *Le portail du Droit des Affaires en Afrique*. [online] Available at: www.ohada.com.

78 *Organization pour l'Harmonization en Afrique du Droit des Affaires*. [online] Available at: www.ohada.org.

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Annex

ECOWAS: Protocols and Conventions [up to 3rd October 2012]

	Protocols and Conventions	Venue and Date of Signature	Entry into force
			5 June
1.	General Convention on Privileges and Immunities of ECOWAS	Lagos, 22 April 1978	1980
2.	Protocol on Non-Aggression	Lagos, 22 April 1978	4 Aug 1982
3.	Protocol A/P1/5/79 relating to free movement of persons, residence and establishment	Dakar, 29 May 1979	8 April 1980
4.	Supplementary Protocol A/SP1/5/79 amending the French text of the Protocol relating to the definition of the concept of products originating from Member States (Article 1)	Dakar, 29 May 1979	6 April 1982
5.	Supplementary Protocol A/SP2/5/79 amending the Protocol relating to the definition of the concept of Products originating from Member States (Article 2)	Dakar, 29 May 1979	30 July 1984
6.	Supplementary Protocol A/SP3/5/80 amending Article 8 of the French text of the Protocol relating to the definition of concept of originating products from Member States (Treatment of Mixtures)	Lomé 28 May 1980	29 Jun 1985
7.	Supplementary Protocol A/SP1/5/81 amending Article 2 of the Protocol relating to the definition of the concept of originating products of the Member States of ECOWAS	Freetown, 29 May 1981	18 Jun 1986
8.	Additional Protocol A/SP2/5/81 amending Article 4 of the ECOWAS Treaty relating to the Institutions of the Community	Freetown, 29 May 1981	24 Jun 1985
9.	Protocol A/SP3/5/81 relating to Mutual Assistance on Defense.	Freetown, 29 May 1981	30 Sep 1986
10.	Protocol A/P1/5/82 on the establishment of an ECOWAS Brown Card relating to Motor Vehicle Third Party Liability Insurance	Cotonou, 29 May 1982	10 July 1984

11.	Convention A/P2/5/82 regulating Inter-State road transportation between ECOWAS Member States	Cotonou, 29 May 1982	17 July 1984
12.	Protocol A/P3/5/82 relating to the definition of Community citizen	Cotonou, 29 May 1982	10 July 1984
14.	Convention A/P5/5/82 on Mutual administrative assistance in Custom matters	Cotonou, 29 May 1982	2 April 1985
15.	Protocol A/P1/11/84 relating to Community enterprises	Lomé, 23 November 1984	12 May 1989
16.	Supplementary Protocol A/SP1/11/84 amending Article 9, Paragraph 1 (c) of the ECOWAS Treaty.	Lomé, 23 November 1984	10 July 1989
17.	Convention A/P1/7/85 relating to the temporary importation of passenger vehicles into Member States	Lomé, 6 July 1985	13 July 1989
18.	SUPPLEMENTARY PROTOCOL A/SP.1/7/85 ON THE CODE OF CONDUCT FOR THE IMPLEMENTATION OF THE PROTOCOL ON FREE MOVEMENT OF PERSONS, THE RIGHT OF RESIDENCE AND ESTABLISHMENT	Lomé, 6 July 1985	28 June 1989
19.	Supplementary Protocol A/SP1/7/86 on the second phase (right of residence) of the Protocol on free movement of persons the right of residence and establishment. t	Abuja, 1er July 1986	12 May 1989
20.	A/P1/7/87 Cultural Framework Agreement for ECOWAS.	Abuja, 9 July 1987	25 Apr 1990
21.	Protocol A/P2/7/87 on the establishment of a West African Health Organization.	Abuja, 9 July 1988	16 Aug 1989
22.	Supplementary Protocol A/SP1/6/88 amending Articles 4 and 9 of the ECOWAS Treaty relating to the Institutions of the Community and its technical and specialized Commissions respectively	Lomé, 25 June 1988	25 May 1990
23.	Supplementary Protocol A/SP2/6/88 amending Article 53 of the ECOWAS Treaty on the budget of the Community	Lomé, 25 June 1988	23 Apr 1990
24.	Supplementary Protocol A/SP1/6/89 amending and complementing the provisions of Article 7 of the Protocol on Free Movement right of residence and establishment	Ouagadougou, 30 June 1989	19 May 1992

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25.	Supplementary Convention A/SP1/5/90 establishing a Community Guarantee Mechanism for inter-state road transit of goods	Banjul, 29 May 1990	19 May 1992
26.	Supplementary Protocol A/SP2/5/ 90 on the implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment	Banjul, 29 May 1990	19 May 1992
27.	Protocol A/P1/7/91 on the Community Court of Justice	Abuja, 6 July 1991	5 Nov 1996
28.	Convention A/P1/7/92 on Mutual Assistance in Criminal Matters	Dakar, 29 July 1992	28 Oct 1998
29.	Protocol A/P1/7/93 relating to the West African Monetary Agency	Cotonou, 24 July 1993	1 Aug 1995
30.	Supplementary Protocol A/SP1/7/93 amending Article 1 of the Protocol Relating to contributions by Member States to the budget of the Economic Community of West African States	Cotonou, 24 July 1993	6 Aug 1997
31.	Convention A/P1/8/94 on Extradition	Abuja, 6 Aug 1994	8 Dec 2005
			14 Mar
32.	Protocol A/P2/8/94 relating to the Community Parliament.	Abuja, 6 Aug 1994	2000
33.	Protocol A/P1/7/96 on Conditions Governing the Application of the Community Levy	Abuja, 27 July 1996	4 Jan 2000
34.	Protocol A/P1/12/01 amending Articles 1, 3, 6 and 21 of the ECOWAS Revised Treaty	Dakar, 21 December 2001	10 Aug 2004
35.	Protocol A/P2/12/01 relating to the ECOWAS Bank for Investment and Development (EBID)	Dakar, 21 December 2001	10 Aug 2004
36.	Protocol A/SP1/12/01 on Democracy and Good Governance supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security	Dakar, 21 December 2001	20 Feb 2008
37.	Protocol A/P4/01/03 on Energy		
38.	ECOWAS Convention on small arms and light weapons, their ammunition and other related materials.	Abuja, 14 June 2006	5 Aug 2009

39.	Protocol A/P1/12/99 relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security	Lomé, 10 December 1999	10 Dec 1999
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40. Protocol A/P1/12/00 amending Articles 12 and 13 of the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security Bamako, 16 December 2000

41.	Protocol A/P1/01/03 relating to the Definition of the Concept of Products Originating from Member States of the Economic Community of West African States (ECOWAS)	Dakar, 31 Jan 2003	31 Jan 2003 (provisoire)
42.	Protocol A/P2/01/03 relating to the Application of Compensation Procedures for Loss of Revenue Incurred by ECOWAS Member States As A Result of the Trade Liberalization Scheme	Dakar, 31 January 2003	31 Jan 2003 (provisoire)
43.	Protocol A/P3/1/03 on Education and Training	31 January 2003	31 Jan 2003 (provisoire)
44.	General Convention A/C.1/01.03 on the recognition and equivalence of Degrees, Diplomas, Certificates and other Qualification in ECOWAS Member States	31 January 2003	31 January 2003 (provisoire)

45. Supplementary Protocol A/SP.1/01/05 amending the preamble and Article 1, 2, 9, 22 and 30 of Protocol A/P.1/7/91 relating to the Community Court of Justice and Article 4 Paragraph 1 of the English version of the said Protocol 19 January 2005 janvier 2005 (provisoire)
46. Supplementary Protocol A/SP.1/01/06 amending Articles VI-C, VI-L, IX-8, X1-2 and XII of Protocol A/P2/7/87 on the Establishment of the West African Health Organization (WAHO) 14 Jun 2006 (provisoire)
47. Supplementary Protocol A/SP.1/06/06 amending the Revised ECOWAS Treaty 14 June 2006 14 Jun 2006 (provisoire)
48. Supplementary Protocol A/SP.2/06/06 amending Article 3 Paragraphs 1, 2 and 4, Article 4 Paragraphs 1, 3 and 7 and Article 7, Paragraph 3 of the Protocol on the Community Court of Justice 14 June 2006 14 Jun 2006 (provisoire).

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49. Supplementary Protocol A/SP.3/06/06 amending Protocol A/
P2/8/94 relating to the Community Parliament 14 June 2006 (provisoire) 14 Jun 2006

50.	Protocol A/P2/7/96 establishing Value Added Tax in ECOWAS Member States	Abuja, 27 July 1996	
51.	Protocol A/P3/12/01 on the Fight Against Corruption	Dakar, 21 December 2001	

52. Supplementary Protocol A/SP.2/12/01 amending the Protocol on the establishment of an ECOWAS Brown Card relating to motor vehicle third party liability insurance Dakar, 21 December 2001

53.	Agreement on Cooperation in Criminal Matters Between the Police of Member States of ECOWAS		
54.	Protocol A/P.1/01/06 Establishing an ECOWAS Criminal Intelligence And Investigation Bureau	Niamey, 12 January 2006	

Source: ECOWAS Commission, Annual Report - Annex, 2012.

Gervasio Semedo

The Record of Trade Liberalization in the Framework of West African Regional Integration processes

Introduction

The Economic Community of West African States (ECOWAS), officially established in 1975 and currently composed of fifteen countries, has been engaged to coordinate and promote trade, cooperation and sustainable development throughout its membership, despite their structural heterogeneity.

As with other regional integration projects the goals of ECOWAS cooperation are to promote trade between member countries and to become a fully integrated space within the framework of an economic and monetary union. According to Balassa (1962)¹, this ultimate goal is to be reached gradually, starting with Regional Trade Agreements (RTAs), more specifically Preferential Trade Agreements (PTAs). The second stage is free trade and customs unions that involve reciprocal tariff reductions. These trade liberalization arrangements, limited to only a few countries, are situated between international free trade and protectionism vis-à-vis non-members, as members countries adopt a Common External Tariff (CET). A common market is the third level. At this stage, the customs union's member countries liberalize the circulation of factors of production within the zone. Workers and businesses can freely move to any country within the common market. The economic union is the stage four: countries that belong to the common market take this step by unifying their economic policies in the areas of competition, currency, agriculture, taxation, etc. For instance, in the agricultural sector, member countries regulate

1 See „Table 1: Graduation in REI.“

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production and the market, and harmonize prices. The monetary union is step five. To foster trade between the regional organization's member countries, some regional groups adopt a common currency. This has the advantage of lowering the cost of trade by eliminating currency conversion expenses. Finally, the last step is widespread integration. The economic union's member countries decide to fuse politically and set up a central government for the union.

ECOWAS has not followed this linear approach. While deciding about the creation of a customs union, the members of this regional economic integration (REI) organization aim to achieve nominal convergence and to have a single currency by 2020.

For Viner (1950), a pioneer of economic integration analysis, REI at customs union level has two effects: a new trade effect where trade between member countries of the customs union will intensify and a trade diversion effect where imports from the union will increase relatively to the rest of the world.

This static point doesn't take into account economic scales, innovation and technological progress, as it focuses only on trade level changes and welfare effects created by trade. According to the new view (Pelkmans, 1990), regionalism must create a space of active cooperation between member countries, and in dynamics normally REI must meet development objectives. Therefore, in many developing countries (DCs), REI has become a pillar of promoting economic growth and reducing poverty. REI can increase factor productivity and competitiveness by attracting new investors and technology transfer.

The aim of this paper is to demonstrate the failures of real regional integration in West Africa. To do so, we have to keep in mind that ECOWAS was initially created to establish a customs union area among its members. Two questions remain: Why the pursuit for integration and what is the direction of causation between tariffs and trade? The first logical answer to the first question leads to trade liberalization in order to improve social welfare through diminishing costs of factors and products. However, this is not obvious when the level of trade is initially low. There are other reasons for liberalizing trade: growth promotion of economies of scales and bulk purchases; nominal and real convergence through targeted objectives (inflation, deficit and debt, etc.) and through improving comparative advantages in order to face the challenges of globalization. The second dimension of the argument is that liberalization leads

to low tariffs and can affect intra-regional trade and the rate of growth of each member of a customs union positively and consequently. In this case, trade liberalization mainly affects business activities in a specific area.

In fact, ECOWAS is only committed to integration in principle (Acclassato, 2013). However over time, the organization has shifted from economic purposes to the political ones. In fact, all these countries are different, in regard to their colonial history, natural resources endowments, comparative advantages, as well as institutional and administrative systems and political rules. However, the most important distortion is that nowadays they are not able to respect the rules that they established according to their declaration to liberalize internal trade and to promote regional firms.

In this paper, I will avoid analyzing the causation between diminishing tariffs within the CET framework and the level of trade in ECOWAS; as this history is too recent. In addition, the purpose of this paper is not an econometric approach, based on the gravity model explaining the level of bilateral trade and its determinants, as this is a practice best observed among economists. Rather, I would like to open discussions to non-economists and to give recommendations addressed to politicians and bureaucrats. Nevertheless, some useful results of econometric models are used to give insights.

Section 2 of this article discusses the process of building a customs union between ECOWAS member countries with the introduction of CET in a regional competition framework.

Section 3 explains why intra-regional trade in West Africa only increased slowly despite potential resources in some areas like agricultural products. Using the example of the supply and demand of rice, I identify obstacles to free trade among countries. Looking at the low level of intra-regional trade and despite the fact that trade liberalization in the years to come cannot affect business activities immediately, I think that there are other good reasons to liberalize: to promote growth through economies of scale and bulk purchases; to achieve convergence and break the magnitude of heterogeneity between West African countries, and to deal with the impact of globalization.

In fact, if these countries do their homework well, there will be no contradictions with multilateral trade arrangements; despite the fact that World Trade Organization (WTO) rule of most favored nation and the rule of the same treatment of goods and services varies from REI. An open regional economy is

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really a basis for successful future free trade. However, in this paper, I do not discuss openness with the rest of the world.

Section 4 is devoted to conclusions and recommendations. Firstly, I summarize the record of trade liberalization in the framework of West African Regional Integration (WARI). Secondly, in order to pursue the objectives of free trade in the region and to build comparative advantages and competitive means to firms, some economic activities could be temporarily protected with subsidies and taxes, as I agree with the theory of “infant industry protection”.

ECOWAS Negotiating Phase for a CET and Regional Competition Framework

The Road to CET

At the end of 2006, the ECOWAS Executive Secretariat reached an agreement on the implementation of a CET. The negotiations on the final rates of duty for the ECOWAS Common External Tariff are structured into 5 negotiating areas: a) changes related to agricultural policy (ECOWAP); b) environmental considerations; c) health considerations; d) products which potentially need extra protection via new accompanying measures and e) products where Member States need to broker an acceptable agreement.

Country negotiators were able to find ways to resolve their differences on tariff duties on 400 products. The implementation of agreements started in 2007, 30 years after the initial creation of the Treaty of ECOWAS and six years after the beginning of the first negotiations.

The ECOWAS Common External Tariff applies to all goods entering ECOWAS customs territory from outside the region. It comprises the commonly agreed levels of customs duties, along with the 0.5% ECOWAS Community Levy, and each country’s statistical tax (generally 1%). The CET also features the potential for applying three new ECOWAS trade remediation measures (two import safeguards and one countervailing duty). The four levels of customs duty under the ECOWAS CET are 0%, 5%, 10% and 20%, based on the degree of processing of the product and other considerations. The ECOWAS CET

also involves harmonization of free trade zones, bilateral trade deals with non-ECOWAS countries, and ad hoc and statutory exemptions from customs duty.

The ECOWAS Treaty eliminated customs duties on agricultural, livestock, forestry and handicraft products, while manufactured products inscribed in the ECOWAS Trade Liberalization Scheme (ETLS) can be traded within ECOWAS without customs duty.

For product areas where trade between ECOWAS member countries has not yet been liberalized, the ECOWAS Common External Tariff can be expected to apply. It is believed that only about one-third to one-half of intra-ECOWAS trade circulates duty free, meaning the internal free trade area still merits attention.

About one-tenth of total imports entering ECOWAS countries come from other ECOWAS members, meaning that the CET applies on more than 90% of West Africa's purchases. The ECOWAS CET is intended to be the external cordon protecting the domestic markets of ECOWAS countries, but with a maximum duty of 20% it certainly must be considered as a low-tariff regime.

The eight countries of the West African Economic and Monetary Union (WAEMU, or "UEMOA" in French) have been applying their own WAEMU Common External Tariff since 2000, with similar levels of customs duty (0%, 5%, 10%, 20%).² The success of the WAEMU CET, reinforcing the monetary union of these eight countries, has informed the development of the ECOWAS CET.

It is through the CET that ECOWAS is implementing the trade-related aspects of the West African common agricultural policy, or ECOWAP, involving lowering the duties on inputs to agriculture, fishing and forestry (such as seeds, tractors, or nets). Lower duties on inputs result in more effective protection and should improve the profitability of West Africa's 200 million people involved in farming, fishing and forestry. These changes were a response to the January 2005 call of the ECOWAS heads of state for a "special treatment" of agriculture. ECOWAP was developed via national processes in each country, including Mauritania, under the leadership of the CILLS³, the regional organization based in Burkina

2 The eight members of ECOWAS that also belong to WAEMU (WAEMU) are Benin, Burkina Faso, Côte d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal and Togo. The seven ECOWAS members that do not belong to WAEMU are Cape Verde, The Gambia, Ghana, Guinea, Liberia, Nigeria and Sierra Leone.

3 Comité Permanent Inter Etats de lutte contre la Sécheresse dans le Sahel in French and thus "Permanent Inter-State Committee to Combat Drought in the Sahel".

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Faso tasked with policies regarding water usage and environmental questions, with support from USAID.

Farmer groups and industrial lobbyists have called for higher tariff levels under the CET in order to provide greater protection against imports. Despite their calls, proposals for a fifth, higher tariff band have not gained traction among negotiators from ECOWAS member countries. With a maximum customs duty rate of 20% already in place in WAEMU countries, and the January 2006 decision of the ECOWAS heads of state to implement a similar system of 4 tariff bands, negotiations on the final duty rates for the 400 or so products remaining to be negotiated are constrained to fitting those products into the 0%, 5%, 10% or 20% duty category.

The process ended in December 2012, and 130 specific products have been identified as requiring the protection of a tax rate of 35%, as they represent sensitive products essential for the development of the region. A common regional fund is ready to receive these specific taxes.

Competition Law into ECOWAS

Competition law is fundamentally related to the conditions that govern free trade. The welfare benefits flowing from a successfully implemented regional competition policy are an important component of economic growth and development. It is unquestionable that competition law and competition policy have played and continue to play a significant role in the economic prosperity of developed nations, which is reflected most significantly in strong economic growth, dynamic entrepreneurship, consumer welfare and social stability. These outcomes of successfully implemented competition policies and competition law suggest strongly that ECOWAS Member States, all of which are striving to develop robust economies and stabilize market conditions, have much to benefit from seriously considering the adoption of a region-wide competition framework.

ECOWAS needs to harmonize existing laws, as we see some differences between common law specific to Anglophone countries and civil law in French speaking areas and WAEMU. These differences can be found in other areas as well, as argued by Mundell (1972, pp.42-43) looking at financial development performances: “that Anglophone countries in Africa, influenced

by British activism and openness to experiment, would have a higher level of financial development than their Francophone neighbors, influenced by French reliance on monetary rules and automaticity. The French and English traditions in monetary theory and history have been different (...). The French tradition has stressed the passive nature of monetary policy and the importance of exchange stability with convertibility; stability has been achieved at the expense of institutional development and monetary experience. The British countries by opting for monetary independence have sacrificed stability, but gained monetary experience and better developed monetary institutions.” The overview of competition legislation is given, taking into account WAEMU and non-WAEMU experiences.

The WAEMU Community

The Community’s competition law is based on three Regulations and two Directives that were introduced in 2002, and came into effect on 1 January 2003. The three Regulations cover concerted anti-competitive practices, abuse of a dominant market position and state aid, respectively. The two Directives apply to (1) transparency in financial relations between Member States and public enterprises, and between Member States and foreign or international organizations; and (2) cooperation between the WAEMU Commission and national competition authorities. In the WAEMU competition scheme, jurisdictional reach is limited only to anti-competitive practices that are able to distort competition within the Union’s market as a whole, or within a “substantial part” thereof. Substantively, the scheme follows a familiar pattern found in most competition laws in the developed world – i.e., its chief focus is aimed at: (1) agreements and concerted practices in restraint of trade; (2) mergers and acquisitions; and (3) monopolization – i.e., abuse of dominant market position. Second, the WAEMU competition framework regulates government-induced market distortions such as state aid and anticompetitive market conduct of state-owned enterprises. Specifically, the provisions of Article 88 of the WAEMU Treaty prohibits the following: a) agreements, associations and organized practices between companies that have the objective or the effect of restricting or distorting competition within the Union; b) all practices of one or several companies or associations amounting to abuse of a dominant position in the Common Market or in a significant part thereof; and c) government aid liable to distort competition by favoring certain companies and products. A fourth category of violations known as anti-competitive practices attributable to

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governments was introduced on the basis of the provisions of Articles 4(a), 7 and 76 (c) of the WAEMU Treaty.

Other Member States

Of the other non-WAEMU ECOWAS Member States, Nigeria and Ghana currently have competition legislation based on common law legal systems. The Nigeria legislation is based on six types of specific anti-competitive agreements/coordinated actions and include: (1) direct or indirect fixing of prices or of other trading conditions; (2) limits on or controls of production, markets, technical development, or investment; (3) division of market shares, customers or sources of supply; (4) boycotts; (5) discrimination in terms of trade and denial of access to arrangements or associations crucial to competition; and (6) tying arrangements. The Nigerian bill on competition also aims to eliminate both, unilateral and joint “monopolization” market practices by prohibiting all acts or behavior constituting an abuse or acquisition and abuse of a dominant position of market power and enumerates examples, including: (1) the imposition of unfair purchase or selling prices or other unfair trading conditions with the purpose of eliminating competitors; (2) the imposition of limitations on production, markets or technical development to the prejudice of consumers; (3) the fixing of resale prices; (4) restricting imports of goods covered by overseas’ trademarks with the aim of charging artificially inflated prices; (5) the application of unjustifiably dissimilar conditions to equivalent transactions; (6) the refusal to transact business according to an enterprise’s customary commercial terms; and (7) tying arrangements. Further, the Nigerian law sets forth the rules applicable to the regulation of mergers and acquisitions (M&A). The legislation provides a right to an appellate review (in a court of law) of all final decisions laid down by the Nigerian Competition Commission’s dispute resolution bodies.

The Competition and Fair Trade Practices Bill of Ghana was drafted a decade ago and is yet to be enacted into law. Based on information from the Ghanaian Ministry of Commerce, it is expected that a new competition bill for Ghana will soon be drafted. Certain provisions in the current Ghanaian Draft Bill reflect minimum standards evident in many other jurisdictions. The Draft Bill prohibits a person from “enter[ing] into or giv[ing] effect to an agreement which” (a) is boycott, or (b) has the purpose of substantially lessening competition; or (c) has the purpose or effect of fixing prices. These prohibited agreements are defined

as those which 1) limit or control production, markets, technical development or investment; (2) divide markets or sources of supply; (3) apply different terms to equivalent transactions; or (4) feature a tying arrangement. The Draft Bill prohibits resale price maintenance arrangements, “[i]n so far as [they] tend to restrict fair competition” and furthermore contains a broad prohibition of exclusive dealing arrangements. The draft law bans a person with “substantial degree of power in a market” to “misuse” that power for the purpose of, inter alia, eliminating fair competition, preventing market entry, and “pricing goods or services at an excessively high level”; proscribes collusive tendering and collusive bidding at auctions. Finally, the Draft Bill provides the framework for the regulation of mergers and acquisitions. Mergers and Acquisitions (M&As) that are “likely” to lead, to a “substantial lessening of competition in a market for the goods or services concerned” are prohibited.

To summarize, the present role of competition law in ECOWAS Member States appears to be limited, but ongoing efforts in WAEMU, Nigeria and Ghana indicate recognition of its importance in promoting development goals and fostering a regulatory environment strongly conducive for economic growth. Based on the results of field research, other ECOWAS Member States are also interested in securing strong, competitive national markets and recognize the important role of competition law in this effort. The development of competition law at the national level will be augmented by a regional competition framework. Despite differences, it is meaningful to attain some points of convergence in substantive and procedural competition rules among the competition laws of WAEMU and the draft laws of Nigeria and Ghana. The similarities among the three bills should serve as the basis for the creation of a regional competition law for the ECOWAS Community as a whole.

Trade Trends in ECOWAS Countries and Barriers to Accelerating Exchange

Stylized Facts on Intra-Regional Trade

International trade can serve as the engine of growth and development if domestic firms are really competitive and exploit comparative advantages while the government helps them with subsidies and taxes to compete and to innovate. Free trade between potential or existing members of a monetary union must also contribute to accelerate the volume of trade by reducing transaction costs, because economic agents should not face, for example, exchange rate volatility. Companies operating within a regional integration arrangement protected by a common external tariff can benefit from economies of scale by having access to a wider market than their domestic market. Regional integration associated with a single currency has dynamic and endogenous effects because it promotes bilateral trade (Rose, 2000). A single currency implies more than the elimination of exchange rate volatilities among its members. It also reduces transactions costs, asymmetric information and uncertainty, and increases transparency, which is relevant to international trade and macroeconomic policies. For example, targeting rules associated with inflation can be introduced.

ECOWAS plans to quickly establish monetary union by 2020. A single currency in a monetary union provides microeconomic gains by reducing transaction costs. To achieve this goal, these countries have implemented policies to support nominal convergence. It is now possible to say that the nominal price convergence has been achieved, the volatility of the real effective exchange rate has been reduced, while the criteria for reducing deficits and debts remain points of divergence between countries (Semedo, Bensafta, Gautier, 2012).

If we look to Rose's contribution, the process of trade regionalization associated with monetary rules can be defined as growing bilateral trade or intra-regional trade between member countries in comparison to non-members of the regional association. Can this be said for ECOWAS? Semedo, Bensafta and Gautier (2012) found that intra-regional trade is not as large as it appears in Table 2 ("ECOWAS members trade structures in 2010."). Figure 1 ("Intra-regional trade in West Africa.") extracted from the good work of De Lombaerde,

Iapadre and Mastronardi (2012), gives a broad answer to this question: “As in other African regions, the intra-regional trade share looks relatively low both in the WAEMU and among the other ECOWAS members. However, there is a strong difference between the two groups, with the WAEMU showing much higher levels than the rest of the ECOWAS, notwithstanding its lower size.”⁴ A more precise assessment of trade regionalization has been developed by these authors, proposing a regional trade introversion index, which measures the intensity of trade preferences among countries belonging to the same region. With this empirical tool, they demonstrated that WAEMU is more integrated than the other ECOWAS members and that (intra-regional trade within) the latter is experiencing a noticeable downward trend, reaching the lowest levels in Sub-Saharan Africa. “This results stems mostly from the fact that WAEMU’s weight in world trade has remained very low in the last two decades, whereas the rest of ECOWAS has risen from 0.3% in 1995 to more than 0.5% in 2010. In other words, the latter sub-region, although expanding its participation to world trade, has not succeeded in strengthening its intra-regional integration.” To summarize, many institutions (ECOWAS Commission, UNCTAD, COMTRADE, UNECA)⁵ and authors (as mentioned above) agree with the fact that West African regional integration remains on a low basis in real terms, because regional trade represents between 10 and 15% of the total exchange of this region. In fact, the EU is by far the first trading partner of each country within the region, except for Nigeria which has a strong relationship with the United States.

Intra-regional trade is not jeopardized by all countries. Some countries have acceptable intra-regional trade levels, but not for the same reasons. The involvement of Nigeria is due to hydrocarbons and manufactured goods. Countries such as Mali and Burkina Faso are landlocked and thus, are transit areas that share a lot with their neighbors. In Togo and Gambia there are warehouses and smuggling is also organized in these countries. All countries bordering Nigeria, like Benin, experience parallel and illicit trade. Finally, countries like Senegal and Ivory Coast export manufactured goods, despite the decline in their manufacturing sector. Ghana, since 1985, is an economy in the process of structural transformation, so that this country is a net exporter of manufactured goods vis-à-vis the rest of the region. But, the share of agriculture

4 In 2010 total trade was about 45 billion dollars in WAEMU, against about 165 billion dollars for the rest of ECOWAS largely recorded by Nigeria.

5 See Semedo, 2012, p.41.

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in the total value added of these countries demonstrates that regional trade is still dominated by agricultural products (see “Table 3: Value added (VA) distribution in 2010.”).

Overall, these countries are still exchanging more with Northern economies and principally with their old colonizers, despite some efforts to diversify their partners. Their new relationships are with China, the United States and newcomers identified with globalization: Brazil, South Korea, India and Russia. Some trade flows are due to contraband, transit and temporary storage for further re-exportation.

Estimates of intra-regional trade are inaccurate. The main reasons for this are linked to informal activities, smuggling, illegal activities and the phenomena of re-export, as companies seek to escape the tax controls, quality controls and health checks. Also, as monetary systems are not unified, economic agents try to take advantage of differences in trading currencies in different markets and illegal trade is prosperous or organized by rational operators who are well informed about the exchange rates of various currencies. Informal flows of goods are also explained by geographical proximity, cultural, linguistic and ethnic community, so that the borders inherited from the colonial era are porous. The populations have created trade networks adapted to their life survival and welfare. Baskets of goods of these informal and illegal flows are composed of both: consumer goods that are really needed by people (pharmaceuticals, sometimes of dubious nature, food products, etc.) but also products which can endanger these populations (weapons, drugs, etc.). Finally, ECOWAS countries claim a desire to achieve the creation of a customs union, but in fact, they maintain several taxes and customs regimes in conflict with the establishment of a CET. Similarly, the subsidy policies of member countries are not the same and the effective rates of protection of each product vary, as intermediate goods that are used in the composition of a product are not taxed at the same rate in each country.

Meagher (1996) thinks that parallel and illegal trade accounted for more than 30 to 50% of agricultural production in some countries of West Africa during the early 90s, so that the official production statistics were false. Concerning WAEMU countries, Adjovi (2010) estimated that between 1996 and 2000, this trade should represent 11.3% of the total flow, and the importance of this trade in a country's exports varies from one country to another, for example 1.7% in Mali and 92% in Benin. In fact, according to surveys of LARES (1995), Benin's

main supplier is Nigeria. One third of imports-of this country come from Nigeria. Strong vertical links between Nigerian and Benin firms exist, so that Benin re-exports on the international markets many products imported from Nigeria like rice, used vehicles and meat products. Soule Bio Goura (2010) estimated the case of Niger, the second cross country with which Nigeria has very intense informal relationship and found a high level of fraud: 15% of exports, 79% of imports. Despite all these negative practices, West Africa has some comparative advantages that need help and constructive policies to build value chains. REI is suitable if governments take care of supply conditions and the environment for agriculture products, keeping in mind that a country is never developed without self-sufficiency in food products.

Barriers to Trade and the Potential of West Africa: The Example of Rice Supply and Demand

Value Chains in Agriculture Products: The Case of Rice

As in the past, West African countries are involved in international trade with Ricardian specialization or complete specialization and are suppliers of a few products like mineral resources, raw materials and agriculture products. For theorists of these countries the temptation is strong to denounce the unequal exchange and the remnants of colonialism. This static view of international trade ignores the fact that globalization requires a strategic vision of comparative advantages, and their establishment through public policies. In this strategic vision, governments must give priority to thinking about food self-sufficiency. Thus, it is up to ECOWAS countries, within the framework of ECOWAP, to limit constraints on production, sourcing and storage in priority areas such as grains (such as rice and sorghum), sugar, and milk and conditioned food preparations. Sylla (2012) identified specific constraints to agriculture linked to supply (rainfalls, capacity of storage, financial constraints, transport, infrastructure, innovation, equipment, energy, etc.) and demand. Gallezot (2006) analyzed the revealed and potential comparative advantages of ECOWAS that are endogenously determined, and which could feed people within the sub-region, reduce the weight of imports and for that matter the cost of wage goods. This policy is possible with new technologies, new land rules or larger and more organized operations. Agriculture is a prerequisite for industrialization.

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Considering that rice has become the leading source of food energy in West Africa and with ECOWAS countries all being net importers, how do we apply this idea to the rice sector in West Africa? It is obvious that importing rice is costly in terms of foreign exchanges. What is the picture of the rice sector in ECOWAS? Firstly, in West Africa, rice is typically imported by each individual country. Currently, there is no regional instrument for regulating rice imports. Secondly, West Africa depends on both, locally grown and imported rice. Whereas the West African sub-region is well-endowed with significant rice-growing potential, it remains dependent on rice imports, mainly from Thailand, China and Vietnam, for almost half of this consumption. These imports of well over five million tons represent around 20% of rice traded internationally. Thirdly, rice imports from Nigeria, the region's largest producer, accounting for 39% to 43% of regional rice production, decreased between 1999 and 2012⁶. Fourthly, cross-border relationships and expectations on exchange rates cause illegal traffic of rice. For example, according to USDA, "an estimated 75% of the rice production in Northern Benin leaves the country, as traders from Niger and Nigeria offer higher prices and faster cash payments". With this example, it is clear that the promotion of self-sufficiency projected in Benin by 2015 is compromised, despite donor support of providing free seeds, subsidized fertilizer, pumps for tube wells and other technical instruments for irrigation. Fifthly, there is a significant product differentiation among imports of broken rice, milled rice, parboiled rice and locally grown rice. Many West Africans express a decided preference for the taste characteristics of locally grown rice. Finally, analyzing this sector, dispute settlements are inevitable between member countries. The WAEMU countries, particularly Senegal, though a producer of rice, do not have the same interests and constraints as Nigeria. In Senegal, the government continues to encourage local rice production to achieve self-sufficiency. But it continues to demand aid from the EU. This major donor supports an irrigation initiative in the Senegal River Valley, including provision of subsidized inputs. However, government targets are not reached, and in some targeted zones soil conditions are ill-suited for rice production. Efforts are also made to improve producers' links with distributors and retailers, in order to strengthen the functioning of domestic rice supply chains. In terms of trade policy, rice tariffs in Senegal vary, ranging from 10% to 32.7%. In Burkina Faso, according to USDA (2012), "government efforts since 2008 to boost rice production have yielded satisfactory results, with the cultivated land increasing more than threefold." Irrigated rice production

6 See Agritrade, 2012. Rice sector trends and trade policy measures in West Africa. *Agritrade*, 12 Aug.

generates greater yields than rain-fed production through input and credit measures. Ivory Coast has the lowest tariff in WAEMU. Mali is far away from self-sufficiency and also applies low tariffs while selling land to foreigners from China and the Middle East. In fact, there is no common policy applied to this sector in the ECOWAS area.

In fact, a Nigerian consumes fewer kilograms of rice per year than consumers from neighboring countries. The average tariff rate on rice in WAEMU is 10% and peasants that supply rice argue that this low tax rate is detrimental to production and perceive it as an incentive to import. This concern was raised by the President of the Network of Peasant Organizations and Producers in WA (ROPPA) Mr. Cissokho, during different meetings under ECOWAP. He considers that certain agricultural products are strategic products and need to be protected until the production level covers at least the value of imports. He believes that the Commissioner of agricultural products has no long-term vision. African farmers have competitive disadvantages associated with physical and climatic problems (lack of rainfalls, etc.), financial problems and problems of transport costs and storage (of seed and foods), and these problems must be taken into account in terms of pricing policies. This view deserves respect, because the question is who must be defended: the importer or producer? It is true that Nigeria behaves like a free-rider and has the means to do it. But there is some hope of a jump in the level of duties and taxes, because rice is one product area where the arguments for a higher customs duty rate have gained traction, as the ECOWAS member country negotiators are considering moving rice to the 20% duty category, more fitting for its status as “a finished product”.

Urgent attention needs to be paid to this sector, as we remember the adverse impact of the 2007-2008 food crises. One good measure considered by ECOWAS in 2008 intended to prevent the impacts international prices on domestic markets, was to build a regional bulk purchase of imported rice. Diagne, Seck, Bamba and Fiamohe (2012) provide empirical evidence to support the implementation of regional bulk purchase of imported rice in this region. Specifically, they estimate the ECOWAS collective market power in the international market by determining both, the elasticity of the aggregate WA demand for rice imports and the elasticity of supply for major rice exporters like Thailand. Based on the residual demand and supply models, a two-country partial equilibrium rice trade model is applied to the Thailand-ECOWAS and Thailand-Nigeria rice trade. The data employed covered a period between 1988 and 2010 and was collected from different sources. The primarily empirical

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results indicate that the ECOWAS region as a whole does possess a strong and significant market power in the international rice export market. These findings imply that bulk purchase of imported rice can confer to ECOWAS Member States a greater bargaining power in rice import markets. In conclusion, with the enhancement of the common external tariff on imported rice, which is a prospect within ECOWAS, the implementation of imported rice bulk purchase would facilitate the rice imports trade and allow a better balance between rice imports and rice production in WA countries, giving producers the chance to bring production into line with regional market development. However, the type of regulation, institutional arrangements and coordination needed to ensure the effectiveness of a policy scheme such as the regional bulk purchase of imported rice needs to be further investigated. Moreover, further evidence-based research is needed to inform the type of policy and institutional innovations are needed in terms of public-private partnership.

Currently, as we can see above, it is important we have to consider that Nigeria follows a coherent policy agenda related to its agricultural processing. For example, as part of its policy mix, cassava and flour, adopted in July 2012, the Nigerian government has increased the tariff on wheat imports from 5 to 20%, while an additional customs duty of 65% was imposed on imports of wheat flour, with the effective right to 100% (Agritrade, 2012, 20 Jul). Over the course of 2012, an additional duty of 40% was imposed on imports of rice, bringing the effective right to 50%, a decision which led to increased smuggling of rice from Benin, but this would be interrupted with monetary unification and should not contradict with lowering prices in an REI area. Nigeria has scheduled a rice import ban in 2015, while at the beginning of January 2013; the Nigerian government announced a complete ban on imports of “packets of sugar, granulated sugar and pieces” as part of a tariff policy that provides incentives for sugar for domestic processing. These rates must be considered in the context of previous Nigerian efforts to establish a “fifth” tariff band 50% in the CET, to support its political agenda agricultural processing. Tariff and non-tariff restrictions are considered by the Nigerian government as a central element of the policy framework to stimulate investment in the transformation of the domestic agricultural sector. Although there are provisions in the Treaty of ECOWAS special taxes and measures of temporary protection, initiated by the Nigerian political movement, appear to raise issues of consistency with the ECOWAS CET and integration ambitions regional trade. The need for a regionally coordinated approach to rice sector development in WA has recently been acknowledged by ECOWAS through

the launch of its 'Rice initiative'. It is hoped that the regional approach taken by ECOWAS with the Africa Rice Centre, a range of food security bodies and farmers' organizations, will effectively lead to better coordination of rice sector development and trade in WA.

The opposition between Nigerian policies and the others provides an opportunity to discuss the limits on intra-regional trade growth into ECOWAS.

Limits to Intra-Regional Trade Growth in ECOWAS

Specific Barriers Related to CET and Regional Competition Framework

No matter which sectors we examine and the CET levels previously applied to them by ECOWAS, it is found that tax harmonization is far from being reached, and that this is detrimental to regional trade growth. The rice sector has shown that. Take the example of new tyres; the WAEMU CET rate is 20%, while Ghana applies 10% and Nigeria a duty of 50%. The appropriate customs duty rate for electricity generating sets, such as those commonly used by West African businesses as back-up or even as their main form of electricity, is also likely to engender a great deal of animated discussion among the negotiators. In areas such as manufacturing, and as important as the power sector, the construction materials, plastic industry, chemicals, polymers, wood and its various transformations (such as paper) sectors must endure long discussions on the external tariff in each case.

Public dialogue about the CET in ECOWAS countries will give national negotiators a firmer mandate to arrive at suitable compromises in those key areas. It is clear that completing the ECOWAS CET is critical to ECOWAS fulfilling its destiny. Establishing a transparent CET on all products will improve the ECOWAS customs union, and will represent a major feat in ECOWAS integration. Once the negotiators agree on the final rates for the CET, the customs officials can publish the tariff books that go out to all the border posts and the public can be informed about any changes. The ECOWAS CET will improve the transparency of customs administration all over West Africa, meaning more money will make it into the public till, even perhaps for products where nominal customs duties are likely to be reduced.

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The present state of competition laws appears to be limited and doesn't reflect the application of the power of the ECOWAS executive decision in each case of dispute settlements. The governments pursue their own interests and avoid exposure to fiscal imbalances. Typically, they are free-riders and are applying taxes in order to maintain their power and the power of lobbies. Ghana and Nigeria do not have the same functioning rules compared to WAEMU countries, despite attempts to harmonize common law procedures with civil law. Seen in this light, African RTAs contrast sharply with their counterparts in Europe and North America where there is a much higher commitment to compliance with the legal obligations contained in the treaties establishing them. Rather, RTAs appear to be flexible regimes. Flexibility here refers to the following defining features of African RTAs (Ghatti-Thuo, 2009). First, these RTAs are regarded as establishing flexible regimes of cooperation as opposed to containing rules requiring scrupulous and rigorous adherence. Second, African RTAs incorporate as a central feature the principle of variable geometry, according to which, there are different speeds for meeting time tables and other commitments are adopted. Third, African RTAs adopt a broad array of social, economic and political objectives without giving salience to any set of objectives. Fourth, African RTAs demonstrate a particular preference for specific, functional objectives to undertake discrete projects and as forums for the integrated development of common resources such as river basins (Mano River, for example) that cut across national boundaries. Fourth, African RTAs demonstrate a remarkable commitment to the equitable distribution of gains from trade and a corresponding weakness in the adoption of non-discrimination trade principles and the related objectives of trade liberalization. Fifth, African RTAs are characterized by multiple and overlapping memberships, exemplifying a classic case of the spaghetti bowl. Multiple RTA membership illustrates the flexibility or open-door membership that African RTAs offer. However, this pragmatic view associated with social and political rules is not adapted to meet the efficiency required in the context of globalization.

Political and Institutional Obstacles to Free Trade

Governments of ECOWAS countries do not appear to be concerned with questions of the effectiveness of regional integration. The negotiations on the CET are proof of this assertion, because they are laborious and take time to be implemented. Tax competition between states is nothing else than a 'vote by the feet.' Politicians are not volunteers of public action; they defend their own

interests. They can then use the issue of national sovereignty for re-election and then mothball the implementation of regional integration projects. However, they are aware that a condition for sustainable growth and development is the existence of large markets.

The ECOWAS institutional arrangement is a blurred copy of the EU. It is comprised of the Authority of Heads of States, the Commission, the Council, the Parliament and the Court of Justice. It lacks an authority charged to regulate and to implement the competition framework. In fact, Parliament has no power and the Court of Justice is a mediator monitoring the interpretation and the application of the treaty.

Examining the regional institutions of ECOWAS and doing a comparison with other REI such as the EU and ASEAN, in terms of their policy formulation processes and implementation, Omisakin (2013) says that ECOWAS is characterized by a lack of inclusive formulation processes, weak policy evaluation and feedback mechanisms, political and financial commitment and problems of ethnicity and weak national allegiances. This implies a need for clarity and consistencies in management and procedures in order to promote greater institutional development. In order to give empirical insights of this work in each country of ECOWAS, we can use the Doing Business indicators of 2013, see table 4.⁷ The goal is to demonstrate that the regulatory environment of enterprises is very unstable in ECOWAS, despite considerable efforts during the last years. If we look at performances in a sample of 185 countries, it is not surprising that overall trade and direct investment (see „Table 5: Foreign direct investment (% of GDP) in the ECOWAS region.“) are at a low level, measured as a percentage of GDP. For better insight, I selected some criteria and made useful comparisons with other countries in the world and between ECOWAS in terms of lower or best performance in Table 6 (“Specific details related to business performances in ECOWAS.“). Taking statistics published by Freedom House in 2012 into account, we can get an idea of stability in the region associated

7 To measure for example the ease of dealing with construction permits (line 3, “Table 4: Doing Business indicators for selected ECOWAS in terms of ranking in a sample of 185 countries in 2013.“), Doing Business records the procedures, times and cost required for a small to medium-size business to obtain the necessary approvals to build a simple commercial warehouse and connect it to water, sewerage and a fixed telephone line. The approach includes all types of inspections and certificates needed before, during and after construction of the warehouse. To make the data comparable across 185 economies, the case study assumes that the warehouse is located in the periurban area of the largest business city, is not in a special economic or industrial zone and will be used for general storage activities.

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with the quality of institutions, in Table 7 (“Quality of institutions into ECOWAS in 2005 and 2012.”). some indexes like: the index of freedom, of physical integrity, of ethnic tension and of conflict means that the picture is not good. Overall, in recent years, sub-Saharan Africa (SSA) has ranked as the world’s most politically volatile region, with major democratic breakthroughs in some countries, and coups, civil strife, and authoritarian crackdowns in others. While the SSA saw several significant gains, especially in West Africa, civil conflicts and the emergence of violent Islamist groups prevented an overall increase of political freedom. Some countries moved from “Partly Free” to “Free”: Sierra Leone and others including Senegal and Ivory Coast moved from “Not Free” to “Partly Free”. Guinea also showed gains, and the most stable country is Cape Verde. Mali suffered with its occupation by fundamentalists after the Libyan civil war, one of the greatest single-year declines in the history of Freedom in the World, dropping precipitously from “Free” to “Not Free”, and Guinea-Bissau’s status declined from “Partly Free” to “Not Free”. Declines were also seen in the Gambia and Nigeria.

If we look at the data in Table 8 (“Corruption Perceptions Index in ECOWAS: country rank among 176 countries, regional rank considering SSA.”), gathering the Corruption Perception Index (CPI) given by Transparency International (2012), West African countries are not well classified.⁸ Corruption translates into human suffering, with poor families being extorted for bribes to see doctors or to get access to clean drinking water. It leads to failures in the delivery of basic services like education or healthcare. It derails the building of essential infrastructure, as corrupt leaders skim funds. Corruption amounts to a dirty tax and the poor and most vulnerable are its primary victims. Add to this important capital flights, and we can understand why foreign direct investment (FDI) is so low in this region where natives are not confident enough to invest in their own region (see Table 9 “Capital flights: the ECOWAS case.”).

Finally, institutions and governance matter in West Africa, because politicians and bureaucrats use their power to catch rent while manipulating citizens with detestable means like ethnic and religious sensitivities. The lack of nation-state

8 The Corruption Perceptions Index ranks countries and territories based on how corrupt their public sector is perceived to be. A country or territory’s score indicates the perceived level of public sector corruption on a scale of 0 - 100, where 0 means that a country is perceived as highly corrupt and 100 means it is perceived as very clean. A country’s rank indicates its position relative to the other countries and territories included in the index. This year’s index includes 176 countries and territories.

building is in fact detrimental to domestic efficiency of firms, as well as to REI and its benefits. Social costs are expansive and resulting markets failures are also high. In his seminal paper on the economic effects of customs unions, Viner (1950) neglects these market failures linked to public goods provisions, externalities and institution defaults.

Theoretical Economic Aspects Concerning Barriers to Free Trade

Despite his rich theoretical contribution on customs unions, Viner offered us a static point of view. The world described by this pioneer is in the framework of perfect competition between firms, partial equilibrium, low transport and transaction costs; in which only goods are mobile between countries and factors don't move between countries but only into different sectors of a country. Goods produced by countries are substituted and freely exchanged in the same region deciding to create a customs union, and not with other parts of the world. It also excluded economies of scale. These assumptions led to identifying a useful distinction in terms of "creation" and "misappropriation" of trade flows in absence of transport and transaction costs including exchange rate variations and absence of bargaining power, meaning competitive sustainability for each firm.

The real world is different. For this reason, this static customs union framework is now only a first step to initial insights and to consider a more dynamic one.

According to Viner, the purpose of a customs union is to organize space, and that specialization of countries should depend on their comparative advantages. I agree with him concerning the planning of space, but it is necessary to have complementarities between countries, factor mobility and financial schemes of compensation to transform the space. This is not only based on comparative advantages. A customs union is an incubator of natural comparative advantages in terms of differences of productivity between sectors of each country, but regional industrial policy is necessary to build regional links of value through strategic trade policies. The regional division of labor becomes necessary to strengthen the international division of labor, since the principle is to protect infant industries that benefit from a larger trade area. This space gives companies the opportunity to benefit from economies of scale. In fact, the intensification of the regional division of labor leads to better integration into the international division of labor. Regional integration is not opposed to multilateralism. With regional integration, each country can improve its specialization and then gradually open

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up to the world. Therefore, the idea defended here in terms of dynamic approach is an open regionalism. The European experience shows that trade flows with the rest of the world have risen steadily since the Treaty of Rome, considering the rate of imports to total consumption of each product or the dependency ratio (imports/GDP). Specializations developed by member countries of the European Union have enabled these countries to cope with international competition. However, changes in specialization and net gains are not the same everywhere in the world. It begs the question, as to whether integration involves countries with the same level of development or very heterogeneous countries. If neighboring countries share similar products and experience a competition based on innovation, intra-industry trade is dominant; while heterogeneous countries will rather be characterized by inter-industry trade. Specialization changes in this case create high adjustment costs as only efficient businesses survive. The poorest countries of the European Community, for example, have strengthened their comparative advantages in labor-intensive industries and caused significant job losses in the richest countries. A customs union allows companies to achieve economies of scale and to diversify the range of products they offer. Production for a larger market is the source of increased varieties produced (economies of scope) in quantity and quality, which increases social utility or collective welfare. Economists who are proponents of free trade are critical talking about customs union. But, as demonstrated by Mundell (1972), the criticism vis-à-vis the customs union is not always justified: an integration process between poor countries may be beneficial in terms of attractiveness of territory with the mobility of capital and labor inputs including capital flows coming from abroad is high. FDI would tend to redistribute capital from rich countries of a region to the poorest and thus strengthen factor endowments in the later. Customs unions catalyze an agglomeration of firms that meet the requirements of international competitiveness. Increasing market size increases attractiveness for FDI. FDI brings new technologies and sources of gains for the region. This attractiveness effect also catalyzes the application of new members and therefore a domino effect (hub and spokes) happens. Finally a gravity effect for all geographically closed members is suitable and it is also possible to have an extension to non-members countries.

Now, how to apply these two aspects (static and dynamic) to the on-going process of free trade in WA?

Costs for commercial activities may hamper the competitiveness of businesses in the region. Prices include transportation costs, which are among the highest in the world, due to poor infrastructure. Roads, ports and airports are insufficient in number, minimally maintained or obsolete. The means of communication to facilitate the networking infrastructure are failing or are exposed to power shortages. For example, Badiane (1997) conducted two surveys on Senegal and Ivory Coast regarding the functioning of local and cross-border agricultural markets and the cost of commercial activities, which explain these failures in the provision of public goods. The case of Senegal is based on a sample of 142 small business enterprises involved in the agricultural sector in a dynamic region of this country, Basin-groundnut. These firms were invited to summarize the five main obstacles to the expansion of their activities. According to its results, financing was most frequently and most strongly felt as being the main obstacle: 92% of respondents placed it in the first three constraints and 77% of them believe that this is the most serious constraint that they encounter in their work. This was followed by taxes and regulations, and the functioning of markets (the organization of local markets and access to markets). The Ivory Coast's results are similar, in particular with regard to funding, which comes on top of the list of constraints cited, representing nearly 26% of responses (see Table 10 "Agriculture major components of exchange costs in percent."). Infrastructural constraints are not apparent in this study, but many traders put roads and accessibility to market as limits to trade. Access to information, which is often overlooked, is also mentioned. Barriers to expanding commerce face various controls sometimes not required by law, for example, the costs of dams and roads. Badiane (1997) has given an overview (see Table 11 "Road and dams controls between Ivory Coast and other Sahel regions.") within the Ivory Coast. The ECOWAS Secretariat (Soule, 2010) also drew attention to a number of checkpoints on some roads linking the countries of the region (see Table 12 "Official checkpoints December 2010."). These mechanisms increase the costs of making business and reduce the potential growth of regional trade.

Ackah, Ebo Turkson and Opoku (2012) suggested the inclusion in trade costs of all costs other than the marginal cost of a product like transportation and roadblocks costs, time and local distribution costs, border costs, legal and regulatory costs, foreign exchange costs, contract enforcement costs, and communication costs. So, other economic barriers are impediments to trade

growth. First of all, the structural value added composition is a limit to further exchange. Some economically leading countries of the region like Senegal left deindustrialization with Structural Adjustment Programs (SAPS) and are now a supplier of services. For others, the explanation of the lack of structural transformation comes from political instability, such as Ivory Coast during the 2000's and Nigeria with ethnic and religious tensions. FDI is not attracted to such environments. All these countries are financially dependent on aid and foreign debt, while ECOWAS is paradoxically a net supplier of funds to the rest of the world. Banks in this region do not really provide funds to small and medium sized firms and are specialized in the financing of old activities (financing exports of minerals, raw materials, cocoa and public enterprise projects) (Semedo, 2012b). In this context, West Africa faces weak industrial performance with multiple factors to explain that situation: domestic policy failures, low human capital, no deepening measures of liberalization in a context of the small size of economies, limited access to new technologies. This results in manufacturing currently playing only a limited role in West Africa. However as can be seen in Table 13 ("Manufacturing performance in ECOWAS."), manufacturing performance varies across West African countries; West African countries still have a low share of global manufacturing, looking at Manufacturing Value Added (MVA) and is losing ground in labor-intensive manufacturing; further, as other African countries, West African countries are dominated by resource-based manufacturing activities (UNCTAD/UNIDO, Report 2011). Regarding FDI inflow, this region is not among the best in Africa or among the least developed countries. In terms of value, FDI flows to ECOWAS tend to be located in mining industries over recent years. New partners like China, Saudi Arabia, Qatar and other emerging countries are looking to invest principally in mines and lands devoted to agriculture; this is dangerous for sovereignty and self-sufficiency goals. Concentration of industrial activities reveals that some countries are potential hubs for others, such as Nigeria, Ivory Coast and Senegal, but riots and ethnic tensions impede full mobility of people. Ghana is also able to attract more regional labor into financial and industrial services. The reason for Ghana's attractiveness is its financial development, the new exploitation of petroleum and gas, and new industries settled in Ghana since 2000's.

Second, the diversity of monetary regimes within ECOWAS and the absence of a functional compensation Chamber of currencies and harmonization of payments, is responsible for the emergence of parallel exchange markets of assets and monies at borders and in major urban agglomerations of West Africa. The simultaneous presence of areas with different currencies can divide West Africa into parallel activity subsystems centered on Nigeria, Ghana, Ivory Coast, and Senegambia (Egg, Igue, 1993). Countries like Nigeria use the relative flexibility of their exchange rates to protect themselves from external shocks, including regional shocks.

Third, the superposition of several tax and customs regimes is in contradiction with the stated objective of harmonization of fiscal policy, tax and the establishment of an CET. These differences in levels of protection are an effective source of windfall gains or opportunistic traffic as re-exports. As subsidy policies are different, prices are not the same from one country to another and the differences are a source of parallel trade. This source of profit and wealth is defended by lobbyists who do not actually want the effectiveness of REI. However, this imposture should fade in the long term for observers and well informed specialists (Igue and Soule, 1992). For these authors, colonial boundaries are not involved anymore, but the divergent economic policies of governments and the practices of lobbies are responsible. It is not excluded that parallel trade is financed by officials themselves, as they do not respect the rules they impose. Similarly, people who manage and accumulate wealth in this field are those who have access to state resources or licenses through personal and official contacts. We must recognize that parallel trade can undermine the development of agriculture and industry in the region (Egg and Igue 1993).

Fourth, ECOWAS countries assert a desire to create a regional space, but in fact, national development policies are likely to be inconsistent with regional policies. On top of that, it's necessary to wonder about their history and the place they give to trade in their development process. The role of international or regional trade (policy of promoting a wider range of export products) has been bracketed in most countries of West Africa since early independence till the mid-90s. The explanation may be that in accordance with colonial policies there was an imposed specialization in raw materials only. But we must also see that these countries chose policies of import substitution early after their independence. In the 90s, the main countries of ECOWAS were still introverted. Such a choice does not lead itself to sustainable growth in trade through mutual tariff preferences or other institutional mechanisms, even between

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geographically close countries. The tension between internal budgetary balance-sheets and tariff reductions needed by CETs appears to be effective and linked to the degree of development of each country. Then countries prefer to delay regional negotiations, because the adoption of a CET does not deal with revenue shortfalls.

Fifth, with SAPs policies, the ECOWAS countries are implementing trade liberalization policies. The policy instruments are the general decline in tariffs, the removal of quotas and licenses, non-tariff measures and simplification of control devices. Currently, the regional trade component mainly consists of two instruments: the pattern of trade liberalization (SLE) and the CET. Normally, with the first logic consisting in lowering trade barriers, the most competitive and recipient countries must compensate trade deficit countries. It is a question of regional solidarity. The principle is laid down in the Treaty of ECOWAS. It depends on the level of development of the countries concerned. Initially, in 2006, the group of low-income countries (Burkina Faso, Cape Verde, Guinea-Bissau, Mali, Niger) had 10 years to implement a rate reduction of 10% per year on approved products. Group two (Benin, Guinea, Liberia, Sierra Leone and Togo) had eight years with a turnover rate of 12.5%. Leading countries (Senegal, Côte d'Ivoire, Ghana, and Nigeria) had six years and an abatement rate of 16.6%. It must be recognized that the pace of implementation of such policies is hampered by social, economic internal difficulties inherent in each country.

Sixth, considering CET, there is the possibility for ECOWAS to adapt the WAEMU's CET to all its members. But observers believe that these two systems are incompatible, as Common law is incompatible to French law. Common law is simple, while the French Civil law suffers from an excess of details. The civil law is not a right fit for business. Also, the CET has been criticized because it would cause an increase in imports of intermediate goods from the rest of the world without reducing food dependency of ECOWAS countries vis-à-vis the rest of the world and that the differentiated application does not meet the objectives of an optimal tax system. Indeed, if it wants to ensure equity among states by compensatory measures ex-post, it does not maximize the tax returns for all the community. Many importers could choose to enter their products in the poorest countries, benefiting from low tariffs and lack of staff and equipment to monitor borders.

All these facts could be integrated into a gravity model considering bilateral trade among WA countries (Carrere, 2003; Ackah et al., 2012) or between WA and their principal partners according to preferential schemes (Nitsch, 2002). This second approach is reserved to open regionalism with the rest of the world so that I present the results obtained by Carrere (2003), Ackah and alii (2012). Carrere (2003) found that REI has succeeded in enhancing intra-regional trade, and that those with common currency components are the most efficient in increasing regional trade. Ackah et al. (2012) used panel econometric techniques to estimate the impact of trade costs on trade flows in regional ECOWAS trade and integration. The measures of transport costs, more precisely logistics performance indexes are extracted from World Bank data. The most important results of their work are (p.31-32) as follows:

The inefficiency of the customs systems confirms the need to improve these systems and to achieve an effective customs union within the region in order to boost trade among countries.

The importance of transport infrastructure and timeliness is really a determinant of trade among members' countries. Then the quality of roads is a factor to improve trade of landlocked countries.

Conclusion and Recommendations

Main Findings Concerning West African Regional Integration

ECOWAS has and continues to have an ambitious project of building an area of progress and development named "Vision 2020, as an ECOWAS for people living in WA". To realize this ambition, ECOWAS has focused on a customs union since 1993 and ECOWAS renewed the real functioning of its organization in 2006. The road to a CET and a mix between preferential arrangements and a customs union has been long, and it has not yet ended. Member countries have now settled on a competition framework to achieve a CET which will lead to the implementation of a customs union. However, they have not neglected monetary measures, like nominal convergence. An observer can say that they are fast tracking REI, looking at the linear view suggested by Balassa (1962). This is a real challenge to be completely integrated in 2020 as it means for them Economic and Monetary Union without budget federalism.

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The purpose of this article is to focus on trade liberalization among WA states. In fact, while describing and analyzing this process, I am aware that, it is linked with overall trade liberalization according to WTO rules, but I have decided to focus my analysis upon internal measures of trade liberalization.

In Section 2 of this article, my purpose was to highlight concerns on the road to CET and the implementation of competition framework into ECOWAS. My main conclusions at this stage of analysis are: there is the possibility of 'spaghetti bowls effects' characterizing the mix of trade rules concerning WAEMU and other Member States of ECOWAS. While I agree that this is a flexible regime, this can produce contradictions resulting from common law simplicity and French civil laws which are very detailed and not easy to apply to business matters.

In Section 3, I started my analysis by pointing out the low level of bilateral trade among ECOWAS countries. This is due to multiple factors as proved by economists using gravity models: differences of currencies, parallel cross-border trade, the structure and composition of CET, heterogeneity between countries, lack of industrialization, low level of infrastructure, and market failures in providing new technologies, physical and human capital or information. Also, I add that political and institutional aspects are to be taken into account, in the analysis of the record of trade liberalization concerning these countries. According to Omisakin (2013), Doing Business, Freedom House, Transparency International, the environment is not adapted to free trade. But my analysis is not pessimistic, as far as I take a salient example to explain why it's possible to create net flows in the production and exchange of rice. My judgment is also based on the dynamic contribution concerning customs unions. With this dynamic analysis, I consider that comparative advantages are not the only tool to participate to regional and international trade. Countries have to build new comparative advantages. For WA countries, it means: First, self-sufficiency; second, measures to boost industrialization in some activities as they need commercial strategic policies and serious discussions with the WTO. Finally, these countries need to reform their institutions and more governance with low political settlements, because politicians and bureaucrats are not benevolent and pursue their own interests to be re-elected at a national level and do not have good performances concerning regional integration. In order to be

permanently elected at a national level, they need to defend fiscal sovereignty and not regional finances.

Which measures could be taken in order to improve the functioning of ECOWAS? The next section provides some recommendations.

Recommendations

What is Possible to Do Immediately and till 2020 with the Single Currency Project?

1. In order to diminish the power of politicians and bureaucrats, a Commission of Trade must be implemented. At present, there are always discussions between WAEMU commissioners and ECOWAS civil servants, this is not efficient. In accordance, with the common law view and to diminish the power effect of the “spaghetti bowl”, the regional competition framework must be revisited.
2. The CET must be simplified in order to avoid free rider behavior of importers who could choose the poorest country to enter their products. To do so, ECOWAS can maintain high tariffs on food and crops and some industrial activities to promote ‘infant industries’ while looking at each country’s advantages. This is not in contradiction with WTO rules and an effective customs union, such as Brazil within Mercosur and other emerging countries have shown that it is possible to temporarily maintain some high tariffs.
3. The optimal regional trade policy is not a simple addition of national interests, but must be supported by compensation schemes. These mechanisms should be adapted on the relative wealth of each country of the region. Efficient compensation maintains unique rates without increasing trends. Finally, trade policy must pursue microeconomic policies to obtain comparative advantages in some sectors based on the logic of community preferences. This is a logical step to open up strategically to international trade. Soule (2010) explains the inefficiency of compensation mechanisms provided today by ECOWAS as it highlights the difficulties of the coordination of information. This may result in double taxation systems. For him, cross-border trade and undeclared trade are justified by high administrative costs. In fact, such cascading taxes

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can only give a small tax return. The lack of a system of single entry of commodities and single tax by product creates the risk of double taxation. National budgets lose revenue because people living in border regions organize tax evasion. However, the ECOWAS countries have completed the computerization of customs clearance procedures. The customs offices are networked with SYDONIA⁹. Thus, countries have introduced a uniform reporting format in detail (WTO, 2010), but with the risk of multiple entries of the same products. However, this advance in the treatment of flows of goods, as contributing to more computerized declaration, must facilitate calculus of global duties and compensation redistribution. The system still needs help in the installation of new infrastructure. It causes maintenance costs and it requires investment to improve operating systems.

4. Since fund availability is upstream in the decision-making process, barriers to wealth creation in ECOWAS and the movement of goods are tied to the issue of funding, the cost of access to credits and therefore to bank intermediation (Semedo, 2012b).
5. Moreover, the areas of commercial activities and transport are the most taxed in WA. Governments in each country must be harnessed to improve the areas of communication, transportation and commercial activities in WA, and then must ensure regional continuity of good policies in these areas. These results show the need for policies and actions designed to minimize the costs of commercial activities and transportation, which have so far not received attention as a possible impediment to intra-regional trade, despite the many reforms introduced in recent years.
6. One obstacle to trade is transaction costs associated with multiple exchange rates in the ECOWAS region. Logically, countries have to pursue their goals concerning the introduction of a single currency in 2020.
7. According to Omisakin (2013), ECOWAS has some institutional and political challenges such as a “lack of inclusive formulation processes, weak policy evaluation and feedback mechanisms, political and financial commitment and problems of ethnicity and weak national allegiances. ECOWAS has to improve its policy formulation and implementation for the benefit of

9 An electronic platform.

regional development. Clarity and consistency in management policies and procedures would promote greater institutional development”.

Structural Reforms to Achieve a Customs Union and Further the Common Market in WA

1. WA is a hotbed of crisis, and this discourages FDI. Sub-regional institutions like ECOWAS have taken the initiative in ensuring peace in countries such as Liberia, Guinea, Guinea-Bissau, Sierra Leone and Ivory Coast. But ECOWAS suffers from a lack of cohesion and the means to prevent and to manage crises. More suggestions can be added in this field to improve peace and stability of the region. Political stability is a necessary condition for industrial development and REI in Africa. This is not possible without the international community today, but WA states have to strengthen their security.
2. WA needs structural transformation and this challenge needs, firstly, self-sufficiency and secondly, the promotion of industrial development by the creation of clusters. Self-sufficiency is not far away, due to progress already made in the region. A recent meeting in Ivory Coast organized by Roppa (2013) gives indications in this direction. In this sense, despite many obstacles, ECOWAP propositions are appropriate for the agriculture sector. This sector is exposed to property uncertainty, climatic shocks, and financial constraints. But everywhere in West Africa, reforms are being taken to boost this sector and global factor productivity is increasing. One should ask where the resources for industrialization and agriculture developments will come from. Once again, I have suggested solutions in Semedo (2013) like strengthening domestic saving, attracting FDI, hedge funds, South-South cooperation, boosting bank credits and borrowing on financial markets emerging in this region, discovering new tax and subsidies, and using traditional and official development assistance. Industrialization is urgent, because West Africa has a rapidly growing population (around 2.6% per annum) and a high percentage of young people (over 50%). This is not contrary to the expansion of demand and decrease in wage goods, if subsequent measures are taken in the direction of self-sufficiency. In this case, the regional market can be a force for industrial developments and economies of scale, if temporary measures are adopted to protect infant industries. Industrial clusters are the place to promote African manufactures. “There is some evidence suggesting that industrial clusters have contributed

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to boosting the competitiveness of medium and small sized firms in Africa. These clusters make market access easier, facilitate technological spillovers, and reduce geographical and information costs of firms” (UNIDO/UNCTAD, 2011, p.104). Also, other policy recommendations at a regional level are: fostering scientific and technological innovation, promoting entrepreneurship and mainly small and medium sized firms, creating linkages in the economy, improving government’s capabilities, avoiding exchange rate overvaluation and adopting an appropriate policy-mix.

3. The current specialization of ECOWAS countries does not advocate a complete openness to international trade. These countries need to strengthen their internal systems while seeking to build a regional industry first protected by a CET and coupled with goals of self-sufficiency, in order to export agricultural and manufactured goods in a second step. It is quite interesting to note that a study should be made of the comparative advantages of the region, which could complement this article.
4. Finally, it would be entirely appropriate to further examine the compatibility between the existence of the ECOWAS CET and new rules of international trade imposed by the World Trade Organization.

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Annex

Table 1: Graduation in REI.

	Markets Integration			Monetary Integration		Economic Policies Integration
	Deletion of the obstacles to the exchanges: Eliminations of duties and non-tariff barriers	Common Market Policies & Commercial policies	Factors mobility Concerning physical and financial services	Fixed Peg or Single currency		Common Economic policies
Free Trade Area						
Custom Unions						
Common Market						
Monetary Union						
Economic and Monetary Union						

Source: Balassa, B., 1962. The Theory of Economic Integration, London: Allen and Unwin.

Table 2: ECOWAS members trade structures in 2010.

	Importations Dollar US*				Exportations Dollar US**			
	ECOWAS	WAEMU	Non WAEMU	EU27	ECOW- AS	WAE- MU	Non WAEMU	EU27
Cape-Verde	1.06%	0.79%	0.26%	77.60%	29.21%	29.21%	0.00%	60.73%
Benin	25.39%	14.38%	11.02%	40.02%	36.10%	24.70%	11.40%	10.01%
Gambia	13.04%	12.62%	0.42%	46.90%	32.13%	31.06%	0.96%	60.80%
Ghana	11.67%	2.09%	9.58%	36.29%	22.39%	19.46%	2.90%	47.82%
Guinea	16.82%	16.51%	0.30%	32.33%	1.86%	1.37%	0.50%	39.24%
Ivory Coast	30.11%	2.01%	28.09%	39.98%	21.69%	10.90%	10.42%	46.93%
Mali	40.62%	37.92%	2.70%	25.42%	25.07%	22.38%	2.69%	8.68%
Niger	23.59%	15.50%	8.09%	25.44%	28.18%	9.72%	18.45%	39.49%
Nigeria	1.30%	1.05%	0.24%	37.65%	6.28%	3.64%	2.64%	21.14%
Senegal	7.62%	4.02%	3.61%	50.96%	36.19%	29.40%	6.63%	26.00%
Guinea-Bis- sau	42.61%	41.01%	1.57%	47.32%	1.38%	1.33%	0.03%	0.44%
Togo	17.18%	15.00%	2.18%	40.54%	67.62%	43.22%	24.39%	8.73%
Burkina Faso	43.37%	37.31%	6.05%	40.17%	74.92%	56.12%	16.95%	22.33%
WAEMU	24.27%	11.34%	12.93%	39.87%	25.95%	15.50%	10.13%	41.46%
Non WAEMU	3.83%	1.90%	1.93%	37.30%	6.87%	4.24%	2.62%	22.43%
CEDEAO	10.93%	5.18%	5.74%	38.66%	9.94%	6.08%	3.82%	25.52%

* In percent of total imports by country . ** In percent of total exports by country.

Source: COMTRADE, 2010, and Semedo, Bensafta and Gautier, 2012.

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Table 3: Value added (VA) distribution in 2010.

	Agriculture VA	Industry VA	Services VA
Benin	33.2	14.5	52.3
Burkina Faso	29.1	19.9	51.0
Cape Verde	9.1	16.6	74.4
Ivory Coast	28	21.6	50.4
Gambia	32.2	14.0	53.8
Ghana	38	25.8	36.3
Guinea	23.2	35.8	37.3
Guinea-Bissau	62	12	26
Liberia	76.9	5.4	12.7
Mali	45	17	38
Niger	39	17	44
Nigeria	18.1	50.8	31.1
Senegal	16.1	19.3	64.6
Sierra Leone	49	31	20
Togo	40	25	35
Mean ECOWAS	36.2	21.2	42.6

Source: Semedo, Bensafta and Gautier, 2012.

Table 4: Doing Business indicators for selected ECOWAS in terms of ranking in a sample of 185 countries in 2013.

	Benin	Burkina Faso	Ivory Coast	Guinea-Bissau	Mali	Niger	Senegal	Togo	ECOWAS average	Cape Verde	Nigeria	Ghana
Ranking	170	153	169	176	153	173	152	160	141	132	178	130
Starting Business	157	153	177	179	151	176	101	169	127	122	131	64
Dealing with Construction permits	125	77	165	103	87	162	117	152	127	122	152	100
Registration of property	129	118	151	175	88	84	167	158	134	122	158	90
Getting credits	152	152	152	152	152	152	152	152	152	132	123	90
Protecting investors	154	147	154	132	147	154	167	147	135	100	178	102
Paying Taxes	167	148	153	133	159	144	170	157	154	122	174	118
Trading across borders	127	175	160	117	154	174	67	93	125	67	176	120
Enforcing contracts	177	108	126	139	133	138	148	151	122	118	178	132

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Locking enter- prises	118	100	76	183	106	136	79	84	110	108	75	78
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Source: Doing Business, 2013.

Table 5: Foreign direct investment (% of GDP) in the ECOWAS region.

Pays	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Mean
Benin	2.49	1.75	0.43	1.25	1.61	1.25	1.19	4.60	2.54	2.04	1.69	1.89
Burkina Faso	0.89	0.33	0.49	0.72	0.07	0.59	1.27	5.48	1.83	1.26	0.42	1.21
Cote d'Ivoire	2.25	2.59	1.85	1.20	1.83	1.91	1.84	2.16	1.91	1.65	1.82	1.91
Cape Verde	6.20	1.62	2.38	4.82	7.31	8.28	11.90	14.41	13.53	7.48	6.73	7.70
Ghana	3.33	1.68	0.96	1.79	1.57	1.35	3.12	5.62	9.52	5.48	7.86	3.84
Gambia	na	na	na	3.57	9.59	8.43	12.32	9.38	7.58	4.01	3.56	7.31
Guinea	0.32	0.06	0.98	2.29	2.67	3.57	4.43	9.17	10.11	1.20	2.14	3.36
Guinea Bissau	0.33	0.20	1.75	0.84	0.33	1.52	3.06	2.72	0.61	2.09	1.06	1.32
Liberia	3.93	1.61	0.52	91.01	16.14	15.28	17.86	17.81	46.38	24.77	45.79	25.55
Mali	3.40	4.63	7.29	3.03	2.07	3.55	0.81	0.75	1.51	8.01	1.57	3.33
Niger	0.47	1.18	0.11	0.55	0.86	1.29	1.39	3.01	6.34	15.52	17.50	4.38
Nigeria	2.48	2.48	3.17	2.96	2.13	4.44	3.31	3.64	3.96	5.08	3.07	3.34
Sénégal	1.34	0.65	1.46	0.77	0.96	0.51	2.35	2.63	2.97	2.59	1.85	1.64
Sierra Leone	6.13	1.22	1.11	0.87	5.58	6.71	4.13	5.80	2.95	4.00	4.53	3.91
Togo	3.24	4.77	3.62	2.02	3.06	3.64	3.51	1.95	0.75	1.54	1.29	2.67
Sub-Saharan Africa	1.94	4.26	3.24	3.08	2.05	2.95	2.15	3.32	3.97	3.49	2.30	

Source: World Development Indicators, 2012.

Table 6: Specific details related to business performances in ECOWAS.

Indicator	Lowest regional performance	Best regional performance	Regional Average	Best global performance
Starting a Business (rank)	176 (Côte d'Ivoire)	38 (Liberia)	127	1 New Zealand
Procedures (number)	10 (Côte d'Ivoire)	3 (Senegal)	6	1 New Zealand
Time (days)	38 (Togo)	5 (Senegal)	19	1 New Zealand
Costs (% of income per capita)	158,7 (The Gambia)	14,9 (Cabo Verde)	80,7	0,0 (Slovenia)
Paid-in min. Capital (% of income per capita)	572,8 (Niger)	0,0 (Libéria)	197,8	0,0 (91 Economies)
Dealing with construction permits (rank)	173 (Sierra Leone)	64 (Burkina Faso)	127	1 (Hong Kong SAR, China)
Procedures (number)	29 (Guinea)	11 (Mali)	16	1 (Hong Kong SAR, China)
Time (days)	475 (Côte d'Ivoire)	75 (Liberia)	16	1 (Singapore)
Costs (% of income per capita)	1.612,8 (Niger)	94,8 (Guinea)	458,9	1,1 (Qatar)
Getting electricity (rank)	182 (Guinea-Bissau)	63 (Ghana)	133	1 (Island)
Procedures (number)	5 (Senegal)	4 (Ghana)	5	3 (Germany)
Time (days)	465 (Liberia)	55 (Côte d'Ivoire)	160	17 (Germany)
Costs (% of income per capita)	14.343,1 (Benin)	873,9 (Nigeria)	4.957,1	0,0 (Japan)

Table 7: Quality of institutions into ECOWAS in 2005 and 2012.

	Index of freedom		Index of Physical Integrity		Index of Ethnic Tension		Conflicts	
	2005	2012	2005	2012	2005	2012	2005	2012
Benin	6	7	6	6	5	5	8	8
Burkina Faso	5	4	7	7	5	5	7	7
Cape Verde	10	10	8	8	6	6	12	12
Ivory Coast	6	8	5	6	1	1	2	4
Gambia	0	0	3	3	5	5	4	5
Ghana	8	8	7	7	6	6	11	11
Guinea	1	3	4	4	1	1	2	3
Guinea-Bissau	3	1	3	3	4	4	5	3
Liberia	3	7	1	6	0	4	2	8
Mali	8	3	7	3	4	2	7	0
Niger	5	4	6	5	4	4	6	4
Nigeria	7	5	5	4	4	2	7	3
Senegal	7	9	8	8	5	5	11	10
Sierra Leone	1	6	0	6	6	5	0	8
Togo	3	7	3	6	5	5	5	6

The index of freedom takes values between 0 and 10 (0 being the total absence of freedom). It is based on the possibility to criticize freely the government by using media.

The index of Physical Integrity takes values between 0 et 8 (0 being the total absence of life protection).

The index of Ethnic tension indicates the existence of ethnic tensions and takes values between 0 and 6 (6 being the best score: a country without tension).

Conflict measure internal and/or external conflicts and take values between 0 and 12 (12 being the total absence of conflicts).

Source: Freedom House, 2012.

Table 8: Corruption Perceptions Index in ECOWAS: country rank among 176 countries, regional rank considering SSA.

Country Rank	Regional Rank	Countries	CPI 2012 Score
30	1	Botswana	65
39	2	Cape Verde	60
43	3	Mauritius	57
50	4	Rwanda	53
64	7	Ghana	45
69	9	South Africa	43
75	11	Liberia	41
83	12	Burkina Faso	38
88	13	Malawi	37
88	13	Swaziland	37
94	16	Benin	36
94	16	Senegal	36
102	19	Gabon	35
102	19	Tanzania	35
105	21	Gambia	34
105	21	Mali	34
113	23	Ethiopia	33
113	23	Niger	33
118	25	Madagascar	32
123	26	Mauritania	31
123	26	Mozambique	31
123	26	Sierra Leone	31
128	29	Togo	30
130	30	Ivory Coast	29
130	30	Uganda	29
133	32	Comoros	28

139	33	Kenya	27
139	33	Nigeria	27
144	35	Cameroon	26
144	35	Central African Republic	26
144	35	Congo Republic	26
150	38	Guinea-Bissau	25
154	40	Guinea	24
157	41	Angola	22
160	42	Democratic Republic of the Congo	21
163	43	Equatorial Guinea	20
163	43	Zimbabwe	20
165	45	Burundi	19
165	45	Chad	19
173	47	Sudan	13
174	48	Somalia	8

Source: Transparency International Report, 2012.

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Table 9: Capital flights: the ECOWAS case.

	1970-2003		1970-2008	
	Total amount in millions of dollars	Annual average	Total amount in millions of dollars	Annual average
Benin	2937.8	87.4	3810.8	100.28
Burkina Faso	13995.5	411.6	17835	
Cape-Verde	188.5	5.8	377.5	9.934
Ivory Coast	43808.9	1288.5	59200.9	1557.9
Gambia	415.02	12.58	558	14.7
Ghana	3593	188.78	3939	103.657
Guinea-Bis- sau	na	na	299	na
Guinea	na	na	1147	30.18
Liberia	na	na	1744	45.89
Mali	821.6	24.89	1431.6	16.058
Niger	532.72	16.143	816	21.47
Nigeria	41464.6	1256.5	54898	1443
Senegal	17489.2	514.4	22751	598.8
Togo	4529.7	137.3	4787	127
WAEMU	8809.9	432.5	110632.3	2911.1
Total ECOWAS	54471.52	1650.65	172438	4537.8

Source: Semedo, 2012b, na= non available.

Table 10: Agriculture major components of exchange costs in percent.

	Ivory Coast	Senegal	Mali
Transport costs	6-30	16-37	6-21
Financial Charges and Taxes	46-72	53-77	72
Handling charges and others	6-23	6-23	8

Source: Badiane (1997).

Table 11: Road and dams controls between Ivory Coast and other Sahel regions.

Itinerary	Distance in terms of kms	Road and dams controls in CFA francs-and euro	Average cost per km
Abidjan Niamey	1480	45000CFA-70 euros	30.4
Abidjan-Bobo-Dioulasso	831	25000 CFA-35 euros	30.1
Abijan-Bamako	1130	15000CFA-22 euros	13.3
Abidjan-Bouna (Ghana)	537	50000 CFA-75 euros	93.1
Abidjan-Bouaké	372	20000 CFA-30 euros	53.8
Abidjan-Daloa	357	30000-44 euros	84.0
Daloa-Bamako	100	10000 CFA-15 euros	100
Abidjan-Ferkessedougou (Burkina Faso)	534	5000- 8 euros	9.4
Average			49.3

Source: Badiane, 1997, op. cit.

Table 12: Official checkpoints December 2010.

Itinerary	Distance in kms	Number of check-points	Number of checkpoints 100 km to 100km
Lagos-Abidjan	992	69	7
Lome-Ouagadougou	989	34	4
Niamey-Ouagadougou	529	20	4
Abidjan-Ouagadougou	1122	37	3
Cotonou-Niamey	1036	34	3
Accra-Ouagadougou	972	15	2

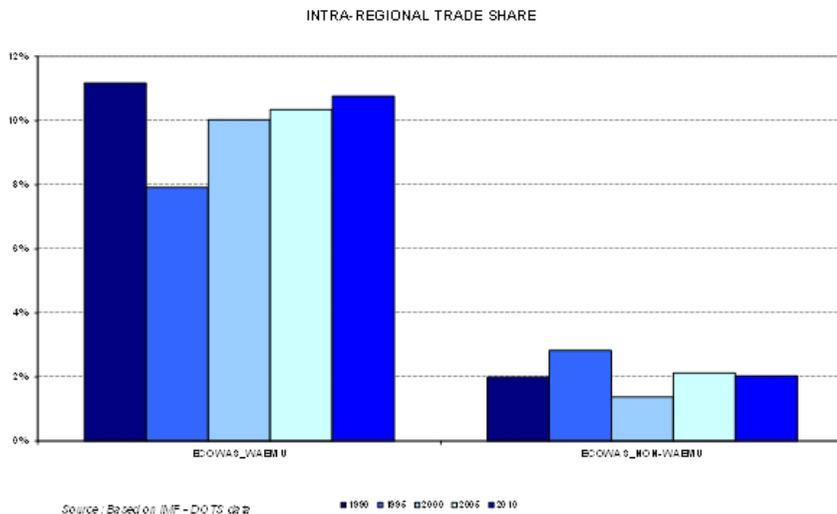
Source: Soule, 2010, op. cit., p.49.

Table 13: Manufacturing performance in ECOWAS.

Contribution of Industry to GDP , 1970-2008, % share of GDP						
Western Africa						
	1970	1980	1990	2000	2005	2008
Industry	26.7	43.3	34.5	39.8	36.7	37.4
Manufacturing	13.3	16.8	13.1	7.8	6.0	5.0
Minig&Utilities	7.7	21.3	18.8	29.3	27.7	29.6
MVA characteristics						
	MVA per capita 1990	MVA per capita 2010	MVA per capita(Compound annual growth rate 1990-2010)	Resources based share of MVA 2009	Low Technology manufacturing share of MVA 2009	Medium and High Technology share of MVA 2009
Benin	21	23	0.4			
Burkina Faso	26	37	1.9			
Cape Verde	108	139	1.2			
Ivory Coast	112	99	-0.6	70	13	17
Gambia	19	16	-0.7			
Ghana	20	28	1.6	86	7	6
Guinea	12	17	1.7			
Guinea-Bissau	26	16	-2.2			
Liberia	34	17	-3.6			
Mali	13	7	-3.3	28	61	11
Niger	13	10	-1.5			
Nigeria	15	24	2.4	26	53	21
Senegal	57	54	-0.3	80	6	14
Togo	22	25	0.5			

Source: UNCTAD/UNIDO, 2011.

Figure 1: Intra-regional trade in West Africa.



Source: De Lombaerde, Iapadre and Mastronardi, 2012, based on IMF data.

Kenneth Omeje

ECOWAS and Security Regionalism in West Africa

Introduction

The Economic Community of West African States (ECOWAS) was formed on 28 May 1975 to promote economic integration and development. At the political and ideological level, the regional body was also conceived to help bridge the inherited colonial division and rivalry between Anglophone and Francophone West Africa. Correspondingly, the West African region was predominantly colonized by France and Britain, albeit the two comparatively smaller West African states of Guinea Bissau and Cape Verde were colonized by Portugal. The regional body comprises fifteen countries - eight francophone, five anglophone and two lusophone states. Mauritania, the erstwhile 16th Member State withdrew from ECOWAS in 2000 to exclusively join the Arab Maghreb Union, a pragmatic device by the hegemonic ethnic Moors-dominated Arab regime to solve the cultural identity crisis of the fragile Sahelian state (Diallo, 2002).

Since its inception, ECOWAS has encouraged and implemented diverse policies and projects to foster regional integration. Some of them include liberal immigration and travel policies (abolition of visa restrictions), free movement of certain consumer goods and services, construction of trans-regional highways, establishment of a regional commercial/investment bank (Ecobank), implementation of common policies in agriculture, environment and water resource management, adoption of a regional security policy, construction of the 680 km subsea West African gas pipeline from Nigeria's Niger Delta linking Benin, Togo and Ghana to bolster energy cooperation and economic productivity, and so forth (Boom, 2009, pp.30-40). Despite these positive

achievements, a medley of destabilizing armed conflicts has over the years, however, compelled ECOWAS leaders to expand their regional project to include security cooperation and conflict intervention. This paper mainly analyses the involvement of ECOWAS in championing regional peace and security activities in West Africa, including its achievements, limitations and challenges.

It is pertinent to first put the destabilizing armed conflicts and wars that necessitated the emergence of regional peacekeeping and what is today regarded as security regionalism into context. The end of the Cold War and the World Bank/International Monetary Fund (IMF) Structural Adjustment Programs (SAP) adopted by many African countries aggravated the challenges of development by proliferating structures and incidents of violent conflicts. With a history that goes back to the early 1980s, SAP which was adopted by or imposed on many countries of Sub-Saharan Africa as an antidote to their economic crises actually preceded the end of the Cold War. Under the technical advice of development economists of the neoliberal paradigm that dominated economic development discourses and policy planning in the early years and decades of African independence, most African states pursued Keynesian state-led modernization policies and programs. As such, development was dominated by the state and the aim was to modernize African economies, societies and institutions by embracing and spreading West European development models, systems and features. Through short and medium term national development planning, industrialization by import substitution and technology transfer, land and agrarian reforms, indigenization of foreign enterprises or partial nationalization, low-cost housing development, and provision of subsidies to essential services (e.g., education, agriculture, health, and so forth), the state tried to lead and promote development in various sectors of the economy. Arguably, this approach overburdened the state with responsibilities that, in some cases, it had limited technical capacity and resources to cope with. Even states that at some point adopted leftist and [quasi]socialist trajectories of development such as Ghana, Benin and Senegal were also guilty of this tendential 'overburdening of the state'. This led to the ironic accusation by some critics that "the state in Africa is overdeveloped" (Dibua, 2006). Neopatrimonialism complicated the phenomenon of overburdening of the state through contrivances like unregulated employment into the state establishments based on primordial considerations and prebendal corruption. The personalization of public offices for private enrichment of the office holder and his family networks and cronies otherwise called prebendal corruption was a major factor in the wrecking of the economies

of many West African countries (notably, Sierra Leone, Liberia, Guinea, Togo, Somalia, Ghana, Mali and Niger). The wrecking effects of prebendal corruption on the economies of fragile states were similarly discernible elsewhere in Sub-Saharan Africa, such as in countries like Congo DR, Congo Brazzaville, Central African Republic, Uganda, Kenya, Sudan, Ethiopia, Somalia, Rwanda, Burundi, Malawi, Lesotho, Swaziland, etc (Dibua, 2006; Bach, 2011).

The World Bank/IMF solution to Africa's economic crises unleashed the full spectrum of the neo-classical economic agenda on the continent – currency devaluation, privatization and commercialization of state enterprises, withdrawal of state subsidies on essential services and the social sector, deregulation of the strategic sectors of the economy and creation of hospitable conditions to attract foreign capital investments, rationalization of the public service and the size of government and removal of import license restrictions and trade barriers (Adedeji, 2002; Dibua, 2006). These measures had such a devastating effect with the result that by the late 1980s and early 1990s the economic and political fabrics of the states in the region became extremely weakened by astronomical inflation, high unemployment rates, high external debt burden and debt service obligations, and low capacity utilization in the industrial sectors. The net consequence of the World Bank/IMF economic intervention measures (SAP) was sporadic mass protests, elite fragmentation, political insurgency and implosion of many structurally divided and weakened states. A multiplicity of civil wars occurred in different African states (e.g. Liberia, Sierra Leone, Chad, Mali, DRC, Central African Republic, Sudan, Senegal, Uganda, Burundi, Rwanda, Angola, Cote d'Ivoire, etc), which, among other things, created enormous humanitarian problems. West Africa, Central Africa and the Horn of Africa were the most devastated regions of the continent. It was these devastating wars and regionalized armed conflicts that regional peacekeeping and the politics of security regionalism were evolved to tackle.

Regional Organizations and Security Regionalism: The Conceptual Issues

The recognition of the role of regional cooperation in promoting international peace and security goes back to the US government Monroe Doctrine of 1823 which eloquently stated that the US government would view any act of interference of the European colonial powers with the sovereignty of the

independent states of north and south America as an act of aggression warranting American intervention. Until the beginning of the Cold War in the late 1940s which radically altered US government's interpretation of the Monroe Doctrine and correspondingly created a perception of the US as an imperial bully among South Americans, the Monroe Doctrine served as a popular beacon of collective security thinking and cooperation amongst the North and South American states, and a deterrence to imperialist interference from Europe. Article 21 of the Covenant of the defunct League of Nations of 1919 recognized the Monroe Doctrine as a regional security arrangement, stressing that: "Nothing in this Covenant shall be deemed to affect the validity of international engagements, such as treaties of arbitrations or regional understandings like the Monroe Doctrine for securing the maintenance of peace" (see Dorn, 2008, p.21).

The 1945 Charter of the United Nations (UN) devotes Chapter VIII to regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action and consistent with the "Purposes and Principles of the United Nations" (see Boutrous-Ghali, 1992). Even though they had the potential to make effective contributions to international peace and security, the potential and efficacy of regional agencies were greatly impaired during the Cold War dispensation because of the superseding ideological allegiance of Member States to the rival super powers. Even the functionality and efficacy of the UN in conflict intervention and peacekeeping was significantly impaired by the Cold War bi-polar politics. The end of the Cold War and the nuanced character of armed conflicts it occasioned therefore provided an opportunity for a reinvention of regional organizations and their role in maintaining international peace and security, focusing primarily at their regional levels and in cooperation or coordination with the UN.

Regional approaches to peace and security are fraught with conceptual and practical ambiguities partly related to the lack of consensus among academic and policy experts on what constitutes a region and how the latter can form the basis for security cooperation. Consequently, many regional institutions in Africa and other developing regions started off with a project primarily focused on economic cooperation and integration, and as such the issue of regional conflict management and security emerged for the most part as an after-thought; a pragmatic response to the empirical impediments of economic development and integration. Many academic and policy scholars define a "region" from a minimalist standpoint of "interlocking geographical proximity"

(see Nye, 1971; Buzan, 1991; Omeje & Hepner, 2013). From a maximalist perspective, some scholars import more subjective constructs like a sense of shared history, identity, political struggle, consciousness, interconnectedness, etc to the conception of “region” (see Adler, 1997; Adebajo, 2004). Some of the indicated features of a maximalist definition of region can also be arguably discerned among geographically inter-connected states definable as a region from a minimalist perspective, although they are features that may seem elusive to empirical determination.

Historically, countries that have shared geographical boundaries or proximity are too often connected in whole or in part by ethno-cultural, linguistic, commercial, economic, and other related ties. Consequently, such states are also inadvertently connected by negative externalities like natural disaster, forced migration and refugeeism, transnational crime and various types of “invisible” or underground transactions. It is for these reasons that some form of mutual consultation and cooperation platform is considered essential among countries within a particular region with a view to maximizing the advantages associated with economies of scale and mitigating the externalities of interlocking threats and nemesis. Buzan (1991, p.190) conceptualizes this type of socio-economic and security interconnectedness that is based on geographical proximity as “regional security complex,” which he defines as “a group of states whose primary security concerns link together sufficiently closely that their national security cannot realistically be considered apart from one another.” Amplifying Buzan’s regional security complex in the context of the West African states, Francis (2006, p.113) argues that the notion of regional security or security regionalism in Africa flows from the practical view that economic interdependence, sustainable development, democratic consolidation, social progress and durable peace are impossible in an environment of regionalized wars, armed conflicts and political instability. Francis further observes that “security regionalism embraces the notion of building a regional order for peace and stability and enhancing national and regional wellbeing through collective action, in particular, collective action geared towards addressing problems with destabilizing regional effects” (Ibid.).

One of the most challenging conundrums associated with regional security policy in Africa is the issue of “competing regionalisms,” a problem conceptualized by Franke (2007) as the prevailing “proliferation of inter-governmental organizations on the continent with the resultant competition for national and international resources, political influence and institutional relevance, which threatens the

viability of a continental approach to peace and security by duplicating efforts and fragmenting support.” In spite of the fact that ECOWAS was partly formed to help bridge the francophone-anglophone divide in the region, a parallel francophone regional economic cooperation agency exists in West Africa, namely the West African Economic and Monetary Union (WAEMU). WAEMU was founded in January 1994, with its own separate monetary zone, common currency and agenda towards greater regional integration. Unlike ECOWAS which was homegrown and mutually canvassed by different West African countries across the inherited colonial lingua franca divide, WAEMU was established under the instigation of France because of their strategic economic interest in the region, leading scholars like Adebajo (2004, p.31) to brand the francophone regional economic and monetary integration project as the “Trojan horse” of France within ECOWAS. In addition, there is a multiplicity of other inter-governmental organizations within West Africa. On a wider continental scale, the incidence of competing regionalism or what many scholars dub “the spaghetti bowl in African regional integration agreements” is even more pronounced:

Of the 54 African countries, 26 are members of two regional organizations, and 19 are members of three. Two countries (Democratic Republic of Congo, DRC, and Swaziland) even belong to four. Only 6 countries maintain membership in just one regional community. Even though the African Union (AU) has limited its official collaboration to five “regional economic communities” (RECs), there are at least 14 economic communities within the geographical space of Africa which have established some sort of peace and security mechanism. In West Africa, ECOWAS cohabits with WAEMU, Mano River Union (MRU), and the Community of Sahel and Saharan States (CENSAD). In Central Africa, the Economic Community of Central African States (ECCAS) more or less overlaps with the French-backed Economic and Monetary Community of Central Africa (CEMAC), the Economic Community of Great Lakes Countries (ECGLC), and the International Conference on the Great Lakes States (ICGLS). In Southern Africa, SADC, the South African Customs Union (SACU), and the Indian Ocean Commission (IOC) share the essential part of their integration spaces among themselves and with the Common Market for Eastern and Southern Africa (COMESA) which, in turn, extends over the whole of Eastern Africa, some states of Northern Africa, and Central Africa. COMESA also straddles between the East African Community (EAC) and Intergovernmental Authority

for Development (IGAD) in the Horn of Africa, while EAC and IGAD partially overlap with each other (adapted, revised and updated from Franke, 2007).

As observed in the preceding citation, the African Union has taken an important step to streamline the conflict intervention and security frameworks on the continent by limiting its official collaboration to five RECs, which the AU regards as building blocks or pillars for a regional security architecture based on the principles of subsidiarity, division of labor and coordination. The RECs partnering with the AU in the continental peace and security architecture are ECOWAS, SADC, IGAD, EAC and the Arab Maghreb Union (AMU).

The Historical and Political Contexts of ECOWAS Peacekeeping Operations

The outbreak of civil war in Liberia in December 1989 marked a turning point in the history of ECOWAS and indeed the global politics of regional integration. ECOWAS' decision to delve into the security domain by authorizing a regional peacekeeping intervention in Liberia in 1990 was both a controversial and pioneering initiative in security regionalism. The peacekeeping intervention was based on an appeal from the embattled Liberian President Samuel Doe to Nigeria for help against the advancing forces of the rebel National Patriotic Front of Liberia (NPFL) led by Charles Taylor. The Nigerian President General Ibrahim Babangida made a case in the May 1990 ECOWAS summit for regional mediation in the civil war, culminating in the deployment of the ECOWAS Ceasefire Monitoring Group (ECOMOG). Babangida's personal relationship with Samuel Doe – two corrupt dictators that shared common interests in perpetuating themselves in power against popular will – was a significant factor in the Nigerian government's push for ECOWAS military intervention. The first phase of the Liberian war ended with the signing of the Abuja peace agreement in September 1996; NPFL and other rebel forces were to disarm under ECOMOG and UN supervision. Elections were held in July 1997 and Charles Taylor won a landslide victory to emerge as President. In August 2003, the ECOWAS Mission in Liberia (ECOMIL) was deployed following the country's relapse to civil war waged by two rebel groups, Movement for Democracy in Liberia (MODEL) and Liberians United for Reconciliation and Democracy (LURD) against Charles Taylor's beleaguered government. The rebel groups were reportedly supported by Cote d'Ivoire and Guinea respectively. United Nations Mission in Liberia

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(UNMIL) was deployed to replace ECOMIL a few months later and, in line with the emerging trend of regional and international synergy in peacekeeping, ECOMIL “rehabbed” or converted to UNMIL.

Besides Liberia, ECOWAS made similar peacekeeping interventions to help resolve the civil war in Sierra Leone (1991 – 2002) and the first phase of war in Cote d’Ivoire (2002 – 2004). In both cases, ECOWAS peacekeepers preceded and later formed the core of UN peacekeeping missions in the two countries. It is remarkable that ECOWAS first two peacekeeping interventions in the 1990s (in Liberia and Sierra Leone) were preponderantly influenced and dominated by the regional hegemonic interest of Nigeria, which was then ruled by military regimes. Nigeria’s foreign policy has long been anchored on a regional (and to some extent, continental) hegemonic ambition, which found its strongest expression under successive military dictatorships in the country. About 80% of the troops and resources for ECOMOG operations in Liberia and Sierra Leone were provided by Nigeria. Many West African countries, especially the Francophone states have often been unsettled by Nigeria’s hegemonic ambition in West Africa, including its initial and occasional tendency to dominate the ECOWAS peace support operations. A significant part of the criticisms against ECOWAS’ initial peacekeeping operations in Liberia and Sierra Leone, especially criticisms related to the excessive indiscipline and unprofessionalism of ECOMOG has been attributed to Nigeria’s domineering role (see Kabia, 2013). The return to democratic rule in Nigeria since May 1999 has considerably minimized Nigeria’s regional power play in peacekeeping interventions. For instance, Nigerian troops were not part of ECOWAS peacekeeping missions in Guinea Bissau (1999) and Cote d’Ivoire (2002).

For the most part, ECOWAS peacekeeping interventions across the various West African countries (Liberia, Sierra Leone, Guinea Bissau and Cote d’Ivoire) were officially justified on humanitarian grounds. Evidently, the most challenging regional security threats presently faced by ECOWAS stem from the civil war in Mali and the fragile peace situation short of outright war in northern Nigeria following the spate of terrorist bombings by the Islamist sect Boko Haram. Northern Mali which has been a hotspot for ethnic Tuareg rebellion in previous years started unraveling in January 2012 when Tuareg separatists, National Movement for the Liberation of Azawad (MNLA) and some deserters from the Malian armed forces forged a loose alliance with Islamist militant groups - Ansar Dine, Al-Qaida in the Islamic Maghreb (AQIM) and Movement for Unity and Jihad in West Africa (MUJWA), to launch persistent offensive attacks against

the Malian army in the north of the country. Most of the rebel combatants were mercenary fighters and armed veterans that had hitherto returned from the Libyan civil war in which the protracted dictatorship of Muammar Gadhafi was toppled. The relatively demotivated Malian forces progressively suffered repeated defeats in the hands of the well-equipped northern rebels which partly triggered a mutiny in the army and subsequently the junta coup of March 2012 led by Captain Amadou Sanogo. Unable to control the rebellion in the north and widely condemned by ECOWAS, AU and the international community, the junta government hurriedly negotiated to hand over power to a transitional government in late April 2012, a few weeks after the rebel forces had declared northern Mali an independent state named Azawad. The transitional government headed by an interim civilian prime minister, Cheick Modibo Diarra, was later replaced by a government of national unity in August 2012. The security situation in Mali underwent a serious deterioration in early January 2013, when elements of Ansar Dine and the Movement for Unity and Jihad in West Africa, with the support of Al-Qaida in the Islamic Maghreb, advanced southwards to Konna, a town located 680 kilometers from the national capital of Bamako (MINUSMA, 2013).

ECOWAS' delay in deploying a multinational intervention force to help reverse the rebel's unilateral declaration of independence in northern Mali after the regional body had agreed on a peacekeeping action in April 2012 is, to say the least, an embarrassment to the capacity of the regional body to implement its much-vaunted new security architecture popularly known as the ECOWAS Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security of December 1999. The war in northern Mali is particularly complicated by the marked ideological rift between the relatively more moderate MNLAs and the radical Islamist groups (notably Ansar Dine with infiltrations from regional narco-terrorists and Jihadist groups like Al-Qaida in the Islamic Maghreb and Boko Haram) within the fragile rebel insurgency. It was not until France had in early January 2013 responded to an appeal by the Malian Interim President Dioncounda Traore for a unilateral military intervention to save his regime from the advancing rebel forces from the north, that about nine ECOWAS states and a few other African Union Member States rose to the occasion to deploy a complementary multinational force alongside the French forces, making the African-led International Support Mission to Mali (AFISMA) essentially an African Union/ECOWAS joint operation. The about 6,300-strong AFISMA troops ultimately formed the core of the 12,600-strong

UN Peacekeeping Force in Mali (MINUSMA) whose gradual deployment took effect from 1st July 2013 as authorized by the UN Security Council. The Malian government signed a ceasefire accord with the Tuareg rebels in June 2013 to pave way for holding the presidential elections in the troubled northern region. Even though successful elections were held throughout the country in July/August 2013 to restore democratic governance, many analysts are of the view that wracked by instability and a crippling economy, Mali will literally remain on “life support” for the foreseeable short-term despite the pledges of 3.2 billion euros (\$4.2 billion) made by international partners at a donor conference in Brussels in May 2013 to help rebuild the war-ravaged country (see Barbier, 2013). The pledged amount is a fraction of the \$43 billion economic recovery plan for Mali linked to the implementation of a political road map that includes the Summer 2013 elections (BBC, 2013). There is huge expectation and responsibility on the newly elected Malian government headed by President Ibrahim Boubacar Keita to fully restore security and rebuild the war-torn country.

In northern Nigeria, the Islamist Boko Haram, a home-grown terrorist network surreptitiously aided by many influential politicians in northern Nigeria and Al Qaida-affiliated terrorist groups, has carried out widespread terrorist attacks since 2009 aimed at establishing an Islamic state in [northern] Nigeria. The Nigerian government has used both carrot and stick to combat the Islamist insurgency, granting a disarmament, demobilization and rehabilitation (DDR)-oriented weapons amnesty to willing members of the groups and using military reprisal to crackdown the recalcitrant elements. In May 2013, Nigerian President Goodluck Jonathan declared a state of emergency in the three northern states of Adamawa, Borno and Yobe most affected by the insurgency and deployed over 2000 troops to intensify the crackdown of militants. Thousands of people have been killed in the long-drawn-out violence, including a large number of civilian casualties. The Boko Haram insurgency and military crackdown has precipitated a humanitarian disaster of regional proportion - over 6,000 vulnerable citizens have fled across Nigerian northern border to neighboring Niger Republic and another estimated 10,000 refugees have cross the border into northern Cameroun (see UN News Service, 2013; BBC, 2013). In early June 2013, the President Obama administration in US extended its global war on terror to securitize the Boko Haram movement in Nigeria by promising a cash reward of \$7 million to anybody who could provide information leading to the capture of the Boko Haram leader Abubakar Shekau. An elated Nigerian government responded to the American booty offer by proscribing the radical

Islamist group. The continuing crackdown of the Islamists has produced two related effects. The first is that it split the insurgency movement into two major factions of moderates and extremists. The more moderate faction of the Islamist group is significantly favorable to a constructive engagement with the Nigerian federal government and accepts the government's weapon's amnesty and rehabilitation program. This faction which is headed by Abu Zamira Mohammed has been in active negotiation with the government since the promulgation of the weapon's amnesty program. The extremist faction of Boko Haram which practically rejects any "rational" negotiation with the government has dispersed across various parts of northern Nigeria, the neighboring countries and beyond. Government's crackdown has further driven the extremist faction underground sub-regionally, mingling across the porous borders of various interlocking states (including Niger, Chad, Cameroun, Burkina Faso, Mali and Sudan) where they link up with local criminal networks and insurgents to perpetrate acts of gun-running, drug trafficking, criminal violence, transnational militancy and terrorism. It was reported in early August 2013 that the fugitive leader of the extremist faction of Boko Haram Abubakar Shekau was shot and deposed by some disgruntled members of the outlawed sect who also announced the appointment of the leader of the moderate faction, Abu Zamira Mohammed, as the overall leader of the group (Vanguard, 02/08/2013). The where about of the reportedly shot Abubakar Shekau remains unknown with the Nigerian military claiming that Shekau was killed during the fatal shoot-out with the state security forces in which he was reported to have been seriously injured. Even though Boko Haram has been proscribed by the Nigerian government, there are still persistent incidents of terrorist attacks in different parts of northern Nigeria that are attributed to the terrorist group.

Why ECOWAS Delved into Security Regionalism

It is remarkable that ECOWAS has ventured into the stormy terrain of security regionalism and made significant strides in spite of not having been originally conceived as a regional security organization. Ostensibly, the most important factor that accounts for this is that from the geostrategic standpoint of having interlocking development and security concerns, West African states stand to suffer more directly from the impact of explosive violence in any Member State. The montage of civil wars in the Mano River sub-regional states of Liberia, Sierra Leone, and Cote d'Ivoire has, for instance, exemplified some of the interlocking

regional security threats - refugee influx and humanitarian catastrophe, arms proliferation, cross-border incursions and inter-flow of combatants, economic and political pressure and destabilization, and cross-border recruitment of mercenary fighters by various warring factions. It was destabilizing security threats of this nature that compelled ECOWAS to develop a positive interest in cooperative military intervention.

Other additional factors have to do with the bureaucratic delay and high stakes interest-driven politics associated with the UN Security Council debate on conflict intervention and peacekeeping deployment; as well as the unconventional and complex nature of post-Cold War armed conflicts in many developing regions which has necessitated a transition from first generation peacekeeping (essentially ceasefire monitoring based on the mutual consent of warring parties) hitherto favored by the UN to the comparatively more risky, multi-dimensional, second generation peacekeeping (including robust enforcement action) which the UN does not seem to have completely adapted. The last and probably most significant point is the late realization by ECOWAS and similar regional economic communities that without durable peace there can hardly be any significant or sustainable economic integration and development.

ECOWAS' Achievements in Security Regionalism

ECOWAS has without doubt made remarkable achievements in security regionalism. Firstly, ECOWAS intervention has helped to mitigate largescale anarchy and humanitarian catastrophe in war-affected countries. Peace enforcement and diplomatic efforts were helpful in achieving ceasefire and establishing safe havens for civilian populations and Internally Displaced Persons (IDPs), as well as in restoration of normality to troubled Member States – Liberia, Sierra Leone and Cote d'Ivoire (Kabia, 2011). Similarly, ECOWAS intervention contributed to conflict settlement, state reconstruction and peacebuilding within the limits of its resources: mediating peace talks and brokering agreements, implementing Demobilization, Disarmament, Rehabilitation or DDR program (especially DD), conducting elections, and helping to re-establish state authority and law and order (see Brown, 1999; Sola-Martin & Kabia, 2007). In addition to peacekeeping intervention, ECOWAS preventive diplomacy has helped to de-

escalate conflicts, contain tension, and avert wars or prevent its reoccurrence in Member States like Togo, Guinea, Cote d'Ivoire and Guinea Bissau.

It is also remarkable that ECOWAS peacekeepers almost in all cases laid the foundation for UN peace operations and also facilitated them through cooperative peacekeeping otherwise known as co-deployment and “rehatting of troops” (i.e. conversion or transfer of ECOWAS peacekeepers to UN peacekeepers). Co-deployment and rehatting of troops between ECOWAS and the UN have been witnessed in Sierra Leone, Liberia and Cote d'Ivoire. In northern Mali, AFISMA (not entirely an ECOWAS mission) has also recently re-hatted to MINUSMA. In this way, ECOWAS has provided UN with significant lessons for reviewing its approach to peacekeeping in complex political emergencies (CPAs) and cooperative intervention with regional organizations (Francis et al, 2004). Because ECOWAS intervention has invariably preceded the peace support operation of the UN and other international state actors in all the post-Cold War civil wars in West Africa, there has been a tendency for many to downplay the achievements of the regional body and attribute every major conflict resolution accomplishment to the world body and other international actors. This analytical slant is a common tendency among many Western commentators and international organizations. Some critics have argued that UN peacekeepers and other uni-/bilateral international actors (e.g. the British in Sierra Leone, the French in Cote d'Ivoire and the Americans in Liberia) in some respects came to take credit after ECOMOG had done the spadework (see Obi, 2009, p.131).

Towards Institutional Remedies: The Evolving ECOWAS Peace and Security Architecture

ECOWAS has utilized the experiences from its various peace support operations to progressively reform and strengthen its institutional and operational structures to meet emerging security challenges. A number of new regional statutes have been adopted since the 1990s and the ECOWAS foundational treaty was extensively revised in 1993 to strengthen economic integration and security regionalism. The single most important protocol adopted by the regional body on security regionalism is the ECOWAS Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security of December 1999. The evolving 'ECOWAS Security Architecture' (i.e. the 1999 Protocol, also called the Mechanism) establishes a number of institutions and mechanisms

to strengthen peace support operations, among other security capabilities and functions. The 1999 Protocol coalesced and greatly built on previous security-oriented protocols, including the ECOWAS Protocol on Non-Aggression (PNA) of 1978 and the Protocol on Mutual Assistance on Defence (PMAD) of 1981. An additional Protocol on Democracy and Good Governance which stipulates rules about democratic transfer of power based on free and fair multi-party elections, credible electoral process and institutions, election monitoring by independent external observers, respect for human rights, etc. was adopted in 2001 (but came into force in 2005) as a supplement to the 1999 Protocol. Some of the key institutional structures established by the famous 1999 Protocol include: The Authority of Heads of State and Government, Mediation and Security Council (MSC), ECOWAS Early Warning System (ECOWARN), and the ECOWAS Standby Force (ESF). They can be briefly discussed as follows:

The Authority of Heads of State and Government (called the Authority for short) – This is the supreme assembly of all the heads of state and government, and is responsible for the major decisions, appointments and policy directions of ECOWAS. However, the assembly or Authority no longer has a monopoly of decision-making powers on key security issues - which include “issues relating to conflict prevention, management, and resolution; peacekeeping and security, humanitarian support, peacebuilding, control of cross-border crime, proliferation of small arms as well as other issues covered by the provisions of the Mechanism” (see Article 6 of the Protocol). On all of these security issues, Articles 6 and 7 of the ECOWAS 1999 Protocol stipulate that the assembly shall delegate to the Mediation and Security Council the power to act on its behalf to take appropriate decisions and implement same to ensure that the provisions of the 1999 Protocol are achieved.

The Mediation and Security Council (MSC) – This is a body at the level of heads of governments and made up of nine states (elected two yearly on a renewable rotational basis), empowered to take emergency decisions on “peace, conflict intervention and security” issues as delegated by the Authority of Heads of State and Government. The MSC works with two advisory committees – a *Committee of Ambassadors (CA)* that have dual accreditation to ECOWAS and Nigeria and a *Defence and Security Commission (DSC)* consisting of national defence and security chiefs and related technical experts.

ECOWAS Early Warning System (ECOWARN) – with responsibility for security risk/threat mapping, observation and analysis. Implemented since 2003, ECOWARN has a central Observation and Monitoring Centre in Abuja, supported by a four Zonal Bureau network, each with a sub-regional headquarters (see Sagna, 2009; OECD, 2009):

- *Zone 1:* Cape Verde, Gambia, Guinea Bissau, and Senegal with Banjul as HQs,
- *Zone 2:* Burkina Faso, Cote d'Ivoire, Mali and Niger with Ouagadougou as HQs,
- *Zone 3:* Ghana, Guinea, Liberia and Sierra Leone with Monrovia as HQs,
- *Zone 4:* Benin, Nigeria and Togo with Cotonou as HQs.

ECOWARN's Zonal Bureaux work in partnership with trained civil society and government representatives to develop, assess and transmit zonal risk indicators weekly to the Central Observation and Monitoring Center in Abuja.

ECOWARN reports to the ECOWAS Commission President and MSC who, depending on the nature and level of threat, could initiate varied intervention measure, including:

- Instituting a fact-finding mission,
- Preventive diplomacy using the good office of the Commission President,
- Preventive diplomacy using the 15 member ECOWAS Council of the Wise (formerly Council of Elders) appointed by the Authority of Heads of State – this is a reincarnation of the traditional African conflict resolution mechanism; and ultimately,
- Military action, i.e. peace enforcement or peacekeeping intervention.

ECOWAS Standby Force (ESF) – This is a 6,500 specially trained multinational brigade conceived to replace ECOMOG. ESF is one of the five regional brigades envisioned by the AU Peace and Security Architecture based on the principles of subsidiarity and complementarity with Regional Economic Communities (RECs). ESF includes a rapid reaction force of 1,500 to 3,000 troops deployable in 14 days before the total force comes on board within 90 days if needed.

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Three centers of excellence have been designated for ESF training:

- National War College (NWC) in Abuja, Nigeria,
- Kofi Annan International Peacekeeping Centre (KAIPTC) in Accra, Ghana,
- Ecole du Maintien de la Paix in Bamako, Mali.

There are a couple of additional structures that support the operation of the ECOWAS peace and security architecture, prominent among them being the ECOWAS Court of Justice (ECJ) and ECOWAS Parliament, both originally envisioned by different protocols that were first adopted in the 1990s. Located in Abuja in Nigeria, ECJ is an evolving regional court that came into operation in August 2002 with the initial mandate of interpreting ECOWAS laws, and to adjudicate on any disputes arising therefrom as instituted by a Member State. The Court also provides advisory opinion to the various organs of the regional body on all matters of law. In response to emerging developments, ECOWAS has over the years adopted additional protocols to expand the mandate of the court to permit private citizens to bring suits against Member States (without any requirement of domestic exhaustion of judicial remedies), especially on issues of human rights violations, the legality of ECOWAS laws and policies, and an alleged failure by a Member State to comply with Community law (see IJRC, 2013). The Court is composed of seven judges appointed by the Authority of Heads of State and Government.

ECOWAS Parliament which seats in Abuja, Nigeria on occasional basis performs only an advisory as opposed to legislative function. ECOWAS Treaties confer all legislative powers on the Authority of Heads of State and Government and the Mediation and Security Council – two institutions dominated by the executive arms of government. Many critics regard this institutional arrangement as a misnomer because of the evident danger of an overly powerful executive which is at the root of most incidents of human rights violations, authoritarianism and failed democracies on the African continent. Be that as it may, the ECOWAS Parliament provides advisory opinion on various issues considered important to regional integration and security, including human rights and rule of law, elections and democracy, travels and immigration, Internet connectivity and telecommunication, trade, health, education and food security. The Parliament consists of 115 seats in which each of the 15 Member State has at least five seats with the remaining seats shared in proportion to the population of Member

States (TEP, 2013). Most ECOWAS parliamentarians are seconded by or elected from their National Parliaments.

Persisting Challenges

ECOWAS Security Architecture is a far-sighted mechanism that embodies prevention, mediation, military intervention and peacebuilding — and it is an attempt to respond to conflicts in a systemic way (Toure & Okae, 2008). But there are a few persisting challenges. In the first place, ECOWAS is a collection of largely fragile, poor and foreign-aid dependent postcolonial states; hence, there is a sense in which the regional body is unable to rise above the relatively weak institutional and resource capacities of the coalescing Member States to more effectively actualize the goals of both economic integration and security regionalism. From this standpoint, funding the new security architecture and mustering the required political will to implement it have been particularly onerous for Member States of the organization. ECOWAS principal funding sources include: Assessed contributions by Member States, Community Levy - a 0.5% tax on all imports into ECOWAS countries – and the donor-driven ECOWAS Peace Fund and Pool Fund created in 2003, which still accounts for at least 25% of the body's funding (Ibid. Kabia, 2013).

Secondly, some analysts have observed that ECOWAS has strategic deficits in transcending traditional conflicts to address the pervasive human security and non-traditional conflict concerns in the region – e.g.: rampant poverty and high levels of youth unemployment; devastating health pandemics such as HIV/AIDS, proliferation of alternative security actors like militia groups; cross-border activities including hard drugs/gun-trafficking, cyber-crime; gender-related violence; and the collapse of state institutions and structures (Boom, 2009). ECOWAS has established many specialized agencies for addressing the above issues but they are poorly staffed and resourced. Having said that, one must emphasize that some of these problematic concerns are part of the traditional functions of the state, which the regional body cannot be expected to effectively take over and solve. This raises a practical concern about striking the right balance between state responsibilities and the responsibilities of regional institutions.

Thirdly, in spite of the relatively well developed conflict early warning mechanism of ECOWAS, the regional body has not been able to effectively

harness and use early warning data and signals to leverage conflict prevention and early response (see WANEP, n.d.). The real problem with many violent conflicts in West Africa in recent years (Mali and northern Nigeria included) is not essentially the failure of early warning but mostly the lack of political will and capacity for early response (see Francis, 2013). Whilst conflict early warning is primarily a bureaucratic security function, early response for conflict prevention is a largely political issue that requires sufficient political will and, as the case may be, operational and military capacity. Evidently, the capacity for early response for conflict prevention is weak among leaders and senior officials of Member States with the result that the regional body is too often unable to take decisive steps towards tackling specific security challenges in the region in accordance with extant ECOWAS Protocols and Decisions. Even with the UN and the international community, the political will for early response is known to be generally weak.

Moreover, there is also the challenge of Security Sector Reform (SSR) in different Member States which is required to effectively implement some of the security components of the 1999 Protocol in order to, among other things, strengthen the capacity of the regional body for early response and conflict intervention in general. Furthermore, the slow rehabilitation and reintegration of ex-combatants is still a security threat in the Mano River sub-region. Inter-flow and recycling of small arms is a problem in the larger region, especially in volatile and conflict-prone countries. The continuing fragile peace situation in some parts of the region, especially in Mali, Guinea Bissau, and Nigeria remains a source of security concern.

Fourthly, the ECOWAS Court, its functions and accessibility are still relatively unknown outside Nigeria where the Court is located with the result that most of the private persons' cases that have been brought before the court have come from Nigerians; the President of the Court has noted that the accessibility and cost of bringing cases to the Court continue to be a barrier to the Court's success, in addition to its inadequate human, financial and material resources (AICT, 2012). There is therefore the need for the ECJ to embark on a vigorous sensitization campaign to popularize itself across West Africa. Complementary efforts could also be made by the Member States' ministries of education to systematically incorporate the knowledge of ECOWAS and its various institutions

and processes into the civic or general education curricula of schools, higher colleges and universities.

Fifthly, Transparency International's (TI, 2008-2012) Corruption Perception Index (CPI) for the preceding five years (2008-2012) is high in the West African region, which affects political and security governance, as well as economic performance. Some of the West African countries with the worst CPI include Guinea, Guinea Bissau, Nigeria, Cote d'Ivoire, Togo, Sierra Leone and Niger. Some 73% of ECOWAS states are among the UN's Least Developed Countries (LDC). The region accounts for about 38% of Africa's LDCs, making it Africa's least developed region (*International Business Times*, 2013).

Finally, as Obi (2009, p.132) has aptly observed, the extent to which the new security architecture and the entire regional integration project are a product of popular democratic consensus among the people of West Africa is highly debatable. As a matter of urgency, local buy-in and popular participation remain crucial for the legitimacy and ownership of the regionalist project by the people of West Africa. In the final analysis, a paradigm shift from elite-centeredness to popular ownership and participation in security regionalism, as the author further recommends, is a desideratum. This might necessitate holding a referendum in the Member States to test the popularity and acceptability or otherwise of some of the core activities of the entire regional integration project.

Moving forward, ECOWAS stands to make greater progress in security regionalism if the Member States can show stronger commitment to effectively implementing the ECOWAS security architecture and other related treaties and protocols. International donors and stakeholders can support the regional body by expanding technical cooperation and capacity-building in areas crucial to security capability in particular, and regional development in general.

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Mahama Kappiah

Sustainable Energy Development in West Africa: Potentials and Challenges

Introduction

The Economic Community of West African States (ECOWAS)¹ faces significant challenges in terms of energy delivery. The vast energy resources of its 15 Member States are unevenly distributed, while the regional energy market remains largely underdeveloped. Analysts note that the region's 23,000 MV of hydroelectric capacity is concentrated in five countries (UNIDO, p.3), with less than 16% being exploited (Ibid.). In terms of crude oil, natural gas and coal, Nigeria alone, accounts for 98% of the region's total reserves (Ibid.).² It comes as no surprise that less than 10% of the population have access to electricity or the services it provides, with traditional biomass accounting for 80% of the domestic energy needs of the majority poor (Ibid.).

Compared to the continental average of 563kWh/capita and the global average of 2596kWh/capita, the region's average electricity consumption rate of 88kWh/capita is among the lowest in the world. Within countries, there are significant disparities in terms of electricity access. For instance, while the region's total household access is estimated at 20%, the rate of access in urban areas is 40%, while the rural areas account for only 6% to 8%. Studies have thus revealed the prevalence of "significant electricity and overall energy pricing inequalities within countries i.e. between rural and urban areas and between countries." (Ibid.)

1 ECOWAS refers to the Economic Community of West African States. It comprises 15 Member States: Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo.

2 Recent discoveries of oil and natural gas in Ghana, with Senegal yet to be proven.

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This scenario has obvious implications for efforts geared towards spurring socio-economic activities, attracting much needed foreign investment, poverty-eradication, the provision of basic social services, and the attainment of the Millennium Development Goals (MDGs). Furthermore, the adverse effects of deforestation, occasioned by the prevalent use of firewood, places severe constraints on the environment, while the widespread use of traditional forms of energy poses health risks arising from exposure to indoor air pollution.

The region's power sector has proved inadequate in meeting rising electricity demand. This inability is responsible for the on-going reforms and the implementation of privatization policies aimed at attracting private sector participation. These efforts have so far failed in this respect due to the non-profitability of power generation and distribution in the region. As analysts point out, "the National Power Companies have continued to be under-capitalized, charge rates below cost, and hence have not been able to access financial markets for upkeep and expansion projects." (Ibid.)

ECOWAS is convinced that the panacea to the region's energy challenge lies in the capacity of neighboring countries within the region to collaborate in the development of energy infrastructure which would be able to provide efficient, affordable energy (WEC 2005, p.9). ECOWAS is therefore actively engaged in regional integration and cooperation in the area of cross-border infrastructure projects for electricity and gas supply, as well as in the harnessing of its renewable energy and energy efficiency potentials, with a view to increasing access to modern energy services in the region. The gravitation towards a regional solution to the energy security challenges currently facing the region is borne out by the capital-intensive nature of energy projects, economies of scale considerations, as well as the need to address the challenges associated with the region's uneven distribution of energy resources.

Background

The total population of the ECOWAS region was 300 million in 2010, representing 35% of the total population of sub-Saharan Africa (SSA) (World Population Prospects 2012).³ Three countries—Nigeria, Ghana and Cote d'Ivoire alone account for two-thirds of this total. Table 1 provides an overview of the national social and economic indicators of the ECOWAS region.

Table 1: Overview of national social and economic indicators of the ECOWAS region.

Country	Population in millions (2010)*	Rural population (% of total population)**	Population below poverty line (%)***	Current GDP (US\$ 1,000,000 in 2010)****	GDP growth (% in 2010)*****	HDI rank (2010 ranking)*****
Benin	8.8	58	37.4	6,633	3	134
Burkina Faso	16.5	80	46.4	8,820	9.2	161
Cape Verde	0.5	39	30	1,648	5.4	118
Côte d'Ivoire	19.7	50	42	22,780	3	149
The Gambia	1.7	42	39.6	807	5	151
Ghana	24.4	49	29	31,306	6.6	130
Guinea	10.0	65	30.5	4,511	1.9	156
Guinea-Bissau	1.5	70	51.6	879	3.5	164
Liberia	4.0	39	80	986	5.5	162
Mali	15.4	67	25.5	9,251	4.5	160
Niger	15.5	83	63	5,549	8.8	167
Nigeria	158.4	50	43.1	193,669	7.9	142
Senegal	12.4	57	35.1	12,954	4.2	144
Sierra Leone	5.9	62	47	1,905	4.9	158

3 Estimates based on: United Nations. *World Population Prospects: The 2012 Revision*. [online] Available at: <http://esa.un.org/unpd/wpp/Excel-Data/population.htm>.

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Togo	6.0	57	36.8	3,153	3.4	139
ECOWAS	300	57.87	42		5.1	
SSA	856	60*****				
World	6,900	44				

* United Nations. World Population Prospects: The 2012 Revision. [online] Available at: <http://esa.un.org/unpd/wpp/Excel-Data/population.htm>

** CIA. CIA World Factbook. [online] Available at: https://www.cia.gov/library/publications/the-world-factbook/wfbExt/region_afr.html.

*** United Nations: UN Data. A World of Information. [online] Available at: <http://data.un.org/Data.aspx?d=MDG&f=seriesRowID%3A582>.

**** World Bank. Data Catalog. [online] Available at: <http://data.worldbank.org/data-catalog/>.

***** Ibid.

***** UNDP: Human Development Reports. [online] Available at: http://hdr.undp.org/en/media/HDR_2010_EN_Table1_reprint.pdf.

***** Food and Agriculture Organization of the United Nations. Mapping poverty, water and agriculture in sub-Saharan Africa [PDF]. Available at: <ftp://ftp.fao.org/docrep/fao/010/i0132e/i0132e03a.pdf>.

In 2010, the average percentage of the rural population in the region was about 58%, with variations ranging from 39% in Liberia and Cape Verde to 83% in Niger. According to estimates, 50% of the population will live in urban areas by 2015, compared to around 42% today. This reflects the fact that the region's cities are attracting more and more people, since they offer better living conditions and greater potential for economic activity. Though this is still a lower ratio than in other developing regions (the rate stands at 70% in Latin America), absolute demographic pressure is still high. It is estimated that by 2015, the population of the ECOWAS region will have risen to 320 million, thus experiencing one of the highest annual growth rates in the world, that is, 2.65%, compared to an average of 1.5% in India and 0.5% in China (N'Guessan, 2011).

Regional Energy Integration

A number of studies have highlighted the link between access to modern forms of energy and socio-economic development. Indeed, energy undergirds the provision of essential services like clean water, health services, education and communication, which are all vital components in the fight against poverty. The American Council for an Energy-Efficient Economy similarly argues that "electricity is not just another commodity: it is a critical public good." (American

Council, p.1) Its unique quality is derived from the crucial role it plays in modern society, hence the need to ensure that electricity is affordable and accessible for the majority poor.

However, as the results of a study conducted by the World Energy Council (WEC), as part of its regional program in Africa, show - “the traditional approach of limiting energy planning and service provision to the individual nation states contributes negatively to the energy access issue in Africa” (WEC, 2005, p.9). These constraints hinge on the reality that energy sources do not often correspond to national or political boundaries; national markets are often too small to justify the huge investments required; and finally, cross-border energy supplies help to diversify energy sources and thus promote energy security. Furthermore, analysts argue that the lack of adequate infrastructure for cross-border electricity and energy supply impacts negatively on key developmental imperatives in Africa. There is therefore a consensus that the interconnection of national power grids and the development of electricity pools and other regional infrastructure will go a long way in improving energy delivery objectives (Millennium Project, p.224).

The development of energy markets on a regional basis also offers significant benefits. According to the WEC, the linking of national petroleum and electricity industries can help to rally private and domestic investments by expanding market size. Whilst interconnections create export opportunities for countries with comparative advantage, in terms of resource or energy supply, secondary benefits such as increased and cheaper energy supply options, will also be available to smaller markets and countries (WEC 2005, p.9). In Plunkett's view, by participating in a regional power pool, the costs of electricity supply could be significantly reduced, which will in turn lead to affordable electricity for the region. Also, reliance on a neighbor's relative comparative advantage and engaging in secure power trading, as well as joint investments, could improve the reliability and competitiveness of the sector (Plunkett, 2001, p.2).

Energy Integration in the ECOWAS

Established in 1975 in Lagos, Nigeria, the ECOWAS now has its Headquarters in Abuja in Nigeria, and comprises 15 sovereign states with border limits in Senegal, Mali and Niger in the north, Niger and Nigeria in the east and the Atlantic Ocean in the South and Southwest with an area of approximately 6.1 million km². The 15 Member States are united in their desire to achieve regional integration, and have intensified efforts to harmonize a broad range of national policies across the region. A Revised Treaty adopted in 1993 subsequent to the 1975 Treaty had the stated aim of positioning ECOWAS as the only economic community in the region for the purpose of economic integration and the realization of the objectives of the African Economic Community (ECOWAS, p.4).

Article 28 of the Revised Treaty is concerned with the energy sector, and seeks to establish a common energy policy to find a collective solution to the energy development problems (Ibid.)⁴ in member countries. Within this framework, the ECOWAS Regional Energy Program was embarked upon with a view to improving access to modern forms of energy by developing regional resources and actively pursuing regional cooperation and integration, particularly in the area of cross-border infrastructure projects for electricity and gas supply.

The main objective for the ECOWAS energy integration program is to develop interconnection and power exchange between power systems of Member States under the West African Power Pool (WAPP) Project. Through the West African Gas Pipeline (WAGP) project, it also seeks to utilize gas flared in Nigeria to feed power stations in neighboring countries. Other objectives are to promote and protect private investments in energy projects, to harmonize legislations and standards of operation in the power sector and finally to create an open and competitive regional electricity market (Ibid.).

4 See also Diaw, I. M., 2004. West Africa's Energy Sector and Developments / Regulatory Issues concerning the West African Power Pool [PDF]. In: Global Regulatory Network (GRN), *2nd Global Regulatory Network Conference*. Bamako, Mali 26-27 July 2004. [online] Available at: <http://www.globalregulatorynetwork.org/Resources/2ndGRN/Images/Session%20I%20-%20Diaw.pdf> [Accessed 7 January 2009].

The ECOWAS Energy Protocol

Modeled after the European Energy Charter Treaty, the ECOWAS Energy Protocol is basically a legal text that formalizes the juridical framework of enterprises in the energy sector (Energy for Poverty Alleviation, p.3). It promotes investment and trade by serving as a security for foreign direct investments in the energy sector (Ibid.). For instance, Member States seeking World Bank facilities for WAPP projects must ensure the adoption and ratification of the convention in order to be eligible. The Protocol, which was signed in December 2003 by ECOWAS Heads of State, seeks:

“(…) the swift elimination of cross-border barriers to trade in energy, and encourages investment in the energy sector by providing for investor friendly terms as international arbitration for dispute resolution, repatriation of profits, protection against expropriation of assets, and other terms considered attractive by energy sector firms and investment bankers. With respect to electric power sector, the Protocol provides open and non-discriminatory access to power generation sources and transmission facilities. The Protocol envisions an enforcement mechanism comprised of the Energy Ministers of the Member States, which will be administratively supported in its functions by the ECOWAS Secretariat.” (Cosbey, Ellis, Malik and Mann, 2008)

The ECOWAS Member States have completed the process of ratifying the Protocol which aims to provide a legal and regulatory framework for all regional energy integration initiatives and projects.

The ECOWAS/WAEMU Regional White Paper on Access to Energy Services for Populations in Rural and Peri-urban Areas (The ECOWAS White Paper)

The ECOWAS White Paper was adopted in 2006 by the ECOWAS Heads of State and Government in recognition of the key role that energy plays in the achievement of the MDGs. The White Paper aims to provide access to improved domestic cooking fuels and sustainable electricity services for the majority of the population by 2015. Moreover, it foresees that at least 20% of new investments in electricity generation should originate from locally available renewable resources, in order to achieve self-sufficiency, reduce vulnerability and ensure sustainable environmental development.

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Specific targets of the regional policy are:

1. Access to improved domestic cooking services for 100% of the total population by 2015, which is 325 million people or 54 million households over a 10-year period. 30 million of this population have access to LPG cooking devices,
2. At least 60% of the rural population will live in localities that have access to motive power, with the objective to increase productivity of economic activities, and will have access to common modern services,
3. Access to individual electricity services for 66% of the population, that is 214 million people living in rural and peri-urban areas; that will go as follows:
 - 100% of urban and peri-urban populations, roughly twice the current rates,
 - 36% of rural populations – as compared to 1% today in those African countries with the least population density, and to roughly 10% in the most advanced countries,
 - Besides, 60% of the rural population will live in localities equipped with basic modern social services: health, education, drinking water, communication, and lighting. All these amenities will be achieved either through decentralized electrical facilities or through grid extensions, more than thrice the current levels.

The West African Power Pool (WAPP)

The WAPP was formally established in October 2000, following the signing of an agreement by 14 ECOWAS Member States, as a means of improving the region's power supply (NEPAD, p.9). This objective is to be realized through the partnership of Member States working in tandem to establish a regional power pooling mechanism as the preferred means to achieve their long term vision – a unified regional electricity market where electricity supply costs are lowered and energy security improved in order to contribute towards further regional energy integration. In 2005, the ECOWAS Heads of State and Government adopted the

ECOWAS Revised Master Plan for the generation and transmission of electrical energy. It was subsequently updated in 2011.

The WAPP project, which serves as an umbrella project for many investment and capacity building initiatives, covers 14 of the 15 ECOWAS Member States. It comprises two components (i) critical infrastructure (Generation & Transmission); and (ii) institutional building and capacity building. A two-phase implementation strategy has been adopted by ECOWAS Member States for the project. The first phase, estimated to cost about \$16 billion, aims to complete priority investments to assure the physical integration of the national power grids, including establishment and/or reinforcement of critical transmission corridors; associated systems control facilities and strategic hydropower generation plants. The second phase, cost estimated at \$7 billion, aims to complete transition to the full-scale functioning of a unified (electricity) market within ECOWAS, with enhanced long-term planning of system expansion for the WAPP Cooperation Model, and full deployment of WAPP regulatory instruments so as to ensure “open access” by all operators to the unified electricity market (Ibid.).

Given the huge investment outlays required, there is a deliberate strategy to create opportunities for private sector participation. The management of WAPP therefore seeks the following:

1. The creation of an investment environment for the regions’ power sector that will facilitate the financing of priority generation and transmission projects,
2. The reduction of the overall amount of capital needed for system expansion in the region by promoting implementation of “bankable” projects on a least-cost basis,
3. The creation of a transparent and reliable mechanism for the prompt settlement of commercial electricity transactions (Ibid.).

A key determinant of private sector participation would be the privatization of state-owned energy utilities. It is hoped that by 2016, a fully liberalized regional energy market will be functional and private sector generation or transmission outfits established in any of the ECOWAS states with the potential for cross border electricity transactions (Ibid.). It is expected that with the full and timely implementation of the ECOWAS Master Plan for the Generation and Transmission of Electrical Energy (WAPP Master Plan), adopted by the

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ECOWAS Heads of State in 2005, the ECOWAS energy crisis will largely be resolved from 2018 onwards.

The West African Gas Pipeline Project (WAGP)

The WAGP Project, estimated to cost US\$610 million, is a 600 km pipeline designed to transport Nigerian natural gas to power plants and industries in the neighboring countries of Ghana, Togo and Benin (Afolabi, p.6). As part of current ECOWAS Energy Regional Initiatives to cater for the electricity and gas sectors, the WAGP, which is also a public–private partnership, will ensure the supply of affordable gas for electricity generation (ECOWAS).

The pipeline project is a 20-inch pipeline owned and operated by a consortium of six companies: the Société Beninoise des Gaz S.A, Société Togolaise des Gaz S.A, Ghana National Petroleum Company, Chevron Nigeria Limited (ChevronTexaco), Nigeria Gas Company and the Shell Petroleum Development Company of Nigeria (Royal Dutch Shell) (EIA, 2001). Its initial capacity is about 200 mmscf/day with an incremental increase in capacity up to 470 mmscf/day. This expansion is expected to cost approximately US\$115 million. The size of the pipeline was predicated on the need to adhere to “overall minimum transportation costs and other operational considerations.” (World Bank, 2004)

Being an onshore–offshore project, the pipeline is scheduled to transport gas from the Niger-Delta region of Nigeria via the existing Escravos-Lagos Pipeline System (ELPS), to its present terminus near Lagos, Nigeria. In effect, the WAGP commences from this point, running for about 56 km onshore to the Nigerian coast, and then for 15–20 km offshore in water depths of between 15 and 70 meters (Ibid.).

The WAGP Treaty was signed on 28 May 2003, by the Heads of Government of Nigeria, Ghana, Togo and Benin. It provides for an all-inclusive legal, fiscal and regulatory structure for the project (Nexant). The Treaty, which has already been ratified by the Nigerian National Assembly, provides for national laws towards the implementation of the obligations of the Federal Government under the WAGP Treaty and the International Project Agreement of the West African Gas Project (The Guardian).

Electricity generation in the region is heavily reliant on hydroelectric power from its major rivers. This energy source is however inadequate, given the fluctuations

in water supply and the long spells of the dry season. The WAGP thus provides an opportunity for diversifying the region's energy mix, by supplying gas to gas-powered electricity generating plants across the region.⁵ The Project will feed into the WAPP which comprises the four countries, but will also spread its benefits to the whole Gulf of Guinea Region (Belguedj, 2006). Experts are of the view that the gas pipeline will enable the electricity sector a measure of price stability, as the long-term gas contracts will also serve as a buffer to variations in the international prices. It is thus important to note the role gas provided by the WAGP will play in making the region's electricity industry competitive. The pipeline will also speed up the establishment of combined gas cycle plants along its route, resulting in increased generation capacity (Plunkett, 2001, p.5).

The ECOWAS Regional Electricity Regulatory Authority (ERERA)

The ERERA was established in January 2008. The establishment of ERERA was informed by the need to promote the development of infrastructure, improve governance of the sector and attract significant private capital. The specific mission of ERERA is to regulate cross border electricity exchanges between ECOWAS countries and is specifically empowered to:

- Create and ensure the maintenance of suitable conditions for the development of the regional market and regional infrastructures for energy transmission,
- Supervise operations of the regional market specifically by warning and sanctioning anti-trust practices,
- Settle disputes between stakeholders (mediation, conciliation, arbitration) and;
- Support and assist national regulators.

ERERA plays a central role in the setting up of institutional and harmonized contractual frameworks to promote cross-border electric energy exchanges within the region. At the regional level, ERERA is to WAPP what the national regulators are to national electricity operators. In addition, ERERA has the authority to issue regulations and decisions that are binding within the

5 See also Chukwu, U.C and Ahiakwo, C.O., 2007. Gas Turbine Technology and the Exploitation of Natural Gas in West Africa Sub- Region European. *Journal of Scientific Research*, 17(2), pp.173-178.

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ECOWAS zone. Since its establishment, ERERA has been working to promote cooperation, exchange of information and assistance among regulatory bodies in ECOWAS member States, through workshops and platforms for regulators and all stakeholders of the energy sector in the region.

The ECOWAS Centre for Renewable Energy and Energy Efficiency (ECREEE)

The ECREEE was established in 2008 as a specialized ECOWAS agency with a public mandate to promote regional renewable energy and energy efficiency markets. It commenced operations in 2010 with the support of the Governments of Austria and Spain and key technical assistance of the United Nations Industrial Development Organization (UNIDO). Viewed as the first regional renewable energy promotion agency in sub-Sahara Africa, the creation of the Centre was predicated on the background of the severe energy crisis facing the ECOWAS region. The overall objective of the Centre is to contribute to the sustainable economic, social and environmental development of West Africa by improving access to modern, reliable and affordable energy services, energy security and reduction of energy related Greenhouse gas (GHG) emissions and climate change impacts on the energy systems. The proposal to establish ECREEE was therefore a carefully thought through, crucial regional response to international declarations, global climate change initiatives and to the specific needs of ECOWAS Member States as expressed in national and regional policies.

The Centre executes and supports activities, programs and projects in the scope of four areas:

1. Tailored policy, legal and regulatory frameworks,
2. Capacity development and training,
3. Knowledge management, awareness raising, advocacy and networks,
4. Business and Investment Promotion.

Adoption of Regional Green Policies

At the background of rising energy security and climate change concerns, the promotion of renewable energy and energy efficiency markets has been acknowledged as important areas for regional cooperation/integration by ECOWAS. The experience of the European Union (EU) has shown that regional integration can be a useful tool to facilitate the adoption and implementation of clear-cut renewable energy policies and related legal and regulatory frameworks on national levels. In Sub-Sahara Africa, ECOWAS has taken a pioneering role in the development of a regional sustainable energy policy framework. Member States have expressed the necessity to mainstream renewable energy and energy efficiency (RE&EE) into their national policies.

In 2012, ECREEE, with support from the European Commission, the Governments of Austria and Spain as well as UNIDO, the Global Environment Facility (GEF), the French Environment and Energy Agency (ADEME), and the United Nations Development Program (UNDP), developed two complementary regional policies on renewable energy and energy efficiency. Both policies contain attainable targets at regional level harmonized with national targets and propose a portfolio of policy measures, laws, regulations and incentives to be implemented on national and regional ECOWAS levels in a short-term and long-term view. These path-breaking policies and corresponding action plans were adopted by the ECOWAS Authority of Heads of State and Government in July 2013. The adoption signifies the region's strong political will to employ sustainable energy technologies towards the realization of the ECOWAS region's energy access objectives as well as the Sustainable Energy For All (SE4ALL) targets. Also importantly, they provide clear regulatory frameworks that promote greater private sector participation and investment.

The ECOWAS Regional Renewable Energy Policy aims to ensure increased use of renewable energy sources such as solar, wind, small-scale hydro and bioenergy for grid electricity supply and for the provision of access to energy services in rural areas. The policy scenario will complement other important conventional sources for power production, such as large hydro and natural gas. The specific objectives of the renewable energy policy include:

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1. The share of renewable energy (including large hydro) of the overall electricity mix of the ECOWAS region will increase to 35% in 2020 and 48% by 2030,
2. The share of new renewable energy such as wind, solar, small scale hydro and bioelectricity (excluding large hydro) will increase to around 10% in 2020 and 19% by 2030,
3. These targets translate to an additional 2.425 MW renewable electricity capacity by 2020 and 7.606 MW by 2030,
4. To provide universal access to energy services it is envisaged that around 75% of the rural population will be served through grid extensions and around 25% by renewable energy powered by mini-grids and stand-alone hybrid systems by 2030,
5. By 2020, the whole ECOWAS population will have access to improved cooking facilities either through improved stoves or fuel switching to other modern forms of energy such as LPG,
6. The share of ethanol/biodiesel in transport fuels will increase to 5% in 2020 and 15% by 2030,
7. By 2030, around 50% of all health centers, 25% of all hotels and agro-food industries with hot water requirements will be equipped with solar thermal systems.

The ECOWAS Energy Efficiency Policy seeks to contribute to creating a favorable environment for private investments in energy efficiency, and spurring industrial development and employment through reduction of energy bills. Energy efficiency is considered as an integral part of the modernization and greening of West African economies. The policy aims to implement measures that free 2000 MW of power generation capacity and in the long term, more than double the annual improvement in energy efficiency, so as to attain levels comparable to those of world leaders. In effect, the amount of energy needed to produce a certain amount of goods and services would decrease by about 4% annually.

The specific targets of the regional energy efficiency policy are to:

1. Phase out inefficient incandescent lamps by 2020,
2. Reduce average losses in electricity distribution from the current levels of 15 - 40% to the world standard levels of below 10%, by 2020,
3. Achieve universal access to safe, clean, affordable, efficient and sustainable cooking for the entire population of ECOWAS, by 2030,
4. Adopt region-wide standards and labels for major energy equipment by the end of 2014,
5. Develop and adopt region-wide efficiency standards for buildings (e.g. building codes),
6. Create instruments for financing sustainable energy, including carbon finance, by the end of 2013, and in the longer term, establish a regional fund for the development and implementation of sustainable energy projects.

The regional RE&EE policies represent voluntary commitments of ECOWAS to the United Nations' SE4ALL Initiative, for which ECREEE has been nominated by the ECOWAS Energy Ministers to serve as the focal point for the implementation of the Initiative in West Africa. The SE4ALL initiative, launched by the UN Secretary-General, aims to achieve the following objectives by 2030: (i) ensure universal access to modern energy services; (ii) double the rate of improvement in energy efficiency; and (iii) double the share of renewable energy in the global energy mix. ECREEE, as mandated by the Authority of Heads of State and as the focal institution for the SE4All Initiative in West Africa, is currently implementing the regional policies at national levels.

Renewable Energy and the Regional Power Market⁶

The electricity generation capacity of most of the ECOWAS Member States is largely based on fossil fuels. As a consequence, electricity tariffs are either high, overburdening consumers or heavily subsidized, considerably straining national budgets. The recent unprecedented escalation of oil prices has demonstrated

6 This section relies on a comprehensive baseline report for the ECOWAS Renewable Energy Policy (EREP). ECOWAS, 2012. *Baseline Report for the ECOWAS Renewable Energy Policy (EREP). Final version* [PDF]. Praia, Cabo Verde: ECREEE. Available at <http://www.ecowrex.org>.

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the potential dangers of over-reliance on fossil fuels with its devastating consequences on national economies across the region. The challenge of oil price volatility therefore provides additional impetus to invest in clean, efficient and renewable energy technologies that will provide a new driving force for economic growth and development.

The region possesses significant technically, economically feasible renewable energy resources, concentrated as follows:

- Wind in coastal zones: Cape Verde, Senegal, Gambia, and possibly Ghana, Mali and Nigeria,
- Small-scale hydro potential partly but not exclusively in the southern part of the region (Cote d'Ivoire, Ghana, Guinea, Guinea Bissau, Liberia, Togo and Sierra Leone),
- Solar resources in the northern regions (Niger, Burkina Faso, Niger and the northern part of Ghana and Nigeria) except for Cape Verde,
- Biomass resources are well distributed among countries in the region.

Expansion of power generation from renewable resources offers the opportunity to complement other important conventional sources of power production (e.g. large hydro and natural gas) and also to complement WAPP's regional power trade scenario. The ECOWAS countries can take advantage of their local renewable energy sources depending on their individual situation and the competitiveness of the available renewable technologies.

The Master Plan divides the ECOWAS region into three country groups and assigns them different roles:

- a. Countries with the potential of a self-sustained supply: This is the case of Senegal, Côte d'Ivoire, Ghana, Nigeria, Togo/Benin and Niger after 2020 (increased coal based thermal production is expected by that year),
- b. Countries with continued dependence on power imports: The Gambia, Guinea Bissau, Mali and Burkina Faso. Niger will require about one third of its electricity needs as imported energy up to 2021, with a surplus to be exported thereafter,

- c. Countries with the potential to become power exporters after 2018: That is the case of Guinea, Sierra Leone, Liberia, and to a less extent Cote d'Ivoire and Niger after 2021. Hydro production will lead to a low marginal electricity cost that can be a barrier for other renewable energy options such as biomass or mini hydro,
- d. Countries with self-sustained supply: For this group of countries (Ghana, Nigeria, Togo/Benin, Senegal, Cote d'Ivoire), additional power generation from "new renewables" is expected to impact positively as it would replace part of the planned conventional capacity development. However, it could require complementary ancillary power capacity to ensure grid stability (e.g. integration of wind and solar). Only some of the renewable energy technologies will be competitive with conventional sources used in these countries:
- For Senegal, additional RE could reduce thermal power production based on coal during the whole period and could contribute to improve the supply security by 2012-13, as Senegal's supply includes a share of energy importation. As the thermal production will be based on coal, additional RE production will have a positive effect on CO₂ emission,
 - For Ghana, additional RE production could substitute a part of the energy importation enhancing the supply security from 2018 and a share of the gas based thermal production (2014-17) that is expected to be exported towards Burkina Faso,
 - For Côte d'Ivoire, the erection of a new dam in 2018 will secure the domestic supply and a certain amount of energy to export. There is no additional RE production on top for the hydro production, programmed by the WAPP and Cote d'Ivoire is very reluctant to consider RE options in their power supply,
 - For Nigeria, the additional RE production would replace the thermal production based on gas or simply satisfy the capacity gap,
 - For Togo/Benin, as well as for Nigeria, additional RE production would substitute a share of gas based thermal production (Maria Gleta gas power plant 450 MW from 2014) or fill the gap in case of delays.

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In all the cases, the magnitude of thermal or hydro production (base load) is sufficient to balance possible variation through RE production (e.g. wind, solar). The countries can rely on different RE resources:

- Senegal: Wind and biomass are obvious candidates. Solar option has to be confirmed in relation to an adequate access to the grid (suitable voltage and distance),
- Ghana: Biomass and wind. The solar option is possibly less cost efficient than biomass, but can be used for smaller application. Mini hydro schemes could contribute for both grid energy and to power isolated schemes,
- Nigeria: SSHP, solar and wind in the North (to be verified) and potentially biomass and agro industrial wastes,
- Togo/Benin: Biomass and SSHP connected to the grid,
- Niger after 2020: Solar but it will require a sufficient transfer capacity on the HV grid depending on where the solar farms will be erected.

As the region is endowed with large potentials of renewable energy resources, and as renewable energy technologies approach grid parity in certain circumstances, the ECOWAS region is today at the threshold of a new regional power supply concept based on large bulk power generation provided and distributed by WAPP and on a substantial contribution provided by renewable energy options financed by the private sector and private banking institutions (ECOWAS Observatory 2012).

Obstacles to Regional Sustainable Energy Development

While progress has indeed been made in terms of developing a regional electricity infrastructure as well as a regulatory framework as a condition for the provision of affordable and reliable electricity, several constraints to the realization of the ideals of a liberalized regional electricity market still remain.

Free Riding

Significant investment outlays are required year-on-year in order to meet the funding objectives of the regional electricity sector. Private investment in the region's power sector is therefore imperative and can be accessed through the provision of a reliable mechanism for conducting commercial electricity transactions (NEPAD, 2004, p.9).

Thus far, these objectives have not been realized. According to analysts, despite attempts at reforming the region's power sector, the private sector has been reluctant to mobilize much needed investment due to the non-profitability of power generation and distribution.⁷ There is the sense that return on investment will not be commensurate given that tariff structures across most of the region are not commercial viable. There is also the risk that consumers will steal electricity outright. In other words, the classic free-rider problem, where the market is unable to derive payment to meet even the basic level of costs of production creates barriers to private investment.

Indeed, a study by the New Economic Partnership for African Development (NEPAD) on the perceptions of the private sector to the financing of ECOWAS projects revealed a major constraint to be the apparent mismatch between customer charges and economic costs, as well as poor discipline or attitudes regarding payment of tariffs or other charges (NEPAD, 2004a, p.36). The report thus argued that such factors limited the appetite of project sponsors, financial and commercial institutions for funding infrastructure projects in West Africa. It also identified a situation where investors' returns were not commensurate with the perceived risks inherent in ECOWAS infrastructure projects, as an additional impediment to the flow of private capital (Ibid.).

7 Being excerpts of an interview granted by the executive vice chairman and managing director of the Power Holding Company of Nigeria, where he made reference to the Nigerian context, however this situation plays out in most ECOWAS countries. Refer to the full interview in Ejiorfor A., 2009. *Why Private Sector Can't Drive Power Sector*, [newspaper] THISDAY, 14(5035), 29 February 2009.

Another fall-out of the free-rider problem is the implication it poses to the development of vital energy infrastructure needed to make the power pool efficient. Inadequate energy infrastructure hinders the utilization of the region's vast energy potential and resources, and also limits the level of economic activity in a country or region. For one, the non-profitability of power generation and distribution in the region makes it increasingly difficult to persuade the private sector to make the required investments (Niyimbona 2006). As an ECOWAS Diagnostic Report on Power Sector also highlights, there is the reality that tariffs often do not reflect economic costs. This situation combined with the high level of technical and commercial losses has the potential of compromising the long-term financial viability of the regional market with the inability of operators to meet their financial commitments (ECOWAS, 2008, p.18).

Poor Restructuring of Energy Sectors

Historically, exports of electricity to other countries, particularly in developing countries have been constrained largely due to the poor restructuring of the national energy sectors. Across ECOWAS countries, the reality is that attempts at restructuring the region's electricity sectors have so far not produced the desired results, as the region's power sectors, till this present day, remain vertically integrated and under public ownership. Indeed, a diagnostic analysis revealed the existence of disparities in the mode of organization of individual power sectors resulting in differences in the industry structure, contractual relations and sector regulation. ECOWAS countries are currently at various stages in the development of a model based on the eradication of the traditional public monopolies in the production and the distribution of electricity through management, or the opening up of the power generation segment to the private sector and a gradual separation of the other segments.

Efforts at vertical and horizontal unbundling have been implemented in only a few countries, with Nigeria and Ghana as main examples. In countries such as Gambia, Liberia and Sierra Leone, the size of their power systems means that a functional unbundling is not feasible for the foreseeable future. The electricity markets in different ECOWAS Member States therefore reveal a slow movement towards disengagement of national governments from its operational activities. The structure of national electricity markets, as they currently operate, creates disincentives for private investment, as the roles of actors are often not clearly defined. Furthermore, the absence of deregulation

or the inadequate privatization of the power sectors hinders private investment in the development of power grids and other transmission infrastructure. In effect, they limit the overall commercial environment for electricity trading both nationally and regionally (Rufin 2002, p.195).

Inadequate Regulatory Frameworks

Physical integration of WAPP's power systems is a prerequisite for an extended power exchange among the separate blocs or national systems. According to the Master Plan, this integration should be achieved by 2017/18, corresponding to completion of major regional infrastructure programs (large hydro dams, interconnections, and gas operated large combined cycle plants). Furthermore, countries need to achieve a certain minimum in adoption and implementation of regional standards as a prerequisite for safe operation of the regional network. The challenge however is that most ECOWAS Member States have yet to establish regulatory institutions that will define the mandates, obligations and duties of the regional market operator.

Furthermore, the significant investments involved in power generation and distribution will require Member States to resort to private investment participation. However, public and private interests are often in contradiction and the short-term policy goals of governments may sometimes compromise these regional objectives and endanger the sustainability of projects and the security of investments.

Given the inadequate institutional and regulatory environment in which the West African electricity industry operates, there will be significant challenges in the implementation of liberalization policies at the national level. This may prove even more difficult when applied to the peculiar nature of cross-border electricity exchanges between countries. The development of regional electricity exchanges therefore faces not only the challenge of insufficient infrastructure but also inadequate institutional and regulatory frameworks.

Conclusion

This paper provides an overview and analysis of regional energy integration efforts of the ECOWAS region. From the foregoing, it is clear that governments in the region have made commendable efforts in expanding access to modern

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energy services for the population. However, more still needs to be done given that there are still approximately over 176 million people that still lack access to electricity in the region.

Regional energy integration, as highlighted in this paper, is a useful tool for achieving regional energy security and enhancing the diversification of energy sources, particularly as energy resources do not often correspond to national boundaries. Also importantly, national markets are usually too small to justify the huge investments required. While energy resources such as oil and gas can be traded on international markets, electricity infrastructure and trading are still very much confined to national borders. Regional electricity markets can therefore provide the economies of scale needed to overcome the problem of small markets.

Natural gas can play a critical role in a successful regional energy integration regime, given its relative competitiveness and availability in the region. A no-gas flare regime must be imposed in the region, and national and international oil companies operating in the sector provided incentives to invest in gas gathering infrastructure that feeds power plants and the West African Gas Pipeline, as well as for powering mini-grids in oil producing areas.

Renewable energy, on the other hand, represents a more sustainable energy developmental pathway. Given the changing and positive trends in terms of technologies, markets and regulatory frameworks, renewable energy power generation has the potential to be a full-fledged component of power production for ECOWAS Member States. Renewable energy based power generation is already more competitive compared with conventional energy sources and can help to reduce fossil fuel consumption, carbon emissions and electricity costs while expanding access to electricity and creating new jobs. Unleashing this potential will however require aggressive regulatory power sector reforms and the entrenchment of more competitive wholesale electricity markets, complete with efficient procedures for dispute resolution and minimum set of electricity trading standards. Finally, regional grid codes should incorporate renewable energy-based power generation to facilitate better market integration of generation from renewable energy sources.

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