



Administrative body or engine room: An analysis of the role of the ECOWAS Commission in Human Rights Protection

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Abstract

Traditionally under international law, States controlled the right to the management and decision-making of international organizations by conferring powers on the plenary organ composed of government representatives who had to approve every important decision unanimously. However, the non-permanent nature of plenary bodies necessitated the creation of the Secretariat to oversee the day to day administration of these intergovernmental organizations. But the transformation of international organizations into autonomous supranational entities makes the study of its institutions difficult. The power of international organizations is demonstrated by recent events like Brexit, Trump's inward-looking and a host of protectionist policies of states that try to detach themselves from the influence of international organizations. Consequently, this paper examines the role of the ECOWAS Commission in the implementation of community objectives. It focuses mainly on the role of the secretariat in the transformation of the ECOWAS regime from economic integration into human rights protection.

Keywords: international law, management, decision-making, ECOWAS commission, human rights protection

1. Introduction

Traditionally under international law, States controlled the right to the management and decision-making of international organizations by conferring powers on the plenary organ composed of government representatives who had to approve every important decision unanimously. This was intended to keep the decision-making of international organizations within the control of sovereignty and also to give them a democratic function. However, the non-permanent nature of plenary bodies necessitated the creation of an organ to oversee the day to day administration of these intergovernmental institutions. This prompted the creation of administrative organs regularly referred to as a Secretariat^[1]. It was envisaged that this administrative entity will execute the decisions of the organization guided by the heads of states or plenary. This way the secretariat will at least possess the capacity to exchange useful information for the functioning of the organization with member state institutions. Incidentally, this function also required the right to monitor compliance with obligations of member states contained in treaties.

The administrative function of the Secretariat depends on the design and objectives of a particular international organization. However, they generally include basic administrative and clerical functions, budget preparations, collection of reports and information, representing their organizations in legal proceedings and rendering technical assistance to member states. Presently, international organizations have morphed into "multiple issue"^[2] entities with supranational powers. The power of international organizations is demonstrated by recent events such as Brexit, Trump's inward-looking and a host of protectionist policies of states that try to detach themselves from the influence of international organizations^[3]. Hence, it has become practically impossible to limit the role of the secretariat to its traditional functions. Secretariats have

become more than just administrative organs. They are now considered powerful organizations which through complex bureaucratic practices control the sovereign powers of states in certain areas. This is a far-cry from the classical realist understanding of the nation-state as the primary object of international law. In some organizations, secretariats have become the engine room. For instance, they engage in election observation, carrying out executive functions and initiating policies^[4].

The diversity in operational capacity of these organs has prompted a variety in nomenclature. Some international organizations have expanded secretariats to become 'Commissions'^[5], while a handful still operate through general Secretariats^[6]. This paper examines the role of the ECOWAS Commission in the implementation of community objectives. It focuses mainly on the role of the secretariat in the transformation of the ECOWAS regime from economic integration into human rights protection.

2. Brief History of the ECOWAS Commission

The ECOWAS Commission was initially established as an Executive Secretariat under the 1975 treaty^[7]. However, the secretariat was hardly functional like other community institutions during that first regime. While the community organizations were undergoing transformation in 2006, the ECOWAS Secretariat was transformed into a 'Commission'^[8]. It was created to adapt '[...] it to the international environment and to make it more effective in the accomplishment of its regional integration assignment'^[9]. In this wise, Article 17 of the supplementary protocol of the revised treaty furnishes the Commission with nine commissioners namely: the President, the Vice President, and seven other commissioners^[10]. The Supplementary protocol A/SP.1/06/06 also expanded the functions of the Commission, significantly transforming it from a mere secretariat to an organ with policy-making competence^[11].

This paper argues that the responsibility of the Commission to ‘exercise its powers to ensure the smooth functioning of the Community and protect the overall interest of the Community’^[12] also entails authority to act in human rights, democracy and the rule of law since these are established as community objectives^[13]. Alter *et al.* allude to the often under emphasized role of secretariats in the transformation of international organizations^[14]. They highlight the critical role of the ECOWAS Commission in the expansion of the court to human rights protection in 2005. Following a proposal by the Gambian government to water down the powers of the ECOWAS Community Court of Justice (ECCJ) in the aftermath of a judgment, it was staff of the ECOWAS Commission’s Legal Directorate that reached out to key lawyers and rights groups to turn up the heat on ECOWAS Member States not to adhere to the proposal of the Gambian government^[15].

Since then the Commission has become an important organ in the promotion and protection of human rights. The human rights function of the Commission also stems from its responsibility to execute community objectives in conjunction with other decision-making organs of the organization vested with human rights mandate. Being an administrative body, it is expected that the Commission’s activities do not mirror the same rights-based *simpliciter*. Most of its activities are incidental, but still institutionally relevant for the protection of rights in the Community. This is mainly because it can operate mainly through policy-making. Thus, the Commission’s new authority in human rights, democracy and good governance entails responsibility to ensure legitimate policy-making^[16]. It is within these rule-making procedures that underlying issues pertaining to human rights can be resolved with sound policy-making. More so, a procedurally legitimate Commission also enhances careful analysis of such policies and engages interested national departments dialogue on methods/mechanisms of implementation. The following section examines the policy-making process of the ECOWAS Commission vis-a-vis its human rights function and the enhancement of the legitimacy of the larger organization.

3. Meetings and Conferences

In its capacity as an administrative body, the Commission expectedly convenes conferences with the aim of setting standards in human rights and the rule of law in member states. In some cases, the Commission has acted in consonance with provisions of the revised treaty, in others, the Commission exercises its functions deriving from directives of the Authority of Heads of States and Government (AHSG) or the Council of Ministers^[17]. The President of the Commission is responsible for the coordination of the activities of the community institutions^[18]. The President of the Commission may on his own organize meetings and conference aimed at addressing specific policy objectives of the community that fall within the space of human rights. Whether these meetings are solely the initiative of the Commission or in conjunction with national institutions, the Commission may improve the human rights regimes in the respective member states by agenda-setting and capacity building through meetings and conferences.

An example of some of the commission’s powers as laid down in community instruments is Article 35(2) of the

Protocol on Democracy which provides that the Commission (then Executive Secretariat) may provide a framework for independent human rights institutions in the sub-region. The framework is expected to form a regional network for the enhancement of national capacities to protect human rights. In line with this provision, the Commission through its directorate of Political Affairs established the ECOWAS Network on Human Rights, a network of human rights bodies, in 2006^[19]. Key meetings include the 2012 meetings to adopt the Network’s constitution. The meeting also concluded a three year plan of action to enhance the performance of national human rights bodies, including those of civil society organizations, in the protection and promotion of human rights in sub-region^[20].

This type of institutional legitimacy chain between the Commission and national institutions provides synergy to report and cooperate on human rights issues in various member states. In addition, the inclusion of NGOs and civil society further enhances the institutional effectiveness of the Commission in this area. Expectedly, the Commission has made remarkable strides in other aspects of human rights. For instance, in peace and security, the Commission was crucial in quelling political instability in Mali, Guinea Bissau and Gambia in the past decade. In 2012, the Commission organized four extraordinary sessions of the Mediation and Security Council at the ministerial level and five Extra-ordinary summits of Heads of State and Government towards finding a solution to the crisis in Mali and Guinea Bissau^[21]. In furthering its mandate in the sustenance of democracy and good governance, the Commission regularly facilitates meetings of National Electoral Commissions (NECs) through its Network of National Electoral Commissions (ECONEC). The ECONEC, *inter alia*, promotes peer learning among Electoral Management Bodies (EMBs) and also builds capacity in election monitoring^[22]. The Commission regularly carries out observation missions through this arrangement and has facilitated peaceful elections in Senegal, Guinea-Bissau, Sierra Leone, Ghana^[23], Togo, and most recently Liberia^[24].

The Commission has also performed admirably in Humanitarian law and Gender Equality. The Commission has in the past organized workshops on the Implementation of International humanitarian Laws in West Africa and has instituted the implementation of the International Humanitarian Laws approved by Member States and presented to Ministers of Justice^[25]. Regarding Women and Children rights, the Commission has been proactive in championing this cause. Along this line, the Commission has concluded plans on finalising a study on Gender and trade dynamics in West Africa^[26].

Through meetings and conferences the Commission has demonstrated its commitment to the institutionalization of transparency and public participation in the policy-making process. These meetings, workshops and conferences promote institutional effectiveness in the organization. The Commission as part of its drive to be accountable^[27] works closely with the West African Civil Society Forum (WASCOF) and also developed an action plan to enhance civil society organizations’ contribution to integration in West Africa. It has also provided financial support to WACSOF and other regional NGOs that focus on the ECOWAS Vision 2020 and ECOWAs Strategic Action Plan’^[28].

As already highlighted, the Commission (at the time the secretariat) played an instrumental role in expanding the human rights mandate of the ECCJ. The Commission was also instrumental in changing the human rights mandate of ECOWAS in other community legal texts ^[29]. The Commission expended a large chunk of community expenditure on judges and staff during this period ^[30]. Accordingly, the Commission's support of civil society and ECCJ judges in the aftermath of the *Olajide Afolabi v Federal Republic of Nigeria* ^[31] decision 'greatly increased the likelihood that ECOWAS Member States would approve the protocol advocated by ECOWAS judges and NGOs' ^[32]. The Commission has been hailed as the "the brand" of ECOWAS ^[33]. This is largely due to its presence in member states through effective policy-making and synergy with national and community institutions. There appears to be little signs of intra-organizational friction with member state institutions despite some gaps that currently exist in the institutional mechanism particularly in implementation of community policies ^[34].

4. Training Programmes

The function of the Commission is not limited to facilitating meetings and conferences. The Commission may also conduct training programmes amongst its staff and also with national actors. The aim of these training programmes is to build capacity of national institutions of member states to enhance and improve Community intervention in certain areas. The Commission contributes to 'human rights education in the community 'mostly by training programmes' ^[35].

In order to improve humanitarian crisis management in the sub-region, the Commission created an ECOWAS Emergency Response Unit (EERT). The EERT has held simulation trainings for EERT members on civilian protection during crisis situations. This training also included the use of Geographic Positioning System to enhance humanitarian missions in the sub-region ^[36]. Furthermore, EERT specialists have been trained on the essential policies and laws of the ECOWAS Commission for response in distressed member states. The importance of an efficient emergency response unit in the sub-region cannot be understated considering the devastating impact of natural disasters in some member states in the past ^[37]. As a mechanism for disaster management, the Commission has also carried out training workshops on International Disaster Response Laws (IDRL) for West African Disaster Managers with the International Federation on Red Cross and Red Crescent Societies (IFRC) ^[38]. The aim of this training programme here is to promote measures for humanitarian access by foreign relief assistance agencies in the case of sudden emergencies that may stretch national institutions of member states.

Bearing in mind the importance of peace to development across the sub-region, the Commission has always worked to strengthen the ECOWAS Early Warning System by holding Regional Policy seminars on the Responsibility to Protect (R2P). In the past, the Commission had organized a in collaboration with the Global centre for R2P, to provide 'an opportunity to share experiences of ECOWAS in implementing its collective security mechanism as a model for implementing the concept, especially, the very controversial third pillar of R2P' ^[39]. In furtherance of this objective, the Commission organizes training sessions on International Humanitarian Response and Humanitarian

response System and Contingency Planning for staff of its Early Warning, Humanitarian and Social Affairs Directorates ^[40].

In a bid to enhance Good Governance in the sub-region, the Commission has undertaken a string of training workshops that aim, in particular to develop the capacity of national institutions. In this regard, subject to the ECOWAS Protocol on Corruption, the Commission has trained Operational Investigators in Anti-Corruption Institutions in member states, and also plans for staff exchange programme among governance Institutions in West Africa. The Commission provides technical and capacity support for the Implementation of the work of Regional Networks on Human Rights, Anti-Corruption, Political Parties and the ECOWAS Network of Electoral Commissions (ECONEC) ^[41].

Through these trainings the Commission has arguably made giant strides in human rights protection in the Community. This is true when it is considered that, through training of community and member state officials, human rights topics are geared toward specialized areas. This enables a more effective policy approach towards addressing rights-related problems in member states, which extends to the grassroots. Additionally, through training of member state officials international human rights strategies are exchanged with skill-development. Tibbits agrees that, it is within the accountability model of human rights training that 'social change is necessary and that community-based, national and regional targets for reform can be identified' ^[42]. Hence, human rights education presents an inclusive platform for effective human rights protection at the vertical, horizontal and vertico-horizontal levels.

5. Policy formulation

As already indicated, the Commission bears a major proportion of the policy-making responsibility of the organization. This policy-making function is however, subject to the approval of the Council of Ministers and the AHSG. In practice, policy proposals of the Commission are mostly adopted by the decision-making organs with minimal input from the supervising organs ^[43]. It is no surprise that the Commission has since its transformation initiated policies that have potential long-term benefits for human rights protection in member states.

Following years of violent conflict in the sub-region, the Commission established the ECOWAS Conflict Prevention Framework (ECPF) which was adopted in January 2008 by the Mediation and Security Council ^[44]. The Framework was eventually supported by funds from major international organizations and state governments ^[45]. The ECPF is a coherent framework which covers several components of the Community's operations, including: Democracy and Political Governance; Natural Resource Governance; Women, Peace and Security; Security Governance; Media; and Preventive Diplomacy ^[46]. Despite the success of the ECOWAS Ceasefire Monitoring Group (ECOMOG) experiment in Sierra-Leone and Liberia, questions remained over the legality and legitimacy of the intervention ^[47]. Soldiers were accused of the gross human rights violations, and a general feeling that the forces lacked sufficient training. To avoid a repeat of such scenario in future peace-keeping missions, the Commission (then still a secretariat) undertook the task of formulating a code of conduct to guide armed forces ^[48].

Another important area where the Commission has initiated policies on its own is Women and children's rights. The Commission developed a Child labour plan of Action in conjunction. Furthermore, it held workshops on the Draft ECOWAS Monitoring and Evaluation Framework for Child Protection system in West Africa ^[49]. In addition to making policies internally, the Commission may formulate policies on the direction of the decision-making organs of the community to complement extant community legislation.

6. Conclusion

In conclusion, the expansion into a Commission has improved the institutional capacity of the Community. The fact that the Commission has made so much impact in the areas analysed above may be sufficient to argue that there exists relative autonomy in the operation of community organs. This further implies a cautious willingness, from member states to look the other way while community institutions assume supranational status. This is a far cry from the usual attempt to muzzle community institutions such as the court.

The ECOWAS Commission and the African Commission have so far expanded the activities of the AU and ECOWAS, particularly in the area of human rights, democracy and good governance. However, this may not directly determine the level of implementation. The 'implementation management capacity' ^[50] of the ECOWAS Commission may differ, but its activities certainly impact immensely on human rights objectives of the community and this is sufficient proof that the Commission is an organizational engine room at least in the area of standard setting and policy guidance in human rights protection.

7. References

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2. Börzel TA. *Comparative Regionalism: A New Research Agenda*, *KFG Working Paper Series* (2011), 11.
3. See, J. Klabbers, 'Transforming Institutions: Autonomous International Organizations in Institutional Theory' (2017) 6 *Cambridge Journal of International Law*, 105, 106.
4. N.M. Blokker & H.G. Schermers, *International Institutional Law*, 4th Edition (Leiden: Martinus Nijhoff, 2003), 325-328.
5. The UN has established commissions in different regions as administrative hubs, primarily for the purpose of economic integration. The European Commission is regarded as the 'EU's executive body, representing the interests of Europe as a whole. See more about the Commission at, <http://ec.europa.eu/about/> (accessed 15 April 2018).
6. Only the African Union (AU) and ECOWAS have commissions, other major Regional Economic Communities (RECs) operate through secretariats. In other parts of the world, the Organization of American States (OAS), the Andean Community and the Caribbean Community (CARICOM) all operate through general secretariats.
7. See, Articles 4(1) and 8 of the 1975 treaty, and articles 17, 18 and 19 of the revised treaty.
8. See, Supplementary Protocol A/SP.1/06/06 Amending the Revised Treaty.
9. Decision A/DEC.1/06/06 Relating to the Commission of the Economic Community of West African States, (2006) Vol. 49 ECOWAS Official Journal.
10. The seven commissioners head the departments of the Commission which include: 1) Administration and finance department; (2) Agricultural, Environment & Water Resources Department, (3) Human Development and Gender department; (4) Infrastructure department; (5) Macro-Economic Policy department; (6) Political Affairs, Peace and Security; and (7) Trade, Customs, industry & Free Movement department. These departments further have directorates that oversee specific aspects of policy-making. See further, <http://www.comm.ecowas.int/> (accessed 15 April 2018).
11. New article 19 of the revised treaty vests the Commission with authority to formulate proposals and make recommendations to the main decision-making organs of the Community.
12. *Ibid.*, 19(4).
13. See Preamble to the revised treaty of ECOWAS 1993.
14. K.J. Alter, J.T. Gathii & L. R. Helfer, 'Backlash against International Courts in West, East and Southern Africa: Causes and Consequences', (2016) 27 *European Journal of International Law*, 293.
15. *Idem.*, 298.
16. Procedural Legitimacy is based on the thought that good governance procedures are essentially employed in the policy-making process. Thus if decision-makers follow the due process, the decisions that emerge will be legitimate to some degree. Furthermore, proponents of this approach argue that procedural rigor is fundamental in the international policy domain, where the lack of democratic underpinnings and political accountability are lacking. See, D. Esty, 'Good Governance at the Supranational Scale: Globalizing Administrative Law', (2006) 115 *Yale Law Journal* (2006), 1490, 1521-1522. Procedural Legitimacy also implies the traditional understanding of rule of law. See, E. Colombatto, 'A Theory of Institutional Legitimacy', *International Centre for Economic Research*, Working Paper Series no. 5 (2012), p.6.
17. Under new Article 9 of the revised treaty, the Commission may adopt rules relating to the execution of Acts enacted by the Council of Ministers. These rules have the same legal forces as Acts adopted by the Council.
18. New article 19(2) of the revised treaty.
19. Deepening Regional Integration in Africa in Response to the Global Economic Crises', ECOWAS Annual Report, (2009), p.76.
20. *Ibid.*
21. 'Integration and Political stability in West Africa', ECOWAS Annual Report (2012), p.85. The Commission also built linkages and advocacy with the AU, UN and other partners in support of ECOWAS mediation efforts in both countries.
22. ECOWAS Annual Report, 2009, 76.
23. ECOWAS Annual Report, 2012, 86.
24. See, 'ECOWAS Election Observation Mission says Parliamentary Polls Credible, Transparent' available at <http://news.ecowas.int/presseshow.php?nb=226&lang=en&annee=2013> (accessed 15 April 2014).

25. ECOWAS Annual Report, 2012, p.76. I
26. Ibid.
27. The current system of global governance has been critiqued for lack of procedural fairness/accessibility. Generally, domestic interest groups that represent the aggregate individual interests are generally not in the know regarding how international organizations conduct proceedings. See, E. D Kinney, 'The Emerging Field of International Administrative Law: Its Content and Potential' *Administrative Law Review*, 2002, 54, 428-429.
28. ECOWAS Annual Report 2012, 79.
29. N. Nwogu, 'Regional Integration as an Instrument of Human Rights: Reconceptualising ECOWAS', 2007; 6:345-352.
30. 'Interview with ECOWAS Legal Affairs Directorate A', cited in Alter *et al*, 2013, 754.
31. ECW/CCJ/APP/01/03 – ECW/CCJ/JUD/01/04 (2004-2009) CCJELR.
32. K.J Alter, L.R Helfer & J.R McAllister, 'A New International Human Rights Court for West Africa: The ECOWAS Community Court of Justice', (2013) 107 *American Journal of International Law* (2013), 737, 754.
33. On a field visit by the author to the ECOWAS Commission, a senior staff referred to the Commission as 'the brand' of the Community.
34. For example, a cursory look at the national unit directory on the ECOWAS website reveals disparities in the national unit structure of member states. Most francophone countries established Ministries of African integration with a department dedicated to ECOWAS. The Anglophone countries on the other hand operate through ministries of Foreign Affairs with divisions or desks dedicated to ECOWAS. See, ECOWAS National Unit Directory at <http://ecowas.int/> (accessed 15 April 2014). It may be argued that the difference in national resources and institutional capacity calls for different institutional structures in member state ministries and departments.
35. The Commissions approach here is in line with the Accountability model in Human Rights Education (HRE). The Accountability consists of legal and political approaches that include trainings and networking. This method is considered one of the most effective methods of human rights education because learners are directly involved in the protection of individual and group rights. Other models include the; 1) Values and awareness model and 2) Transformation model. See further, F. Tibbits, 'Understanding What We Do: Emerging Models for Human Rights Education', (2012) 48 *International Review of Education*, 159.
36. ECOWAS Annual report, 2009, 79.
37. For example, the flood disaster in Nigeria in 2012 was the worst in 40 years and displaced over 2 million people cutting off routes to neighbouring countries. See, 'Nigeria: 2012 Flood Disaster, Worst in 40 years', Daily Trust, 6 Aug. 2013, available at <http://allafrica.com/stories/201308060714.html> (accessed 15 April 2016); 'Nigeria Flood displaces 2 Million people, kills 363', BBC News Africa, 6 Nov. 2012, available at <http://www.bbc.co.uk/news/world-africa-20221451> (accessed 15 April 2016).
38. ECOWAS Annual report, 2012, 76.
39. Ibid, 87.
40. Ibid.
41. Ibid., 85.
42. Tibbits, 2002, 166.
43. S. T Ebobrah, *Legitimacy and Feasibility of human rights realisation through regional economic communities in Africa: The case of the Economic Community of West African States*, unpublished doctoral thesis (University of Pretoria, 2009), 197.
44. ECOWAS Annual report, 2009, 75.
45. The EU committed the bulk of one hundred and nineteen million euros (€119m) facility towards the implementation of the ECPF under the 10th European Development Fund (10th EDF). The Danish government on the other hand, financing the development of the Plans of action for five components of the ECPF
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47. See, 'Sierra Leone: Getting Away with Murder, Mutilation, Rape', Human Rights Watch Report, (1999), available http://www.hrw.org/reports/1999/sierra?SIERLE99-04.htm#P1104_182827 (accessed 15 April 2014).
48. ECOWAS Annual report, 2005, 93.
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50. For a European perspective on the mechanism of Implementation Management Capacity of the European Commission, see, M.W Bauer, 'Co-managing programme implementation: conceptualizing the European Commission's role in policy execution', *Journal of European Public Policy*. 2006; 13:717.