Symposium II: The Economic Community of West African States in its Fifties – Looking Back, Look Forward - The ECOWAS Commission: The Road to Significance

By:

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June 08, 2026

Introduction

The Economic Community of West African States (ECOWAS) is a central actor in the law, politics and economics of the West African sub-region. Under article 3 of the ECOWAS Revised Treaty, ECOWAS aims to deepen and strengthen relations between its members with the aim of promoting co-operation and integration, leading to the establishment of an economic union in West Africa. This goal, if ever attainable, depends considerably on the role and power of its

treaty organs, including its administrative organs, strengthening the ECOWAS legal order and thus underscoring ECOWAS relevance and power. This aim suggests the need for scholars of ECOWAS to focus attention on organs that they have largely neglected. This submission explores the growth and development of administrative power in ECOWAS. I seek to contribute to the current limited body of knowledge on this aspect of ECOWAS by sketching the outlines of the ideas that have moulded the ECOWAS administrative apparatus.

Julia Gray has stated that international organizations can be grouped into three categories: those organizations that function effectively, those organizations that are practically dead either because the members have left the organization or neglected to implement their treaty commitments, and those that retain a superficial semblance of existence but have very little impact. Gray insists that an international organization's bureaucracy helps explain into which of her three categories the organization fits. Julia Gray, "Life, death, or zombie? The vitality of international organizations." 62 (1) *International Studies Quarterly* (2018): pp.1-13. Thus, Gray traces influence on whether an international secretariat can have enough of an impact on the issue area(s) a treaty is supposed to govern.

The significance of treaty secretariats is further grounded in their role in energizing international law. The international law-making arena, previously dominated by members of a treaty system acting together as the heads of state and government, has seen the entry and impact of treaty bureaucracies. Treaty bureaucracies acquire specialized knowledge across issues that require global governance, and they are also essential for post-treaty implementation and compliance without which organizations have no impact or cease to function. Hannah Birkenkötter, ""What the Secretariat Makes It": United Nations Civil Servants between Administrative Function and Contemporary International Lawmaking" 20 (3) *International Organizations Law Review* (2023): pp.426-456.

Research on ECOWAS has, as noted above, ignored its administrative arm – the ECOWAS Commission (previously the ECOWAS Secretariat). The study of ECOWAS' formation, Yakubu Gowon's doctoral dissertation submitted to the University of Warwick in 1984, barely mentions this arm of ECOWAS. To understand this requires highlighting Gowon's scathing dismissal of a strong

administrative machinery which was that:

‘We did not, however, envisage a strong regional administration for the community, or the delegation of substantial powers to its executive institutions, partly because we felt that the community was not lacking in effective leadership and a sense of purpose and direction, but also because it is customary in West Africa for important political decisions affecting the region or any part of it to be taken by the governments concerned – and after extensive consultation. A highly developed sense of participation seemed to promise better and more lasting results both in the short and long-term - than a brief and pointless display of high-handed efficiency by bureaucrats who lacked the means to impose their policies’ Yakubu Gowon, *The Economic Community of West African States: a study in political and economic integration*. PhD diss., University of Warwick, 1984, p.24.

Since ECOWAS was formed, scholarship on this body has covered trade liberalization, peacekeeping, and the ECOWAS Court of Justice among other issues, but as noted above, has barely addressed the Commission. For instance, major works on the 1975 Treaty by Sam Asante, and Ralph Onwuka barely touch on the ECOWAS administrative apparatus. This neglect persisted in the era of the Revised Treaty with work by Manboah-Rockson and Olabisi D. Akinkugbe leaving the ECOWAS bureaucracy untouched. Between 1975 and 1991, it does seem that, probably, the only instance when the Commission was the subject of intellectual inquiry beyond just a description of its powers, was in a published paper about its clash with the then ECOWAS Fund for Cooperation, Compensation and Development over whether the Fund was independent of the Commission. Igezunyia Abutudu, “Fund versus Secretariat: the struggle for the management of extraversion in ECOWAS” 25 (3-4) *Quarterly Journal of Administration*, 1991, pp.260-272. The neglect of the Commission is a gap in the literature that cries out for study although some scholars have started to fill this gap. Lukas Maximilian Müller. *The rise of a regional institution in Africa: Agency and policy-formation within the ECOWAS Commission*. Routledge, 2022, and Stefan Gänzle, Jarle Trondal, and Nadja Kühn, (2019) ‘The ECOWAS Commission and the making of regional order in West Africa: Intersecting logics in international public administration’ in Katharina Coleman, Markus Kornprobst and Annette Segers, *Diplomacy and Borderlands: African Agency at the Intersection of Orders* (2019) pp. 130-152. Routledge.

Notwithstanding Gowon's views and that under the 1975 Treaty the Commission's powers were supposed to be limited, there was still some scope for it to influence the functioning of ECOWAS. Article 8 (10) of the Treaty conferred responsibility on the Commission to continue to examine the functioning of the Community; submit reports of activities to the Council of Ministers and the ECOWAS Authority of Heads of State and Government; and undertake such work and studies and perform such services relating to the aims of the Community as may be assigned to him by the Council of Ministers and also make such proposals thereto as may assist in the efficient and harmonious functioning and development of the Community.

This ostensibly weak Commission is explained by several factors. First, in the post-colonial struggle for a united Africa, it was obvious that moderation had triumphed over radicalism. With the constraints on the Organization of African Unity (OAU) that rendered it a forum for intergovernmental relationships and not a supranational body, it was plain that African heads of state were not enthusiastic about strong and unchecked regional administrative staff. Second, most probably the members of ECOWAS had learned lessons from the OAU Secretary-General, Boubacar Diallo Telli who was seen by the majority of OAU members as too dominant a figure who sought to make policy instead of serving as a neutral international civil servant, even though the OAU Charter specifically described the Secretary-General as an 'Administrative' Secretary-General. Zdenek Cervenka, The Unfinished Quest for Unity: Africa and the OAU, (1977) Holmes and Meier: New York, pp.31-32.

Then there was also the very nature of West African politics which at the time was devoid of open and democratic governments. Most member states had constrained space in policy circles at the national level and it would be against the trend in the region to empower a regional secretariat to be a major actor in regional affairs and which could take decisions that would shape the politics and economics of the ECOWAS member states. Furthermore, scholars assert that regional cooperation in Africa was not designed to empower regional bodies, making them influential actors in African politics. This is the paradox about African regionalism – the treaties while empowering regional bodies were designed to enhance the power of the states that created them. Jeffrey Herbst, 'Crafting regional cooperation in Africa' in Crafting Cooperation: *Regional International Institutions in Comparative Perspectives*, in Amitav Acharya and

Alastair Iain Johnston (eds.) Cambridge University Press (2007), pp.129 -144, 129-131.

Thus, the ECOWAS Commission's fate seemed to be sealed – a marginal body that was hemmed in by beliefs in the inadequacies of civil servants, the path of post-colonial moderate regionalism, the limits to African democracy, and the contradictory role of regional bodies for African governments.

The Revised ECOWAS Treaty

There was an opportunity to invigorate the ECOWAS Commission in the 1990s when ECOWAS member countries decided to reconfigure its treaty system. This decision was shaped by the failings of ECOWAS, which included the fact that it had hardly changed the economic and political fortunes of its members and citizens. One area that was problematic was its governance organs, deemed weak and thus stronger treaty bodies were needed. The decision to transform ECOWAS was also shaped by the comparative success of the European Union (EU) with its authoritative organs, including the EU Commission and the view that for ECOWAS to be successful required what has been termed as 'mimetic isomorphism' – when organizations may model themselves on other organizations. Kofi Oteng Kufuor, *The Institutional Transformation of the Economic Community of West African States* (2006) Routledge, p.10.

The strengthening of the Commission would only really be the codification of practice that had developed incrementally since the 1975 Treaty. As has been stated in this regard and which challenges the view of a docile Commission, at a time when ECOWAS was entangled in a web of implementation problems and low levels of trade, among other major problems the Commission has still managed to play a role in enabling a degree of regional integration. Thus, it has been stated that:

"… the success of ECOWAS programs depends not only on the political and financial commitment of Member States but also the functions, effectiveness and capacity of the ECOWAS Executive Secretariat to discharge its central role of coordinating a coherent, pragmatic and realistic Community programs and policies capable of furthering the cause of regional integration. Delivering these responsibilities by the regional bureaucratic institution is key to achieving the ECOWAS objective". Ahmad Dahiru Aminu and Shakila Yacob, "Walking the

Tight Rope of Diplomacy: ECOWAS Approach to Institutional Formation and Establishment of the Executive Secretariat, 1975 –1977", 30 (2) *Sejarah: Journal of History Department, University of Malaya*, 2021: 136-152, 149.

The Committee of Eminent Persons (CEP) Report also noted this drift towards a Commission that differed from Gowon's views, yet the CEP also was resistant to a strong Commission that transplanted all the powers of the EU Commission into the ECOWAS regime. Economic Community of West African States (ECOWAS) Review of the ECOWAS Treaty, Final Report by the Committee of Eminent Persons (1992) Lagos.

The CEP Report asserted the significance of keeping some constraints on the Commission on the grounds that:

'…in the EC, the initiative for instituting enforcement measures is, in practice, vested in the Commission, although Member States may also exercise that responsibility. Given the sensitivities of governments, it is not considered prudent to expose the ECOWAS Secretariat to such a high risk responsibility'. Ibid. p,20.

Hence, the members the CEP asserted that enforcement measures should remain with the ECOWAS Authority of Heads of State and Government (AHSG) and thus this organ should still have sole responsibility of referring any matter concerning the interpretation of the Treaty or a breach of member obligations to the ECOWAS Court of Justice. Ibid.

The CEP did note however, that the Commission had not been the docile bureaucracy that was expected of it in the wake of Gowon's observations; rather the Commission had taken advantage of the ostensible vagueness in the law to claw power and responsibility for itself and had been initiating proposals for ECOWAS decisions and regulations on its own. The Commission had exploited the general provision in Article 8 (10) (d) which granted the Executive Secretary the power to"... make such proposals to council as may assist in the efficient and harmonious functioning and development of the Community."

To formalize this power the CEP proposed that the Revised Treaty should include a clear provision conferring this power on the Commission as a first step in the decision-making process. Ibid. p.22.Therefore, the Commission should

continue with its tasks of generating policies, plans and programmes and that the Commission should be central to their execution. Of note in this regard is that the CEP Report asserted that ECOWAS existence depended on the Commission. Ibid. para.100.

The Revised Treaty provisions on the power of the Commission reflect the change in its potential contribution to the development of ECOWAS while under the 1975 Treaty. Now under Article 19 (3) of the Revised Treaty the Commission is empowered to execute decisions of the AHSG and Council of Ministers without any specific provision that the Commission be supervised in this role. It also has the power to convene meetings of sectoral ministers, while under the 1975 Treaty, this power was just the power to prepare such meetings. This suggests the Commission has been granted greater flexibility and autonomy in its functions by granting it authority to draw together domestic actors charged with giving effect to the ECOWAS mandate.

Conclusion

When it began its life under the 1975 Treaty, it was safe to assume that the Commission would do nothing more than shuffle papers, organize meetings and obey instructions from the AHSG and Council of Ministers. However, the Commission has played a role that differs from this understanding. Under the 1975 Treaty, the Commission was allowed a flexible interpretation of its role and therefore it was able to assert power beyond what was originally planned for it. The Revised Treaty has shored up this role as it has granted more power to the Commission. Thus, the Commission will play a more active function in enabling the regional provision of beneficial public goods such peace and open markets. The CEP however has been cautious about overreach by the Commission as this could provoke a clash between the Commission on the one hand and ECOWAS member states on the other hand. The Southern Africa Development Community (SADC)Tribunal was dismembered and re-configured as a much weaker body because it handed down a judgment deemed unacceptable to Zimbabwe and that country’s political goal of land seizure and redistribution. Konstantinos D Magliveras and Gino J. Naldi. "When Politics Prevail Over the Rule of Law: The Demise of the SADC Tribunal" 10(1) *International Human Rights Law Review* (2021), pp.124-154.

These developments in SADC reinforce caution in empowering supranational Commissions and using them to pursue an aggressive supranationalism given reservation about whether ECOWAS is currently powerful enough to attain this goal. While attempts to subvert the power of the ECOWAS Community Court of Justice failed, Karen J. Alter, James T. Gathii, and Laurence R. Helfer. "Backlash against international courts in west, east and southern Africa: causes and consequences." 27 (2) *European Journal of International Law* (2016), p.293-328, pp.296-300, ECOWAS assertion of authority over Burkina Faso, Mali and Niger regarding the overthrow of their national constitutions, has resulted in these three members exiting ECOWAS. Kofi Oteng Kufuor, “The Rupture of the Economic Community of West African States” 14 *Global Journal of Comparative Law* (2025) pp.1-21.

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