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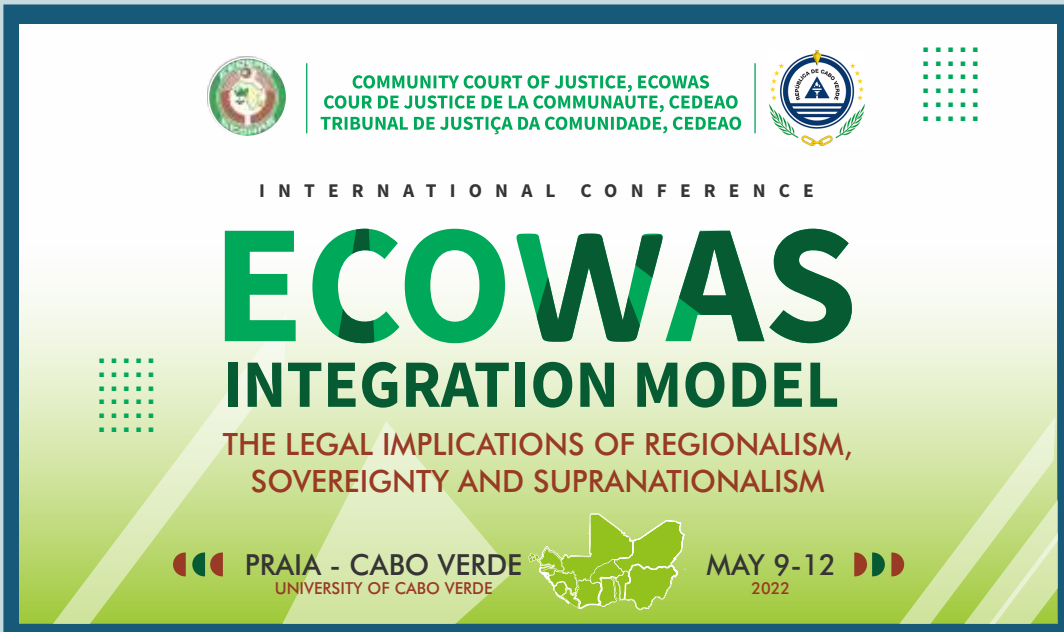
INTERNATIONAL CONFERENCE, CABO VERDE



The ECOWAS integration architecture was built on the superstructure of economic cooperation through a policy focused on self-reliance and complementarity with the objective of enabling Member States achieve a "viable regional Community." This requires the partial and gradual pooling of their sovereignties for their collective benefit and enable them cope with the realities of the evolving external economic environment.

Article 3 of the Community's 1993 Revised Treaty, the successor to the 1975 founding Treaty, provided the rationale. It was fundamentally to 'promote co-operation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its people and to maintain and enhance economic stability, foster relations among Member States and contribute to the progress of the African continent.

The route to this destination was straightforward. This was to be achieved through the 'harmonisation and co-ordination of national policies and the promotion of integration programmes, projects and activities in identified areas; the promotion of joint ventures and the establishment of a common market through a specific pathway, mainly through the liberalization of trade and the unhindered intra-community movement of its citizens.

How has the Community performed forty seven years into this journey? Empirically, the performance has been decidedly mixed as it struggles to realise its full potential. While the effort to create a single currency to facilitate intra-community trade has remained elusive, obstacles remain in respect of the free intra-Community movement of citizens. Moreover, the plethora of Community texts have not morphed into the desired Community legal order with the ambivalence of the States' about the desired surrendering of a part of their sovereignty for the realization of their collective interest.

The 2022 international conference of the Court in Cabo Verde, an annual platform for evaluating some of the legal dimensions of the ECOWAS integration project, provided an opportunity to interrogate some aspects of this journey. Organized under the theme: ECOWAS Integration Model: The Legal Implications of Regionalism, Sovereignty and Supranationalism.

It provided the platform for academics, jurists and lawyers to examine integration under seven sub themes and the rubrics of the ECOWAS Integration Model; Regional Economic Integration; Sovereignty and Regionalism; Supranationalism and Regionalism; Regional Courts in Regional Integration Process; Regional Integration and Regional Protection of Human Right and the Free Movement of Persons, Goods and Services as an Important Factor in Regional Economic Integration.

After the four day conference, the participants prof fered some solutions whose implementation will hopefully fill the identified gaps and help the Com munity on this journey.

Hon. Justice Edward Amoako Asante
President

Concept Note

1. The conference focused attention on the integration process of the Economic Community of West African States (ECOWAS) and the legal implications of regionalism, supranationalism and the limitation of the national sovereignties of Member States in relation to a supranational organization like ECOWAS, a Regional Economic Community (REC) in the West African sub-region. Since, the European Economic Community (now European Union) blazed the trail in 1951 with the European Coal and Steel Community (ECSC) which was established by the Treaty of Paris, RECs have sprung up in different regions of the world. Regional Economic Integration sometimes referred to as Regional Integration, typically occurs among neighbouring nations in a geographic region, when they agree through a Treaty to reduce and ultimately remove tariff and non-tariff barriers to free trade in the region by increasing the free movement of people, labour, goods, services, capital and ideas across national borders and reducing the possibility of regional armed conflicts.

2. The types of Regional Economic Integration range from Free Trade Areas, Customs Union, Common Market to Economic Union. The level of integration involved in an Economic Integration Initiative can vary enormously from loose association to a complex and completely integrated economic union. It also creates physical and institutional infrastructure, supranational policies and Institutions for the integration project. Regional integration has therefore been organised either through supranational institutional structures or through intergovernmental decision making or a combination of both. Supranational authorities, acting on delegated authority from the Member States and the pooling of national sovereignties, can assume immense powers that it can be likened to a 'Super State' with a well-developed legal order or community law.

3. Regional Integration makes it possible to lift a large part of the population out of poverty, enhance economic development and improve the living standards of the people. It can reduce the cost of trade, increase trade and employment opportunities, improve the availability of goods and services and increase consumer purchasing power in Member States. On the other hand, there could be the risk of trade diversion, employment shifts and reductions and loss of national sovereignty, as the Member States may have to give up more and more of their political and economic rights to a supranational authority and supranational actors.

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“Regional Integration makes it possible to lift a large part of the population out of poverty, enhance economic development and improve the living standards of the people”

The Lagos Treaty of 28th May, 1975 which established ECOWAS, in Article 1 of the said Treaty provided as follows: “By this Treaty, THE HIGH CONTRACTING PARTIES establish among themselves an Economic Community of West African States (ECOWAS) hereinafter referred to as “The Community”. The aims of the community were set out in Article 2 of the Treaty and it was basically to promote co-operation and development in all fields of economic activity and particularly for the purpose of raising the standard of living of its peoples, of increasing and maintaining economic stability, of fostering closer relations among its members and of contributing to the progress and development of the African Continent. In paragraph 2 of the said Article 2, the Community agreed in stages to ensure, inter alia:

(a) The elimination as between the Member States of custom duties and other charges of equivalent effect in respect of the importation and exportation of goods.

(b) The abolition of quantitative and administrative restrictions on trade among the Member States.

(c) The establishment of a common customs tariff and a common commercial policy towards third Countries.

(d) The abolition as between the Member States of the obstacles to the free movement of persons, services and capital

5. In order to tackle the challenges militating against the successful implementation of the Treaty and provide a better framework for the realisation of community objectives, the Authority of Heads of State and Government commissioned the Committee of Eminent Persons in 1990 to review the 1975 Treaty under the chairmanship of General Yakubu Gowon, the former Head of State of Nigeria and one of the founding fathers of ECOWAS, and the Committee submitted its Report in 1992. The ECOWAS Revised Treaty proposed by the Committee was adopted by the Member States in Cotonou, Benin Republic on 6th July, 1993. Article 2 of the Revised Treaty re-affirmed the establishment of the Economic Community of West African States (ECOWAS).

6. Article 3 of the Revised Treaty, sets out the Aims and Objectives of the Community as follows; "The aims of the Community are to promote co-operation and integration leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster relations amongst Member States and contribute to the progress and development of the African Continent. In paragraph 2, the Community agreed to ensure in stages, inter alia…

(d) The establishment of a Common market through;

i. The liberalization of trade by the abolition among Member States, of Custom Duties and of non-tariff barriers in order to establish a free trade area

ii. The adoption of a common external tariff and common trade policy vis – a – vis third countries

iii. The removal, between Member States, of obstacles to the free movement of persons, goods, services and capital, and to the right of residence and establishment;

e) The establishment of an economic union through the adoption of common policies in the economic, financial, social and cultural sectors, and the creation of a monetary union…

g) The adoption of measures for the integration of the private sectors, particularly the creation of an enabling environment to promote small and medium scale enterprises;

h) The establishment of an enabling legal environment;

> *"The aims of the Community were set out in Article 2 of the Treaty and it was basically to promote co-operation and development in all fields of economic activity and particularly for the purpose of raising the standard of living ..."*

7. In the 47 years of its existence, ECOWAS has indeed recorded a lot of achievements, especially in the consolidation of its institutional framework, which include organs like the Authority of Heads of States and Government and the Council of Ministers, and Institutions like the Commission, the Court of Justice, WAHO, EBID, GIABA and the Parliament which is yet to be directly elected and still lacks concrete legislative powers. In the normative sphere, apart from the 1993 ECOWAS Revised Treaty, the Community has adopted many Protocols, Conventions and Supplementary Acts. Some of the key Acts of the Community include the Protocols on; Non-Aggression; Free Movement of Persons, Right of Residence and Establishment; ECOWAS Trade Liberalization Scheme (ETLS); Mechanism for Conflict Prevention, Management, Resolutions, Peace Keeping and Security; Democracy and Good Governance; Community Levy; Common External Tariff (CET); Investment; Competition; and a host of other very important legal

instruments. ECOWAS also did well with its ECOMOG intervention in the civil wars in Liberia and Sierra Leone.

8. Despite the abundant legal regime at the community level, ECOWAS has not been able to develop an ECOWAS Community legal order or ECOWAS Community law because of the absolute lack of implementing legislation in ECOWAS Member States, the non-ratification or domestication of ECOWAS Revised Treaty, the Protocols, Conventions and Supplementary Acts by Member States. Furthermore, Community Acts are not directly applicable in Member States, and there is also absolute lack of synergy between the ECOWAS Court of Justice and the national courts of Member States.

The Court has not yet received a single referral from any national court and community citizens cannot invoke ECOWAS Community norms before the national courts of Member States, which also continue to lack the necessary tools to enforce the judgments of the ECOWAS Court of Justice.

Also, Member States are very often in breach of their Treaty obligations to ECOWAS and it is difficult to hold them accountable because the Member States themselves and the ECOWAS Commission are reluctant to trigger the Sanctions Mechanism. Member States continue to guard very jealously, their national sovereignties, not mindful of their delegated authority to ECOWAS to act on their behalf in their areas of common interests.

This therefore raises the questions, is ECOWAS truly a supranational authority? Is there primacy of Community Acts over the municipal laws of Member States? Is there an ECOWAS Community legal order? Is there a pooling of national sovereignties? Does the enabling legal environment for the integration of the Community exist?

THEME

9. The proposed theme for the 2022 International Conference is ECOWAS Integration Model: The Legal Implications of Regionalism, Sovereignty and Supranationalism.

SUB THEMES

10. The following are the Seven (7) sub themes and the issues for consideration under each sub theme:

SUB THEME 1

ECOWAS INTEGRATION MODEL

Issues Considered

- Regionalism – Types of Regional Integration
- Evolution of ECOWAS Integration Model – The 1975 ECOWAS Treaty, the 1992 Report of the Eminent Persons Committee, the 1993 ECOWAS Revised Treaty and relevant ECOWAS Protocols in perspective!
- Regional Integration theories and practice - European Integration as a model for Regional Integration.
- Intergovernmentalism; ECOWAS approach to regional Integration - Merits and challenges of the ECOWAS Integration model.
- Goals and pillars of ECOWAS Regional Integration objectives – shifting deadlines – ECOWAS Vision 2050

SUB THEME 2

REGIONAL ECONOMIC INTEGRATION

Issues Considered

- ECOWAS Regional Economic Integration Agenda – The enabling Legal Environment for Economic integration.
- Preferential Trading Area, Free Trade Area, Customs Union, Common Market, Economic Union, Economic and Monetary Union, and complete Economic Integration – Situating ECOWAS in the regional economic integration metrix.
- Lessons from European Union Integration Process.
- Barriers to regional trade.
- Merits and costs of regional economic integration.

SUB THEME 3

SOVEREIGNTY AND REGIONALISM

Issues Considered

- CONVINCED that the integration of the Member States into a viable regional Community may demand the partial and gradual pooling of national sovereignties to the Community within the context of a collective political will – 1993 ECOWAS Revised Treaty.
- Legal implications of pooling of national sovereignties and the delegation of authority

by Member States to ECOWAS – as a supra-national organisation.
- Effect of Regionalism on National Sovereignty – Limitation/ Erosion of National Sovereignty.
- Conflicts between national norms and community norms – Primacy of Community norms Community Obligations of Member States to ECOWAS under the Revised Treaty, Conventions, Protocols, Supplementary Acts, Regulations, Directives, or Decisions of ECOWAS.
- Failure by a Member State to honour its community obligation to ECOWAS – what options available to the community and the ECOWAS Commission

SUB THEME 4

SUPRANATIONALISM AND REGIONALISM.

Issues Considered

- Legal Implications of supranationalism and primacy of Community norms and ECOWAS as a "Super State" or "Supranational Authority" – Myth or fact?
- ECOWAS – Regional Integration without Supranationalism; Regional Integration without direct applicability of Community Acts in Member States; and Regional Integration without the invocation of community norms before the national courts of Member States – How feasible?
- Delegation of Authority by Member States to ECOWAS - Legal relationship between Member States and ECOWAS
- Holding Member States accountable for their Treaty obligations to ECOWAS – the role of Member States and the ECOWAS Commission.
- European Union: A Model of Supranationalism – Lessons for ECOWAS.

SUB THEME 5

REGIONAL COURTS IN REGIONAL INTEGRATION PROCESS

Issues Considered

- Treaty supervision and oversight functions - Role of ECOWAS Court of Justice in the ECOWAS Integration process.
- Lessons from the role played by the European Court of Justice, in the European integration process and in the development of the European Community Law.
- Strengthening the relationship between national Courts of Member States and ECOWAS Court of Justice for the attainment of an ECOWAS Community legal order.
- Harmonization of the legal and judicial systems of Member States and the Enforcement of the Judgements of the ECOWAS Court of Justice by national courts of Member States.
- Invocation of Community law before national courts and the Preliminary Ruling Procedure – (Referrals, Article 10 (f) of the Protocol on the Court).

SUB THEME 6

REGIONAL INTEGRATION AND REGIONAL PROTECTION OF HUMAN RIGHTS.

Issues Considered

- Relationship between Regional Integration and regional protection of human rights.
- The Unique Features of ECOWAS Human Rights Mechanism.
- An appraisal of the human rights Jurisprudence of the ECOWAS Court of Justice.
- Regional Human Rights systems.
- Challenges in the enforcement of the Judgments of the ECOWAS Court of Justice, and how to strengthen the judgment enforcement Mechanism.

SUB THEME 7

FREE MOVEMENT OF PERSONS, GOODS AND SERVICES AS AN IMPORTANT FACTOR IN REGIONAL ECONOMIC INTEGRATION.

Issues Considered

- The ECOWAS Protocol on Free Movement of Persons, Right of Residence and Establishment.
- Free Movement of persons, goods and services as an important factor for Regional Integration.
- Challenges militating against Free Movement of Persons, Goods and Services in the Community.
- Challenges militating against the full enjoyment of Rights of Residence and Establishments by Community Citizens in Member States – Discriminatory national laws and double standards.

- ECOWAS Common Passport and ECOWAS Community Citizenship

GENERAL OBJECTIVES OF THE CONFERENCE

11. The general objective of the International Conference is to critically appraise the legal environment for the implementation of the regional integration agenda of ECOWAS and the impact of regionalism, supranationalism and national sovereignties of Member States on the integration process. The conference will also examine whether or not, the enabling legal environment exists at the regional and municipal levels for the development of an ECOWAS Community legal order, the role of the ECOWAS Court of Justice, national courts of Member States and the ECOWAS Commission in the integration process. It will also highlight the challenges militating against the realization of an integrated Community legal order, that is necessary for the ECOWAS regional integration agenda.

NUMBER OF PARTICIPANTS

12. In the light of the global COVID- 19 pandemic, the maximum number of participants expected to physically participate in the conference from Member States, ECOWAS Institutions, some International Organizations and some of the resource persons is one hundred and fifty, while one hundred other participants will participate remotely through Zoom, making a total of two hundred and Fifty (250) participants.
The Covid-19 Protocols will be strictly observed.

VENUE

13. The conference will be held in Praia, The Republic of Cabo Verde. The venue of the conference and the Zoom Meeting ID will be communicated to the participants in due course.

METHODOLOGY

14. The proposed International Conference will be a four-day hybrid conference plus four traveling days.

The conference will be held partially in person and partially remotely, between 9th & 12th May, 2022. It would hold in plenary sessions and there will be an opening ceremony and one session on the first day and three sessions each on the second and third day.
The adoption of the conference report / recommendations and the closing ceremony will take place on the fourth day.

15. Each Session will be moderated by one of the Hon. Judges of the Court or the President of a Regional Court or the Supreme Court of a Member State. Each sub theme will have 3 to 5 resource persons. Some of the resource persons will be physically present, while others will make their presentations remotely via Zoom. It is expected that each presenter will discuss in his or her paper the 5 issues for consideration under his or her sub theme.

"The general objective of the International Conference is to critically appraise the legal environment for the implementation of the regional integration agenda of ECOWAS and the impact of regionalism, supranationalism and national sovereignties of Member States on the integration process."

Each panel of discussants will collectively have between one hour, fifteen minutes and one- hour forty minutes. Specifically, each presenter has twenty to twenty-five minutes for his or her presentation. This will be followed by general discussions by participants for one hour under the moderation of the chair of the session. The moderator shall present the recommendations of the session.

16. The recommendations from each session will be drawn up from the presentations of the panel of discussants and the contributions by the other participants. The resource persons will consist of jurists and scholars from Member States, ECOWAS Institutions, International Organizations and Development Partners. The conference will be conducted in the three official languages of the Community; English, French and Portuguese.

Tony Anene-Maidoh
Chief Registrar

THE ECOWAS INTEGRATION MODEL EXAMINED AT INTERNATIONAL CONFERENCE OF THE COURT IN CABO VERDE

President Neves with the Judges and other officials at the opening

After some 47 years of the ECOWAS integration arrangement and against the backdrop of the region's transition into a new integration focus, the Court decided that its 2022 international conference should provide a forum to interrogate various aspects of the region's integration model. The conference brought together some 250 participants, mainly judges, academics, jurists, lawyers and experts with competences in various dimensions of West Africa's integration architecture to discuss the various aspects of West Africa's integration model over four days in collaboration from Monday, 9th May 2022 in Praia, the country's capital.

The hybrid conference, which was held under the theme **ECOWAS Integration model: the legal implications of Regionalism, Sovereignty and Supranationalism,** and enabled a panel of discussants consisting of jurists and scholars from ECOWAS Member States, ECOWAS Institutions, International Organisations and Development partners to discuss the theme under seven sub themes.

Ahead of the conference, the President of the Court, Justice Edward Amoako Asante said the conference was intended to provide a platform to critically examine the legal environment for the implementation of the regional integration agenda including the impact of regionalism, supranationalism and national sovereignties of the Member States on the integration process.

"Participants will examine whether or not the enabling legal environment exists at the regional and municipal levels, for the development of an ECOWAS legal order as well as the role of the Court, national courts and the ECOWAS Commission in the integration process,' he added Under the first sub theme, panelists examined the ECOWAS integration model including the types of regional integration, the evolution of the ECOWAS model; regional integration theories and practice including the European integration as a model for regional integration. They also discussed intergovernmentalism, the ECOWAS approach to regional integration including its merits and challenges as well as the goals and pillars of ECOWAS regional integration objectives including the issue of shifting deadlines as well as the ECOWAS 2050 vision.

Panelists discussing the second sub theme of Region al Economic Integration evaluated the ECOWAS integration agenda including the enabling legal envi ronment for economic integration and situate ECOW AS in the regional economic integration matrix such as the Preferential Trade Area (PTA) Free Trade Area, Customs Union, Common Market and others.

The Resource persons involved in the fourth sub theme of Supranationalism and Regionalism con sidered the legal implications of supranationalism

Ministers, other officials and guests at the opening.

and the primacy of Community norms including the myth or reality of ECOWAS as a super State or Supranational Authority. They discussed ECOWAS regional integration without supranationalism including regional integration without the direct applicability of Community Acts in Member States and the feasibility of regional integration without the invocation of Community norms before national courts.

The Panelists also examined the delegation of Authority by Member States, particularly the legal relationship between the States and the Community; the role of Member States and the Commission in holding Member States accountable for their Treaty obligations as well as the lessons for ECOWAS in the European Union model of Supranationalism.

The Role of Regional Courts in the regional integration process, the seventh sub theme was examined by panelists with emphasis on the role of the ECOWAS Court in the Integration process particularly its Treaty supervision and oversight function; lessons from the role of the European Union court in the European integration process and the development of European Community Law.

The discussants proposed ways to strengthen the relationship between the ECOWAS Court and National Courts for the attainment of an ECOWAS Community legal order, the harmonization of the legal and judicial systems of Member States as well as the vexed issue of the enforcement of the judgments of the ECOWAS Court by the national courts of the States. They discussed the invocation of Community Law before national courts and the preliminary Ruling Procedure as provided under Article 10 (f) of the Protocol on the Court relating to Referrals.

Under the sixth sub theme of Regional Integration and Regional Protection of Human Rights, panelists considered the relationship between Regional Integration and the regional protection of human rights; the unique features of the ECOWAS human rights mechanism as well as the ECOWAS common passport and ECOWAS citizenship. In addition, they undertook an appraisal of the human rights jurisprudence of the ECOWAS Court; regional human rights systems and the challenges of the enforcement of the judgments of the court and how to strengthen the enforcement mechanism.

Finally, panelists discussing sub theme seven reviewed the Free movement of Persons, Goods and Services as an important factor in regional economic integration against the context of the Protocol on the Free Movement of Persons, Right of Residence and Establishment, including the militating factors. Also for examination by the panelists were the free movement of persons, goods and services as an important factor in regional integration; the challenges militating against the full enjoyment of the right of residence provisions of the Protocol including discriminatory national laws and double standards.

President Jose Maria Neves of the Republic of Cape Verde delivered a statement at the opening ceremony on Monday, 9th May 2022 while the President of Court, Justice Asante gave a welcome address. Professor Solomon Ebobrah of the Niger Delta University in Nigeria's Bayelsa State delivered the keynote address as the Guest Speaker.

Each session was chaired by either a judge of the ECOWAS, the President of a Regional Court or President of the Supreme Court of a Member State.

STATEMENT OF HIS EXCELLENCY, THE PRESIDENT OF THE REPUBLIC OF CABO VERDE, JOSE MARIA NEVES

President Neves delivering his opening speech

Distinguished Guests,
Dear Students,
Ladies and Gentlemen,

I greet everyone present, but, in a very special way, the Members of the Delegation of the ECOWAS Court of Justice, to whom I wish an excellent stay in our country.

I am grateful for the honorable invitation I received to preside over this opening ceremony of the International Conference of the ECOWAS Court of Justice. I consider this event to be of great importance and I hope that these four days of work will be very productive and that all the recommended objectives will be achieved.

It is always with great joy that Cabo Verde welcomes meetings of this nature and scope, promoted by ECOWAS, and this one in particular, always in the hope that they will become more routine. We have great pleasure and honor in welcoming the brothers from our sub-region and, as always, we want to continue to be useful and contribute to the institutional growth of our Community and to the strengthening of regional integration, in all its dimensions.

Regional integration is a fundamental option of the State of Cabo Verde and a defining axis of our action at the external level and also at the internal level, due to its consequences for the formation of national public policies.

I would like to emphasize that, in our Sub-region, Cabo Verde is the only island State, with the smallest population and surface area, lacking in traditional natural resources and extremely vulnerable and sensitive to external shocks, both in the economic and financial domain, as well as in terms of climate and environment. These conditions, in themselves, make all our work more demanding towards full integration in the Region. Far from discouraging us, these constraints encourage us to persist in defending a specific statute that allows us to be closer, increasingly in tune with the dynamics of integration, legitimately contributing to and benefiting from them.

In the other direction of the same road, it is essential that the Community understands our insularity as a source of wealth and a factor that fosters greater approximation with other geo-economic spaces, as well as strategic dialogues and partnerships that have the Atlantic as a corridor of peace, security and development. In the same way that there is no development without peace and stability, it is also unreasonable to seek a lasting and sustainable context for the problems of security and stability in our region without a correct understanding and

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insertion of the challenges in terms of maritime security and the maintenance of legality in this entire quadrant of the Atlantic.

In this balance of factors, it is essential to properly understand Cape Verde's geo-strategic position and all the contribution that, over the years and despite its smallness, it has given to the better management of global challenges here at this crucial intersection for international politics and governance. A strong commitment to connectivity with this archipelago (area, maritime, business, technological and knowledge flows connectivity) should be defended and promoted by everyone, such is its relevance to the thriving and inclusive community we want. ECOWAS cannot neglect its highways of progress and inclusion in and over the Atlantic.

Our 15 countries make up a very diverse mosaic in terms of population, with around 400 million inhabitants, territorial dimension, historical background, natural resources, socio-economic development and the maturity of democratic institutions. And the truth is that, in these 47 years of existence, ECOWAS has sought to carry out harmonizing work, taking into account these specificities, in addition to implementing its institutional framework, which includes the different bodies, such as the Court of Justice, always with a view to promoting the development of member countries.

Unfortunately, these last years have been one of enormous challenges for our Community and for humanity in general, but they have hit harder on less vigorous economies, such as our countries. To the devastating effects of the Covid-19 pandemic – which has not yet ended – are now added the terrible consequences of the war in Ukraine, with no end in sight. On the other hand, at the moment, some of our countries face outbreaks of terrorism, alteration of the constitutional order, different types of trafficking and other problems, whose connection to transnational organized crime, I repeat, cannot and should not be neglected.

There are too many occurrences that certainly disturb the normality of production and commercial transactions, with a shortage of products and inflated prices, aggravating poverty and delaying the economic recovery. It should be noted that, precisely, the economic aspect is the one that, in our Sub-region, was still struggling to achieve the dynamism that would be desirable.

We are called to be stronger and more effective in post-pandemic management. To be more daring too, namely in taking advantage of opportunities and valuing endogenous resources, starting with human resources. For example, we have to be prepared for other pandemics and endemics. We have to be in tune with the political and strategic centrality of health and health security issues, including the capacity to produce vaccines and medicines in general. In other words, we cannot be at the mercy of a system whose iniquities the pandemic has completely exposed. Perhaps we will have to have the courage to rethink priorities and question established ways of managing the public interest.

Cape Verde is one of the countries with the greatest impact of Covid-19, which translates into a reduction in its GDP by around 15%. Vital sectors of our economic and social life were heavily affected, with some regions of the country in urgent need of positive discrimination measures so that they can quickly recover and thus contribute to the rhythm of national growth. Despite this context of intense economic crisis, and in a gesture that demonstrates the strategic importance we attach to integration in the Region, our Embassy was opened in Abuja, Nigeria, last year, with powers of representation before ECOWAS, with a view to increasing the presence and participation in the Subregional organization.

Naturally, regional integration is always a process that evolves, with costs and benefits. We have to be persevering. We can learn from what is positive in previous experiences, such as European integration. On the other hand, the less successful examples will also serve as a teaching to avoid the same failures.
The most recent events at world level, which are still ongoing, show a permanent mutation, with relations between States progressively becoming more complex, so that ECOWAS must also be

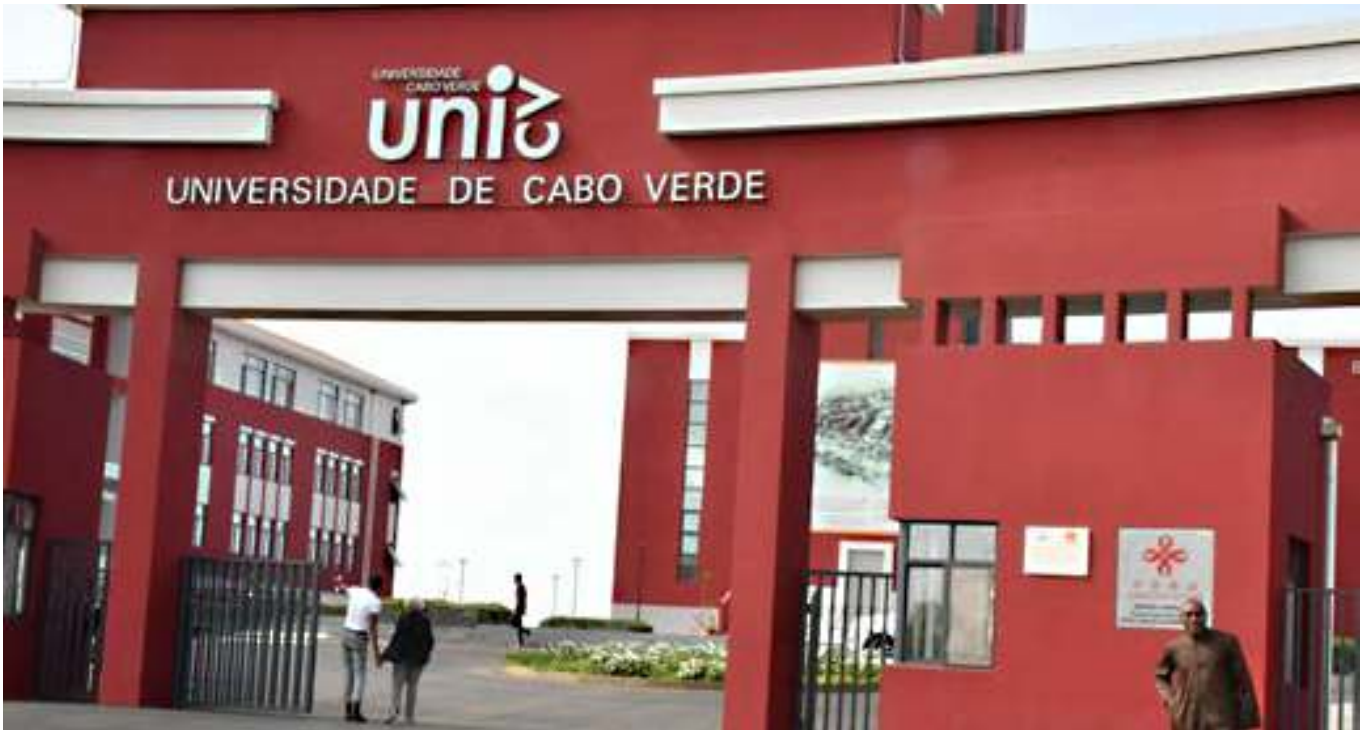
attentive to these challenges and always strive for the dialogue and negotiation to resolve disagreements, differences and disputes.

We are already in a disruptive period at the international level. The economy in crisis, but also several principles and values that we had already consolidated were called into question. We need to find ourselves again in what is common and essential to us, since the health, stability and future, after all, of the international community depend on this common heritage. The emerging new world order will certainly demand more regional and continental integration from us and will force us to undertake profound and radical reforms at the national, regional and African levels, with impacts on the division of labor between these different levels of governance.

I am sure that this International Conference will address issues relevant to the ECOWAS integration process and to the advancement of community law. It will be an opportunity to deepen the debate and approach the solutions and models that best reflect the aspirations of the people of the Sub-region and that ECOWAS can have democratic, transparent and effective institutions, which are true instruments for promoting development.

Indeed, the main purposes, according to the provisions of Article 3 of the Revised Treaty, are "to promote cooperation and integration, with a view to economic union in West Africa, to raise the standard of living of the populations, maintain and increase economic stability, strengthen relations between Member States and contribute to the progress and development of the African continent".
In this path, the aims of the Conference that is now beginning are framed: "critically evaluate the legal environment for the implementation of the ECOWAS regional integration program and the impact of regionalism, supranationalism and national sovereignty of the Member States in the integration process".

As for the scope and speed of integration, I believe that it is necessary to be in tune with the practices and norms of other similar institutions, which have been able to innovate in the face of complex situations, and which may resemble those we are currently experiencing. This level of regional integration must also presuppose that the different Member States have robust institutional structures, which involves reform and modernization of the State and the creation of inclusive political and economic institutions. This desire also extends to the institutions of administration of justice, which, as essential pillars of the rule of law, must be solid and inspire confidence in citizens as guarantors of their fundamental rights.
The effects of successful regional integration are more than evident. I would like to highlight the possibility of strengthening economic development, improving the population's standard of living, helping a very significant part to be able to get out of poverty, which will have a huge impact on a long-awaited economic recovery, taking into



The main entrance to the University of Cabo Verde, venue of the Conference

"...to highlight the possibility of strengthening economic development, improving the population's standard of living, helping a very significant part to be able to get out of poverty..."

account the consequences, which are still prevalent, both the Covid-19 pandemic, as well as the war in Ukraine.

The promotion and consolidation of democratic systems of government, tolerance and respect for human rights, the elimination of all types of discrimination, must permanently form part of the catalog of concerns of ECOWAS, and of its Court, in particular. . It should be noted that, in the area of human rights, progress has been significant, with the fact that, following changes to its original Protocol, through the Additional Protocol of 2005, the Court's jurisdiction has been extended to cover cases of violation of human rights in the member states.
In relation to this protection of human rights, which has been exercised by the ECOWAS Court of Justice, to which we continue to recognize enormous importance, the main challenge facing our Community is the creation of a legal-institutional framework that ensures the principle of complementarity between National Jurisdictions and the Court of Justice of the Community. It should be noted that the performance of this Court is well referenced in the African continent, and beyond.

In this sense, I defend its role in the interpretation of community texts, in the solution of conflicts that may arise within the scope of regional integration and the strengthening of its consultative role in relation to the other organs of the community.

The jurists, lawyers, academics and other specialists, with knowledge in the matter, and who will participate in the discussions, will certainly enlighten us on the relationship between regional integration and the regional protection of human rights, as well as on other incidences. The free movement of people, goods and services will occupy a prominent place and will deserve the attention of this Conference, taking into account its importance for Regional Integration.

Unfortunately, in some of our countries certain situations of political instability or dysfunction in the normal functioning of institutions prevail. This mismatch constitutes an obstacle to the development of our Sub-region and an obstacle to the process of Regional Integration, which is intended to be inclusive and comprehensive, at a time when some of the sister countries are suspended, for reasons that are known.

When the way of accessing power is not through elections, in accordance with the Constitution, and when there are activities of terrorist groups, we are always faced with situations of threat to peace and security in our Sub-region. And I insist on the following: the instability inherent to this type of occurrence becomes an obstacle to the process of economic development. We must redouble our efforts in the search for sustainable and lasting solutions to the cyclical crises that persist in affecting ECOWAS. Above all, we must be intransigent in the face of any form of subversion of political-constitutional normality. We have no right to be either duplicitous or condescending. And this applies to everyone, in all institutions and instances. Basically, it is about the generalized assumption of constitutionality and the canons of the Democratic Rule of Law.
Cape Verde welcomes all initiatives aimed at strengthening democratic processes and good governance. In fact, our commitment to the values, principles and rules of the Democratic Rule of Law is unshakable and the commitment, which belongs to ECOWAS, but also to the African Union, with a view to its consolidation and defense at the continental and regional levels.

Our Regional Integration, despite the normal difficulties along the way, has a record of progress that has already been achieved, which must be consolidated and expanded, always with a view to the greater objective that is development and well-being for all the peoples of our Sub -region.

And it is on this positive note that I conclude my speech. I reiterate my congratulations to the ECOWAS Court of Justice, for this commendable initiative, and for the fact that they chose the City of Praia to host this very important event.

I declare open the International Conference

"ECOWAS Integration Model: The Legal Implications of Regionalism, Sovereignty and Supranationalism".

Thank you very much.

WELCOME ADDRESS BY THE PRESIDENT, HON. JUSTICE EDWARD AMOAKO ASANTE

President Asante delivering his opening speech

Protocol

1. Your Excellencies, it is my pleasure, to warmly welcome the President of the Republic of Cabo Verde, His Excellency José Maria Neves on behalf of the ECOWAS Court of Justice, to the opening ceremony of this International Conference being hosted by the Court in this beautiful metropolitan city of Praia, in Santiago Island in the Republic of Cabo Verde. We are indeed delighted, that despite the very busy schedule of His Excellency, he agreed to personally attend this opening ceremony and to declare open this very important conference.

2. May I also seize the opportunity, to also welcome to this event all our invited dignitaries here present, including: the Chief Justices of Member States; Hon. Ministers, high government officials and the members of the judiciary of the Republic of Cabo Verde; Heads of ECOWAS Institutions; Hon. Judges of the ECOWAS Court of Justice; Presidents of Regional Courts; Justices of Supreme Courts of Member States; The Vice Chancellor of the University of Cabo Verde; Heads of ECOWAS National Offices in the Member States; Special Representative of the President of ECOWAS Commission to Cabo Verde; Your Excellences, Members of the Diplomatic Corps; the Presidents of all the Bar Associations; our International Development Partners; Members of the Academia; our Resource Persons; Members of the Press; all our collaborators and indeed all distinguished participants at this conference.

3. Your Excellencies and distinguished guests, it is common knowledge that the Economic Community of West African States (ECOWAS) was established by the Lagos Treaty of 28th May, 1975. As presently composed, ECOWAS consists of fifteen Member States in the West African sub region. The ECOWAS Revised Treaty, which replaced the initial Treaty, was adopted in 1993. This Revised Treaty, is the fundamental Charter of ECOWAS and the road map for the economic integration of the Community.

Article 3 of the Revised Treaty provides that the main "aims of the community are to promote co-operation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, and to maintain and enhance economic stability, foster relations among Member States and contribute to the progress and development of the African Continent". These are indeed laudable objectives. We are proud to note that ECOWAS has recorded a lot of achievements as the leading Regional Economic Community (REC) in Africa.

4. The ECOWAS Court of Justice is the principal legal organ of the Community and one of the key Institutions of ECOWAS. The essential role of the Court is to ensure the observance of law and justice in the interpretation and application of the Treaty and the Protocols and Conventions annexed thereto, and to be seized with the responsibility of settling such disputes as may be referred to it in accordance with the provisions of the Treaty or between Member States inter-se and Institutions of the Community. The 2005 Supplementary Protocol on the Court, which amended the initial 1991 Protocol on Court, granted to the Court four clear mandates: mandate as a Community Court, with contentious and advisory jurisdictions; mandate as

> *"...aims of the Community are to promote co-operation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples..."*

an ECOWAS Public Service Court, mandate as an Arbitral Tribunal and mandate as a Human Rights Court.

The Legal Framework of the ECOWAS Integration Model

5. Your Excellencies and distinguished guests, the importance of this international conference cannot be overemphasized, because for the first time, an ECOWAS Institution is providing a forum for a comprehensive review of the legal and institutional architecture for a regional integration project and the legal implications of regionalism, sovereignty and supra-nationalism. The conference will pay particular attention to the existing legal framework for the ECOWAS integration project and especially on what needs to be done to strengthen the existing legal and institutional architecture. Without doubt, every regional integration project is anchored on a legal framework, around which policies and decisions of the integration project revolve. It also governs the legal relationship between the Member States of the Community and the supranational organization created by the Member States for the integration project.
This conference therefore gives us a golden opportunity to evaluate the existing legal framework of the ECOWAS integration project and the ECOWAS legal order.

6. The legal framework in most regional integration systems usually implies the direct applicability of Community norms in the Member States and the rights of Community citizens to invoke Community norms before the national courts of the integrating Member States. The conference will therefore have the opportunity to place on the front burner, the essential issues in the establishment of a functional legal framework in a regional integration arrangement and the shortcomings and challenges in the ECOWAS integration legal framework model.

"It does not suffice to merely have a strong legal regime without an identifiable Community legal order".

7. Your Excellencies, it is noteworthy that since the establishment of the Economic Community of West African States (ECOWAS) in 1975, it has adopted and implemented important legal texts, including the Protocol on ECOWAS Trade Liberalization Scheme (ETLS), the Protocol on Free-Movement of Persons, the Right of Residence and Establishment, the Protocol on Common External Tariff, the Protocol on Democracy and Good Governance, the Protocol on Community Levy, Supplementary Act on Investment, Supplementary Act on Competition, amongst others. We are however convinced, that there are gaps in the legal framework of the ECOWAS integration project and it is absolutely necessary to focus attention on these legal issues, with a view to strengthening the existing legal framework of the ECOWAS integration project. By this, we are attempting to align our Community objectives with the prerequisite legal architecture that is necessary for the attainment of our Community objectives. The European Union remains the model for regional economic integration and we may do well to learn from the established legal framework of the European integration project.

8. The formation of a Regional Economic Community (REC) is Treaty based. It is therefore of utmost importance, to provide the enabling legal environment for the attainment of the community objectives. However, it takes more than the normative framework. It does not suffice to merely have a strong legal regime without an identifiable Community legal order. Furthermore, the importance of a strong and independent Regional Court with treaty supervision and oversight functions, to facilitate the integration project cannot be over emphasized. The ECOWAS Court of Justice was established with the primary responsibility of interpreting and applying the Revised Treaty and the annexed Protocols and Conventions. However, the human rights mandate of the ECOWAS Court of Justice has become the centerpiece of its judicial activities. Participants at this conference, will therefore have the opportunity to review the legal relationship between regional eco nomic integration and regional protection of human rights.

> *"...the importance of a strong and independent Regional Court with Treaty supervision and oversight functions, to facilitate the integration project cannot be over emphasized."*

"We cannot provide the enabling legal environment for the ECOWAS regional integration agenda, without establishing a functional legal order that will ensure the attainment of our community objectives.
A Community legal order is the fulcrum of any

regional integration arrangement"

Theme of the Conference – ECOWAS Integration Model: The Legal Implications of Regionalism, Sovereignty and Supra-nationalism

10. Your Excellencies and distinguished participants, the theme of this conference is ECOWAS Integration Model: The Legal Implications of Regionalism, Sovereignty and Supra-nationalism. The intention of the Court in choosing this theme, is to focus attention on the essential ingredients in the legal framework for a regional integration arrangement but with particular attention on the ECOWAS integration model and the legal implications of regionalism, sovereignty and supra-nationalism. We cannot provide the enabling legal environment for the ECOWAS regional integration agenda, without establishing a functional legal order that will ensure the attainment of our community objectives. A Community legal order is the fulcrum of any regional integration arrangement.

11. In order to effectively discuss all the ramifications of the theme of this conference, it has been divided into seven sub-themes as indicted and listed in the brochure. The importance of this conference is mainly due to the fact that, the themes and sub themes are linked to the regional economic integration objectives of the community and the legal frame work for the achievement of the Community objectives. The theme and sub themes are also relevant to the mandates of the various ECOWAS Institutions.

They also mainstream the role of Member States in the integration arrangement and the legal relationship between the Member States and ECOWAS. We are delighted that we have an array of highly distinguished panelists, consisting of legal experts, jurists and professors of law, who have been carefully chosen to discuss these issues because of their expertise and wealth of experience.

Member States as Critical Stakeholders

12. We recognize that the Member States are the most important stakeholders in the integration process. We also recognize that the political will of Member States is a necessary factor for the achievement of our Community objectives. It is also not in doubt, that all Member States are sovereign States. However, we cannot disregard the legal implications of the supra nationality of ECOWAS, especially in the context of the powers given to ECOWAS by the Member States, to act on their behalf in certain spheres. We have therefore invited stakeholders from the Member States to participate in this international conference, because the integration process revolves around the Member States.

Constraints

> *"...the ECOWAS Court of Justice is a pacesetter amongst regional courts in Africa, there are factors that are militating against the Court in the discharge of its mandates..."*

4.13 remains a pacesetter amongst Regional Economic Communities in Africa, there are several constraints that are militating against the attainment of Community objectives. One of the key constraints, is the lack of a functional Community legal order that highlights the legal relationship between the Member States and the ECOWAS Institutions and between the ECOWAS Court of Justice and the national courts of Member States.

14. Similarly, although the ECOWAS Court of Justice is a pacesetter amongst regional courts in Africa, there are factors that are militating against the Court in the discharge of its mandates, some of which pose existential threats to the Court. Your Excellencies, permit me to highlight a few of these constraints.

The reduction of the number of judges of the Court from seven as provided for in the initial Protocol on the Court to five in 2018, is of grave concern to us and it is having an adverse effect on the operations of the Court. Despite the best efforts of the current set of judges, the number of cases pending before the Court continues to grow astronomically. In the light of the increasing caseload of the Court, it is obvious that a Court composed of only five members cannot cope.

It is also difficult to form more than one chamber in the Court, since a chamber requires a minimum of three judges. It is therefore suggested, that the Member States should consider restoring the composition of the Court to seven Members as provided for the in the initial Protocol on the Court as soon as possible.

15. Secondly, the reduction of the tenure of the judges from five years renewable, to four years non-renewable, is also not in the interest of the Court or

the Community, as there is no International Court or tribunal that has such an abridged tenure for its judges. It is not advisable to model the tenure of the judges of the Court in line with that of the tenure of the commissioners in the Commission, who are political appointees. There is no Regional Economic Community (REC) that has this model, since the tenure of judicial officers is different from the tenure of political appointees. Furthermore, the complete renewal of the Membership of the Court, as was done in 2014 and 2018, as opposed to the staggered tenure of the judges as envisaged under the initial Protocol, is also not in the interest of the Court and the Community, as this leads to compete loss of institutional memory.

16. Your Excellencies, the poor rate of compliance with the judgments of the Court, which currently stands at about thirty percent, is also of grave concern to the Court. We regret that only six Member States have appointed the competent national authorities for the enforcement of the judgments of the Court in their respective Member States. These are the Republic of Guinea, Nigeria, Mali, Burkina Faso, Togo and Ghana. We will continue to appeal for the remaining Members States to do the needful, and I hope that this International Conference here in Cabo Verde, will result in the appointment of it's Competent National Authority as our 2019 Conference in Ghana did that magic.

Conclusion

17. Your Excellencies and all our distinguished participants, in conclusion, may I once more express the profound appreciation of the ECOWAS Court of Justice, to the President of the Republic of Cabo Verde, His Excellency José Maria Neves, for graciously honouring us with his presence at this opening ceremony. May I also express our profound appreciation to the Government of Cabo Verde for accepting our request to host this conference in this beautiful city of Praia and for the very warm African brotherly hospitality that has been extended to all the non-resident participants at this conference since our arrival in Praia. May I also express our gratitude to the Chief Justices and Judges of the Member States, here present, Honourable Ministers and high Government Officials of the Republic of Cabo Verde, and all our distinguished participants at this conference, for accepting to be part of this very important event.

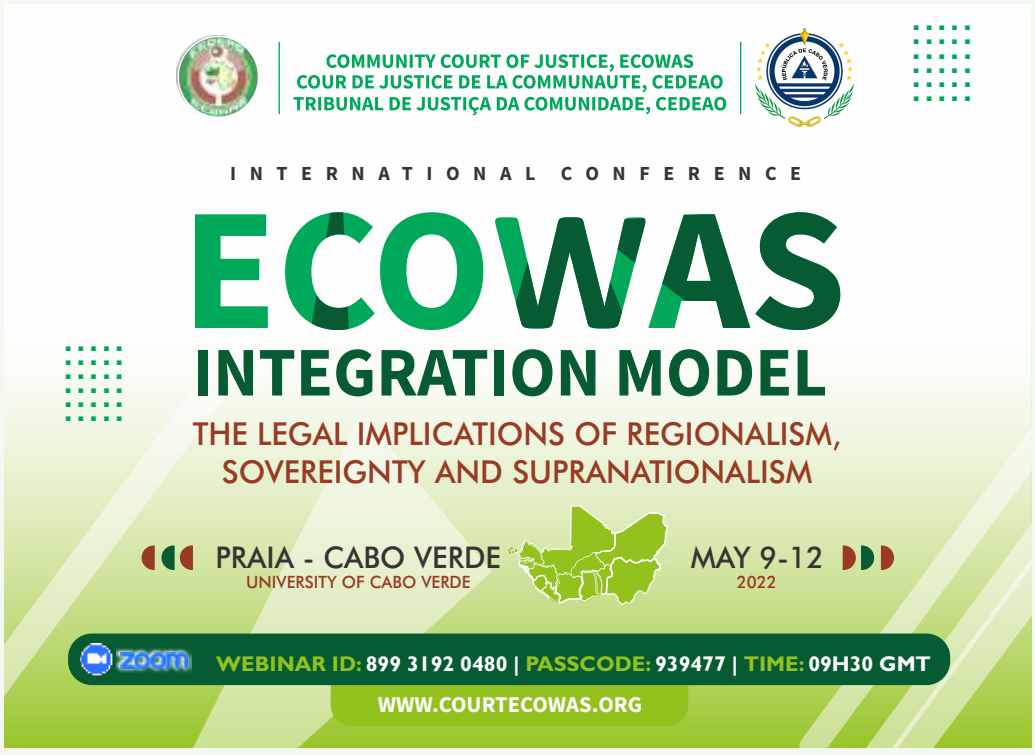
18. May I also express our special gratitude to the Raoul Wallenberg Institute of Human Rights and Humanitarian Law (RWI), for collaborating with us in hosting this conference. I am delighted that this conference gives us the opportunity to interrogate very important legal issues necessary for the establishment of a functional legal architecture for the integration of our Community. By the quality of the participants at this conference and having had the privilege of having a preview of the high quality of the presentations to be made at this conference by the resource persons in respect of the various thematic areas in the next three days, I am confident that this conference will be very fruitful, and that the outcome will be useful in charting a functional Community legal order for the ECOWAS regional economic integration agenda in the years ahead. I wish you all very fruitful deliberations.

Muito Obrigado

Merci beacoup

Thank you.

Hon. Justice Edward Amoako Asante



GOODWILL MESSAGE OF THE PRESIDENT OF THE ECOWAS BANK FOR INVESTMENT AND DEVELOPMENT (EBID), MR. GEORGE AGYEKUM DONKOR

The EBID President delivering his goodwill message

His Excellency, Jose Maria NEVES, President of the Republic of Cabo Verde

Honourable Justice Edward Amoako Asante, President of the Community Court of Justice

Honourable Justices of the ECOWAS Community Court of Justice

Fellow Heads of ECOWAS Institutions,

Distinguished Legal Luminaries,

Members of the Press,

Dignitaries and Invited Guests,

1. It is an honour to address this august gathering in commemoration of the International Conference hosted by the ECOWAS Court of Justice to discuss the legal climate in our Community.

2. Ladies and gentlemen, as the regional Development Finance Institution (DFI) providing financing solutions for both public and private sector projects in the Member States, EBID is all too familiar with the legal challenges posed by doing business across countries.

3. For instance, it has been difficult historically to coordinate enforcement of judgements against debtors operating in multiple jurisdictions. This is further compounded by the unwillingness of some local authorities to apply principles espoused by the Community Court of Justice.

4. Although EBID manoeuvres within the confines of the existing legal framework, with the assistance of well-vetted local counsel for loan recovery purpose, the gaps in the general legal infrastructure adversely impact the sub-region's ability to attract investment.

5. Regional economic integration will not be successful unless measures are implemented to give companies especially Small and Medium scale Enterprises (SMEs), a modicum of predictability and certainty when entering into international transactions which can then be factored into costs and reflected in pricing.

6. The legal framework rests at the core of business risk calculations making it a key factor in the success of business initiatives and in the long-term, economic growth, and it is imperative that we develop solutions to the issues that plague it.

7. I therefore call on all stakeholders to consider the following during discussions:

i. Framing treaties and existing protocols as tools to fast-track regional integration especially amidst efforts to promote trade within the framework of The African Continental Free Area (AfCFTA);

"Regional economic integration will not be successful unless measures are implemented to give companies especially Small and Medium scale Enterprises (SMEs), a modicum of predictability and certainty..."

ii. Championing initiatives that further incentivize countries to refer cases to the Community Court especially those involving international plaintiffs;

iii. Concretisation of efforts to equip local courts to enforce judgements by the ECOWAS Court

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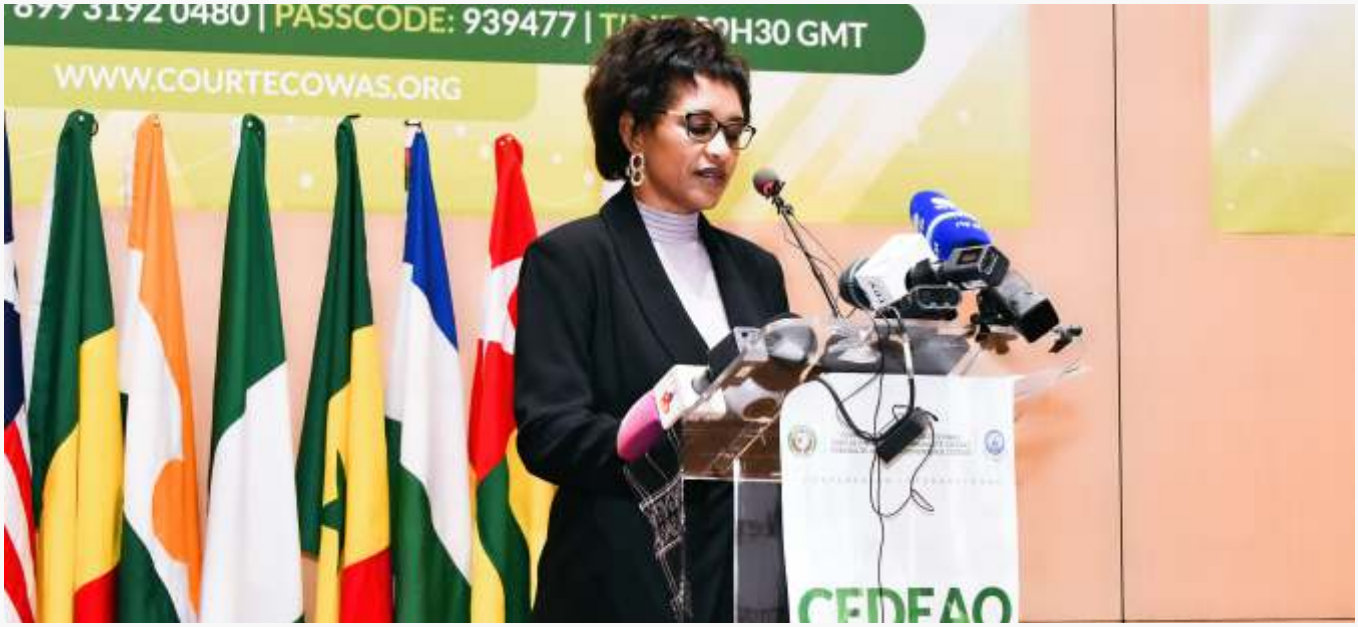
SPEECH BY DR. JOANA ROSA, MINISTER OF JUSTICE OF CABO VERDE



Dr. Rosa

Sir
Madam
Ladies and Gentlemen
distinguished guests
ladies and gentlemen

Allow me to take this opportunity to greet all those present and to refer in a special way to the presence of His Excellency the President of the Republic of Cabo Verde, Dr. José Maria Pereira Neves, who agreed to praise this ceremony by participating, in a clear gesture of engagement by all Cabo Verdean authorities, in deepening our integration into the Economic Community of West African States - ECOWAS.

Being full members of this Community, since 1976, it is necessary to recognize that the true integration of our State, in our sub-region, has not always gone satisfactorily.

Indeed, between ups and downs, sometimes more active and other times not so much, I believe that there is a consensus on the recognition that we still have a long way to go and an important diplomatic activity to develop, in the sense of an engaged and profitable integration for both Cabo Verde as for the other countries of the community.

Cabo Verde has always known about the advantages of our integration.

We have always known that our small territorial, population and economic dimension can be highly leveraged by a community full of dynamism, which extends over more than 5 million square kilometers, has a population of more than 350 million people, with a historical, cultural, linguistic and ecological importance in the African continent, with an absolutely remarkable natural wealth and a remarkable potential for political, economic and social development.

On the other hand, we are aware that, even on a small scale, we can and must also contribute to the development of a region that is ours, which can greatly value us and which will certainly also be strengthened with the contribution of this small nation, but large of character, culture and ambition

The path of our integration has been, several times, hampered by the specificities of Cabo Verde and by the fact that, not infrequently, we do not have enough knowledge to act assertively.
We must, however, recognize that there is a genuine will to take steps, a more intense political engagement and a better framed institutional representation.

Therefore, I would like to thank the ECOWAS Court of Justice, its President, His Honor, Judge Edward Amoako Asante, our Judge Januária Costa and the other members, who chose Cabo Verde to hold such a remarkable event, aware that it will be a success and yet another instrument of strengthening Cabo Verde's integration.

> *"...we can and must also contribute to the development of a region that is ours, which can greatly value us and which will certainly also be strengthened with the contribution of this small nation..."*

Therefore, welcome to our country and take advantage of the opportunity to socialize and enjoy the habit of living in this welcoming city of Praia.

Mr President of the Republic,

Excellencies,

For Cape Verde, the desired regional integration is the widest possible and must always take into account the territorial, population, economic and cultural specificities of the country.

Political and institutional integration is an immediate challenge. Our assiduous and systematic presence in all ECOWAS bodies and organizations, effective participation in decision-making processes, filling the political and administrative posts that we are responsible for, together with the strengthening of bilateral relations and interests, are factors that will improve Cape Verde's performance in this regard.

In terms of economic integration, the Community's most important objective, defined since its inception and reinforced throughout the successive reforms introduced, Cape Verde's actions must be guided by a more active, better clarified and more demanding stance on issues such as: the customs union, the common currency, the development of air and maritime transport, free movement, legislative approximation, trade and new technologies.

At the same time, we must be attentive to the expectations and legitimate interests of our partners and identify, in a timely manner, the contributions that we must make to the overall development of the sub-region.

In order to enhance economic integration, it is also necessary to promote integration in terms of human capital development, in education and training, in research and technological development and in the promotion and training of our entrepreneurs. In this regard, it is essential to promote and encourage initiatives that integrate Cape Verdean businessmen in large (current and future) business projects at the sub-region scale.

It will also be necessary to pay special attention to the integration of sectors such as culture and sport which, with a clear vision, can and should be considered factors of economic development.

In such a rich and diversified region from the historical and cultural point of view, with great human potential in terms of sports, it is imperative to take advantage of these sectors as far-reaching economic opportunities; that they can bring people, institutions and agents together; and to become fundamental pillars of regional integration and a strong instrument of African affirmation.

Our community relations in the field of Justice develop naturally.

The ECOWAS Court of Justice, present here in its fullest expression, has maintained institutional relations with Cape Verdean justice. It has followed Cape Verde and analyzed our judicial situation.
The paths of full integration are being trodden.

Our permanent presence in this institution is guaranteed, at this moment, by a Judge and her respective staff.

Our cooperation and exchanges with other bodies linked to justice and crime in the sub-region are ongoing.
Whenever necessary, the Court of Justice has analyzed issues relating to Cape Verde and has produced its learned positions, always counting on the collaboration and involvement of the country's jurisdictional authorities.

We regularly host exchange actions between the national and community legal reality and we engage in the elimination of barriers that still hinder our full integration.

Homework is being done.

Mr. President,

Distinguished participants,

Ladies and gentlemen,
The international conference "Model of Integration in ECOWAS", whose opening is now proceeding, as well as its specific content "The Legal Implications of Regionalism, Sovereignty and Supranationalism", will be an opportunity to

discuss our integration model, the political history and the legal specificities existing in the sub-region.

It will be a time of exchange between jurists, academics, jurisconsults and politicians, together on a journey that is intended to be fruitful and convivial.

Where issues such as: objectives and models of regional integration will certainly arise; conflicts of law between national and supranational legal frameworks; the forms of normative compatibility; the challenges and agenda of Regional Economic Integration; or even the implications of regional integration in the defense of human rights and citizenship.

It will be a discussion that will strengthen us and provide us with the opportunity to question the path already taken, the obstacles overcome and those still to be overcome.

For the actors present, we will have high-level presentations and debates.

We await the conclusions, hoping to use them to raise the levels of effectiveness of ECOWAS integration.

But we also hope that from the discussions, from the comparative analyzes that will inevitably be carried out, specific ideas for improving the performance of Justice in the Member States will emerge.

Ideas that will help us to face many of the problems that we are facing at the moment, such as: the full integration of our citizens; the promotion and protection of human rights; the protection of entrepreneurs, companies and investments; commercial, administrative and customs justice; the fight against organized crime and corruption, just to name a few.

> *"...Registry of the Court is faced with the responsibility of preparing the cause list on the instructions of the Judge Rapporteur, serving hearing notices on the parties, witness summons on witnesses and collaborating with the host government for the necessary arrangements"*

Ideas that will help us to adopt common measures that reinforce the harmony, approximation and convergence of regulations, which I consider essential in our sub-regional integration process.

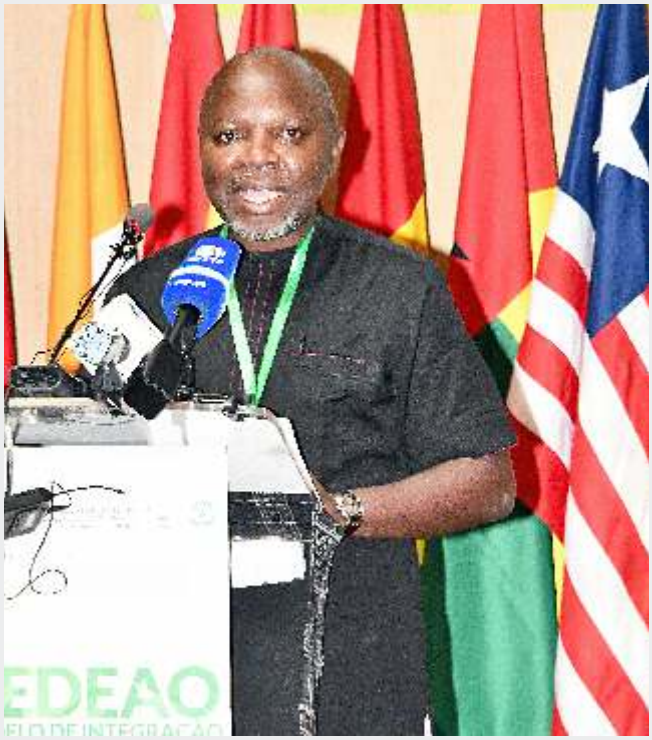
It is thus clear that the Government of Cape Verde and particularly the Ministry of Justice, which I am responsible for leading, understand the importance of this Conference, view it positively and look forward to contributions.

For this reason, I want the work to take place normally and I make myself available to provide all the support I can, providing successful conditions for this event.

Thank you very much for your attention!

Law Students were also in attendance

KEY NOTE ADDRESS OF THE GUEST SPEAKER, PROF. SOLOMON EBOBRAH



Prof. Ebobrah

1. Introduction

It has been nearly half a century since the original Treaty that gave life to the Economic Community of West African States (ECOWAS) was adopted and ratified. In these approximately 47 years of the existence of ECOWAS, it is still not very clear what kind of organisation we have received from the founding fathers or created for ourselves. Cynics would even ask if ECOWAS is still the organisation that its founders intended to create and if so, what exactly did the founding fathers intend to create? Has ECOWAS evolved de jure or de facto from its originally intended form to a different form (possibly closer to the image of the European Union)?

These questions are not merely academic or theoretical, but have practical implications, not the least for enhancing our understanding of the attitude and commitment of critical stakeholders, particularly, Member States, to the ECOWAS project. Indeed, in relation to the theme and purpose of this conference, the answers to the questions above will enable us properly situate and engage the question whether 'ECOWAS is truly a supranational authority' or whether 'there is primacy of Community Law over the municipal laws of member states' or whether 'there is a pooling of sovereignties in the ECOWAS framework' or whether 'there is an ECOWAS Community legal order' or finally, whether 'the enabling legal environment for the integration of the Community does exist'. Ultimately, it is hoped that engaging all of these questions will lead us to address the very important question as to what needs to happen to propel ECOWAS more effectively towards the objective behind its creation.

Notwithstanding any speculations we can make today about the intentions of the ECOWAS founding fathers, their omission of the term 'integration' in the enumerated aims of the ECOWAS as set out in the founding 1975 Treaty cannot be wished away. Without much, if any evidence, to indicate whether the goal of economic cooperation had been or was ever realised, by 1993 when the revised ECOWAS Treaty was adopted, the goal had shifted forward to the pursuit of regional economic integration.

While we were yet to come to terms with the legal implications, if any, of thy e shift in goal from economic cooperation to economic integration, we became confronted with the introduction of concepts such as 'intergovernmentalism' and 'supranationality' into the ECOWAS institutional vocabulary. Arguably 'borrowed' from the vast literature on Europe's integration, ECOWAS stakeholders including representatives of member states, community officials and functionaries, commentators, and scholars consciously and unconsciously began to tout, invoke and employ the concepts of intergovernmentalism and supranationalism in conversations, discussions and usages on and about ECOWAS.

Amongst other things, the entry of these concepts into the ECOWAS institutional vocabulary has provoked questions regarding the legal implications of one or the other for member states, not the least on the claim to sovereignty of ECOWAS member states. For some, even the question of compliance with, and implementation of community obligations by ECOWAS Member States may be understood essentially as a function of the legal status of ECOWAS either as an intergovernmental or a supranational organisation. Thus, it would appear that the key to unlocking the mystery that is ECOWAS lies in unravelling the nature of this organisation and the

"...in relation to the theme and purpose of this conference, the answers to the questions above will enable us properly situate and engage the question whether 'ECOWAS is truly a supranational authority'..."

legal implications of that nature. But is that really the case?

In this paper, as I broadly engage the main issues that emerge from the theme of this conference, I also argue
(i) (in agreement with some existing scholarship) that especially for purposes of legislative action within integration frameworks, economic integration can broadly be conceptualised in two parts or stages. First, there is a market-creating part which requires congregating states to remove national (domestic) constitutional, legal and other obstacles to the emergence of the proposed or agreed form of integration. Then, there is the market-regulating part which involves the enactment, monitoring and enforcement of norms in the market so created.
(ii) That, in broad terms, the market-creating function is more suited to the intergovernmental approach while the market-regulating function invites a supranational approach which may be either in the form of a pooling of sovereignties or in some delegation of sovereignty to supranational organs of the created organisation.
(iii) That the ECOWAS as it currently stands, is still at the market-creating stage of integration, therefore, it is still largely more suited to intergovernmentalist legislative action even though it might, and does procure the aid of some Community organs and institutions to clear actual and perceived obstacles to a successful creation of the ECOWAS market.
(iv) That the compliance and implementation obligations of ECOWAS member states are not necessarily lesser in the context of the intergovernmentalist stage even if they may be of a different character. Especially bearing in mind that the intergovernmentalist and supranational stages exist sequentially within the same continuum.

These arguments are developed in four main parts in the remainder of this paper. In the section following, I give an overview of the main concepts thrown-up in the theme of this conference by briefly exploring some understandings of, and approaches to integration based largely on the very robust literature on European integration. In section 3, I trace the evolution of the major epochs of the institutional and normative structure of ECOWAS from inception, highlighting any changes in the approach to ECOWAS integration. In the process, I hope to subtly raise and attempt to answer the question whether a uniquely ECOWAS integration model has emerged over the years. This is followed by section 4 where I set out what I consider to be some of the current legal realities of the ECOWAS integration and try to interrogate some of the legal implications these realities. I wrap up with a rather brief conclusion that summarises the main points of this paper.

2. Of Integration and matters related thereto
Efforts at integration in Africa can easily be traced back to the colonial era when the colonisers sought to organise and integrate economic and political affairs in proximate territories for their own purposes. However, autochthonous integration initiatives motivated by political goals of post-colonial African leaders are the ones more commonly recognised as integration qua integration, and some of them also began well before the flames of independence had died down. It is in these post-independence initiatives that concepts such as regionalism, intergovernmentalism, supranationalism and the loss of sovereignty gradually became buzzwords.

In the aftermath of the much-touted flag independence of colonised African States in the 1960s, political leaders, eager to urgently deliver on promises of immediate socio-economic growth and shared prosperity, but confronted with the stark reality of an impregnable global economic super structure heavily skewed against newly independent states with small markets simply had to search for a way out. Regional integration quickly emerged as a critical component of the 'development strategy' by which the continent could respond to its challenges. Integration in Africa is therefore relatively recent and arguably still work-in- progress.

Europe, on the other hand has had a longer (and some would say) more successful experience of integration. It is therefore not surprising that our concepts and issues of interest -regionalism; the approaches to regionalism; and the impact of such approaches on the sovereignty of member states – have received more sustained and robust attention in the literature on European integration. This part of the paper naturally draws freely, albeit cautiously from this literature. My reference to the

literature on European integration is not to invoke it as some sort of normative standard by which to judge the ECOWAS integration. Instead, I apply the literature basically with empirical objectives in mind, to promote my description of the concepts with the aim of providing a common if not uniform understanding for the purposes of this conference. I concede that I may have presented the discourse in this section in a manner that some may consider to be too brief yet I believe it highlights and privileges the concepts and issues that I consider critical, or at least relevant to the theme and sub-themes of this conference. I apologise if my approach creates an appearance of oversimplification of some of the issues that should have otherwise invited more detailed and thorough interdisciplinary engagement.

Integration can, and has been used in different contexts with a variety of often contrasting meanings. In one usage, it is understood to mean the 'voluntary clustering of independent states into regional groupings'. Integration often has a geographical angle that is sometimes so prominent that it is not uncommon to find that 'regional integration' and 'regionalism' are used in the literature to describe the same phenomenon. More technically, Haas defined or described integration as the 'process of how and why nation states voluntarily mingle, merge and mix with their neighbors so as to lose the factual attributes of sovereignty while acquiring new techniques for resolving conflicts among themselves'. To Haas's definition, Schimmiter has added the elements of the creation of 'common and permanent institutions capable of making decisions binding on members'. This definition, while not perfect (as some other eminent scholars have pointed out) , is the understanding of integration on which the rest of the paper proceeds. Haas both recognises that integration is a process rather than an event, and alludes to the possible impact of integration on sovereignty. Schimtter's contribution then draws attention to the institution-building elements of integration and the potential legal effect of the actions of the created institutions on the Member States. It is these additional elements that form some of the stronger bases of Europe's claim to the uniqueness of its integration agenda and process.

Another significant element attributed to integration (in Europe's context) is that it differs from the regular form of inter-state interaction known to public international law. Thus, for instance, writing on the origins of the EC, Schütze claims that the decision to integrate, (then as the European Coal and Steel Community (ECSC), is itself an indication of 'the wish of the contracting states to break with the ordinary forms of international treaties and organizations'. Foutaine's account of the early origins of integration in Europe subtly makes a similar claim in different words as it emphasises that it was the need to 'unravel …web of difficulties where traditional diplomacy was proving powerless' that forced Robert Schuman to invite Jean Monnet to lead the search for a solution to the problem that 'international politics' posed.

This element of distinction from the normal workings of public international law also has the endorsement of the European Court of Justice (now the Court of Justice of the European Union (CJEU) as captured in the Van Gend en Loos case. In the words of one commentator: 'the ECJ has consistently held that international law has no role within Community law'. Effectively, it can be said that the European style of integration is an invitation for states to move beyond the privileges of statehood and diplomacy associated with public international law, to the extent that Europe-style integration requires those states to sacrifice some attributes and thus, some attendant consequences of sovereignty that public international law takes for granted.

Despite the insistence of the proponents of the view that integration (and by extension Community or European Union law) operates on principles distinct from the more commonly accepted principles of public international law, there are others who are quick to point out the foundational relevance of public international law for integration and whatever body of laws that may have arisen from such integration. In effect, the latter school of thought takes an approach that traces the origins of integration initiatives to rules of public international law, thus challenging any claim of integration's total exorcism from public international law and its traditional rules and principles of diplomacy.

In this regard, Schilling asserts that 'at inception, the European Community was clearly a creature of international law' since it 'was established by a series of treaties concluded under international law by the (future) Member States". Weiler and Haltern, equally acknowledge the international law origins of even the most sophisticated integration initiatives as they admit that 'the European legal order was begotten from public international law in the normal way that these

things happen: there was a communion among some Member States – the High Contracting Parties – which negotiated, signed and subsequently ratified the constituent Treaties that brought into being … the European Coal and Steel Community …'. In other words, to the extent that the making and ratification of international treaties was required to found the EC, European integration is no different from any other form of inter-state interaction in international law.

However, European integration also shows that having been birthed, integration can travel far from the boundaries of public international law to arrive at destinations that transform the nature and scope of rights and obligations for states and even their citizens. So while it shares the public international law origins with other international organisations, integration under the EU is widely accepted to have advanced to acquire a 'constitutional character'. According to Alec Stone Sweet and Thomas Brunell, constitutionalism in European integration is 'the process by which the EC treaties evolved from a set of arrangements binding upon sovereign states, into a vertically integrated legal regime conferring judicially enforceable rights and obligations on all legal persons and entities, public and private within the sphere of application of EC law'. Anthony's much earlier work agrees with this description to the extent that he had contended that the EC stands apart from other otherwise successful European international organisations because those organisations 'do not impinge upon the lives of people, do not evoke grass-roots support and even emotion, do not hold promise for the citizen, as does the Common Market'.

In the face of all of this, Weiler and Haltern explain that the European Community legal order – that is European integration - has the distinctive and 'special feature' of blurring a supposed dichotomy between "the international" and "the constitutional". The essence of this dichotomy is arguably one of the important distinctions between intergovernmentalism and supranationalism. Thus, de Areilza for instance, observes that 'the originality of the EC governance is typically summarised in the word supranationalism'. As will soon become evident, there are several meanings linked to supranationalism and they attract different consequences for regional integration. For now, it should only be borne in mind that supranationalism in its characterisation as constitutionalism stands in contrast to the concept of intergovernmentalism. Whereas intergovernmentalism is the default operating system associated with the functioning of international organisations founded on public international law, supranationalism is supposed to be the innovative operating system that allows the organisation to transcend the boundaries set by traditional public international law.

One picture, among others, that then emerges from Europe's integration story is that in the adoption of treaties, states do not necessarily create a supranational organisation. Pescatore captures this wisdom in the assertion that 'the Treaties establishing the Communities … merely laid down certain elementary rules relating to the solution of immediate problems. The remaining distance … must be covered by means of legislation, the formulation of which is entrusted to the common institutions'. While by adopting a Treaty or treaties states create the overarching organisational frame, it is by legislation and policy making that the transformation into supranationality takes place. Such legislation, it needs to be emphasised, 'is not merely the law of member states, or the general principles or international law, but the law of a new regime, "Community law". Thus, it can safely be said that integration happens when states, usually territorially proximate states, voluntarily converge in international law, to solve problems either applying the well-known and accepted rules and principles of international law or by growing and applying regime-specific rules that push the boundaries of inter-state relations. European integration, being the first, and arguably currently the only initiative to have grown beyond the regular parameters of international law, is entitled to claim the status of a unique model. The question is: what does this uniqueness really entail and how does it enhance our understanding of our concepts of interest at this conference?

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Sovereignty, or at least a part of it, was an early casualty in Europe's integration. Citing one of the main architects European integration, Fontaine posited that 'the indispensable first principle of

these proposals is the abnegation of sovereignty in a limited but decisive field'. It was felt that a surrender of some bit of sovereignty was inevitable if states were serious about solving the quagmire they faced, as only such surrender of sovereignty would take integration beyond mere cooperation between the contracting state parties. On this basis, one commentator reasoned that 'no government … remains sovereign in the sense understood by diplomats and constitutional lawyers half a century ago' so that among the integrating states, 'mutual interference in each other's domestic affairs has become a long-accepted practice'. Hence, water-tight sovereignty gives way once the decision to integrate is made. However, it needs to be stressed that the easing of sovereign rights is not unique to EC/EU type or degree of integration since most forms of inter-state interaction require some concession of sovereignty by state parties to a treaty.

Thus, the innovation that the EC/EU can claim is the more extensive cession of sovereignty associated with supranationality. It began with the introduction of the 'High Authority' in the ECSC Treaty - an organ expressly stated to be a 'supranational' body. Although the term 'supranational' is not defined in that treaty (or anywhere else for that matter), Claude identifies three main elements associated with the concept: 'the capacity to make binding decisions on important matters by majority vote, … the substantial authority conferred upon organs composed of persons other than governmental representatives and … the competence of the agencies to deal directly and authoritatively with firms and individuals within member states'. As regards Claude's first element, authority leaves the member states but does not go to reside in an independent organ of the Community or Union as the ceded authority is exercised by representatives of the member states in a pool where 'majoritarian decision making' takes place. Decision by majority vote takes away the 'decisional veto' that unanimity confers on each state. For some commentators, this element amounts to "supranationality without supranational institutions".

Claude's second element is even more invasive of sovereignty as it involves a 'delegation of authority to one or more independent bodies'. These bodies are then able to bind states even against their will, thus resulting in a bigger loss of the states' sovereignty given that officials of these bodies are required to decide and act in the common interest and in the interest of the organisation even in spite of individual member state contrary interest.

However, the transfer of powers to the EC/EU independent organs is not necessarily absolute even in the limited areas of EC/EU competence. The significant and distinctive point of Claude's third element is that no intervening national transformatory action is required for Community laws to bind citizens of state parties. Schütze sees this as a removal or limitation of the member state's "normative veto" even 'at the borders of their national legal orders' – another form of transfer or cession of sovereign powers. Whereas in the first two elements, supranationality mostly invades the sovereign prerogative of the executive arm (government) of member states, the third element sets the Community or Union against the national legislature and (to a lesser extent) even the national judiciary.

With this understanding of the functioning of supranationality in Europe's integration, it is important to recall that in the intergovernmental approach, the Community or Union is seen only as 'a forum for inter-state bargaining' where 'member states remain the only important actors' and 'policymaking is … through negotiation among member states or carefully circumscribed delegations of authority'. While Europe's experience gives the impression that effective integration can only happen where a high level of supranationality is involved, Clark reminds us that 'It is possible to arrange international economic integration in such a way as to create no structural relationships involving supranational organs and little or no interference with national sovereignty'. In fact, according to Schütze, at some point in its evolution, the EC 'carefully avoided all reference to the concept of "supranationalism" … (as) the enormously enlarged scope for European integration required a high price: the return to a more international format of decision-making'. But as Clark also acknowledged, integration without some sort of supranationality will mean making decisions based on 'traditional diplomatic negotiations leading to universal consent, or at least to general consent, not binding on those parties not in agreement'. This, as we know, also means that 'Decisions so reached have effect only on the international place or require the intervention of organs of the state before any question of their domestic enforceability arises'.

One last significant angle to the intergovernmentalism versus supranationalism

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divide in integration governance worth mentioning arises from the distinction between negative and positive integration identified by Malamud. According to Malamud, in the negative phase of integration, the focus is to create the bigger market through the 'dismantling of national barriers on trade and the prohibition of discriminatory behavior' while in the positive phase, the focus shifts to regulation of the market created by enacting 'common policies that shape the conditions under which markets operate'. Significantly, Malamud conceives the market creating function as one achievable through intergovernmental actions by state parties while the marketing regulating function 'requires enforcement by supranational agencies and rules'. Stone Sweet reinforces this view in the observation that an increase in transnational exchange translates into higher costs for governments that insist on maintaining their own national rules, especially where those rules are contradictory.

Noting in a different context, that the states are 'implicated in all features of markets', Fligstein and Mara-Drita seem to provide some support for Malamud's postulation as they show that the regulation of property rights and the setting of competition rules at the domestic level are 'central to states' claim in sovereignty'. Pointing out that domestic economic elites with existing rights and control over spheres of the domestic market under existing national rules are likely to resist market-creating moves that threaten the stability they enjoy, Fligstein and Mara-Drita help us understand why states may be more interested in managing the market- creating function that in exercising control over what they call 'rules of exchange' in the market-regulating phase. In Europe's integration, it is claimed that the negative and positive phases of integration occurred chronologically so that EC/EU integration moved from intergovernmentalist processes to supranational processes, without completely or exclusively discarding one or the other. From my outsider's view, it is correct to assert that while the EC/EU appears heavily supranational, with states accepting elaborate invasion of their respective sovereignties in a specific but limited area of competence, it remains intergovernmental in significant areas without a reduction in the level of commitment to integration on the part of its member states.

3. ECOWAS: From Inception till date

In 47 years of integration effort under the auspices of ECOWAS, do we know what kind of organisation we inherited or have created? Is ECOWAS an intergovernmental or a supranational organisation? Do we have a uniquely ECOWAS model of integration, distinct from the operating principles of the traditional inter-state relations in public international law and equally distinct from the EC/EU model or is ECOWAS a caricature of the EC/EU model? Most importantly, is ECOWAS really in pursuit of integration with its attendant consequences? These are some of the questions that I hope to trigger in this part of the paper. To do this, I have relied extensively on the memory of one of the founding fathers of ECOWAS and former military Head of State of Nigeria, General Yakubu Gowon as recorded in his doctoral thesis presented in 1984. To this, I have also added materials extracted from archival and current official documents of ECOWAS. My aim is to trace the evolution of ECOWAS as an international integration scheme to enhance understanding of the nature of our ECOWAS.

A first point to note is the choice of economic cooperation as the organisational target in what can loosely be regarded as the first (1st) epoch in the evolution of ECOWAS. States were deliberate in this choice. At the very least, this suggests that political leaders were conscious of, and sought to avoid the consequences of a more elaborate arrangement likely to be more invasive of their newly acquired sovereignties. As article 2(1) of the 1975 Treaty of ECOWAS indicates, the aim of the Community was to 'promote cooperation and development in all fields of economic activity. In parts of his account of the events leading up to the formation of ECOWAS, General Gowon subtly admits to this point. Noting that the intention was to pursue functional integration rather than a political union, Gowon's explanation that they targeted 'economic cooperation rather than economic nationalism' was to show that the founders understood the need to avoid protectionism. But thereafter, his thesis makes no less than three other mentions of 'economic cooperation', even if an intention to proceed ultimately to an economic union was declared. A deliberate determination not to immediately

engage in a venture that could threaten any significant loss of sovereignty may very well have accounted for the preference for economic cooperation rather than economic integration. Gowon captures this point in his recollection that 'It seemed to us advisable, this time, to focus initially on a manageable range of issues, and to secure preliminary agreement by member states to a certain number of tangible objectives. These should not encroach too far on national sovereignty or impose a new and substantial burden on any one government'. In fact, General Gowon took the view that 'There was no question, for the present, of any member being asked to sacrifice a substantial part of its sovereignty …'. These considerations naturally influenced decisions relating to the structure of the organisation. Hence, Gowon noted that 'the structure of the proposed community would not permit community decisions affecting the vital national interests of any one member without that country's prior consent'. National interests, state consents and respect for sovereignty, all hallmarks of traditional inter-state interactions under public international law spoke volumes of the intentions of the contracting parties under the 1975 Treaty. With cooperation in mind at this time, it was also not likely that any real attention was paid to the creation of a market.

Arguably, the resolve to avoid any commitment with significant threat to sovereignty also influenced the quality of organs and institutions established under the 1975 founding Treaty. In its article 4, the 1975 Treaty provided for four (4) main institutions (or organs) – the Authority of Heads of State and Government, the Council of Ministers, the Executive Secretariat, and the Tribunal of the Community'. Of these four, the Executive Secretariat and the Tribunal were supposed to be the independent (supranational) organs but the establishment of the Tribunal was postponed while the Executive Secretariat was exactly that – an organ to provide secretarial services to the States (Authority of Heads of State and Government or Authority) and the representatives of States (the Council of Ministers). Two quick points to note are i) stipulation of the Authority as the principal governing institution of ECOWAS and the organ with responsibility for, and control over performance of the executive functions of the Community and achievement of its aims. ii) The drafters made sure to constrain the organs by inserting in article 4(2) of the 1975 Treaty an express statement that the institutions shall only perform the functions, and act within the limits of the powers conferred by the Treaty and its protocols. No room for activism or expansionist manoeuvre was allowed. Thus, the institutional structure of the ECOWAS under the 1975 Treaty epoch (the first epoch) was highly pro state parties and intergovernmentalist in nature. The Member States left no one in doubt that they were the masters of the treaty.

Having postponed the establishment of the Tribunal, the founding fathers were unequivocal about the status of the only remaining common institution or organ in the ECOWAS structure, the ECOWAS Secretariat. General Gowon records instructively 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.

The decision not to establish a body comparable to Europe's supranational organ was quite deliberate at this time. General Gowon noted further that the Secretariat was merely 'intended to be the main administrative and nerve centre of the Community' since 'the governments concerned preferred this system to the pattern of supra-national organisation employed elsewhere because it seemed more appropriate in our case, and because in any case, decision-making in 'supra-national' bodies usually requires individual states to approve the more important decisions taken on their behalf'. This vision of the Secretariat was shared by President Siaka Stephen of Liberia who is quoted to have conceived of it as an 'energetic secretariat … "to keep us in constant touch with one another" and to provide members "with the necessary information at the right time". This institution or organ was not intended to be a supranational organ and there were no expectations or even pretensions that it would perform any role beyond providing secretarial assistance for the decision makers.

Critical decision making itself was essentially the prerogative of the Member States in this first epoch.

The 1975 Treaty envisaged the use of treaties (protocols) for purposes of community governance and required that such treaties be signed and ratified in accordance with the constitutional provisions of the Member States. In the functioning of that ECOWAS, it was intended that 'Ministers would be in touch with their respective political heads and would be more closely involved in the planning and discussion of Community affairs, working to ensure the harmonious development of the community and the recognition by others, of the interests of their own state'. ECOWAS in this first epoch was truly an intergovernmental organisation intended to operate under the general principles of public international law. None of the elements of supranationality existed in the functioning of the organisations.

It would appear however, that even in this first epoch economic cooperation was expected to give way at some point to more elaborate arrangements bordering on the creation of an ECOWAS market. One evidence of this point is that 'much thought was expended on the time-table whereby conflicting and discordant policies will one day be harmonised and the obstacles to economic integration reduced and finally removed'. Similarly, it is on record that 'signatories also undertook to abolish all obstacles to the freedom of movement and residence within the community of the citizens of member states'. Despite the rhetoric of cooperation in the first epoch, the intention to create a market, albeit through a gradual process, could not be denied. The possibility of achieving this market-creation goal through a supranational approach in the face of West Africa's socio-political context was however, doubtful. In any case, there is no evidence that the intergovernmental approach of this first epoch achieved much before the 2nd epoch arrived with the 1993 revised Treaty.

Although, as a result of political upheavals in West Africa, there were changes in the focus and institutional practices of ECOWAS prior to the amendment of the 1975 Treaty, the second (2nd) epoch in the organisational and institutional development of ECOWAS only truly began with the 1993 revised Treaty. Probably dissatisfied with the pace of the organisation, the contracting state parties, in the preamble to the revised Treaty, robustly expressed their desire to change gear in a bid to 'accelerate economic and social development' in their respective states. This is one area where the shift in the aims of the organisation appeared strongly. Building on at least four mentions of integration in the preamble (as against mere cooperation), contracting state parties escalated the aims of the Community from the pursuit of 'cooperation and development' to the pursuit of 'cooperation and integration'. In support of this deliberate shift in organisational objective, the contracting states also made a huge mental leap in their acknowledgement that some concession of sovereignty is an inevitable price for integration.

As a consequence of these shifts, ECOWAS Member States also expressed their acceptance of the 'need to establish Community Institutions vested with relevant and adequate powers'. The institutional structure of ECOWAS had to change with provision for additional institutions such as a Community Parliament, an Economic and Social Council and the Fund for Cooperation, Compensation and Development. The judicial organ of ECOWAS which was originally established as the Tribunal of the Community in the 1975 Treaty but emerged as the Community Court of Justice in the 1991 Protocol that operationalised it was also formally recognised as such in the revised Treaty. Despite of all of these, including the increase in the number of institutions and the declaration of intention to confer 'relevant and adequate powers' on them, the institutional equation remained significantly the same as it was in the first epoch. Apart from the Authority becoming 'the supreme institution of the Community' in place of its earlier position as the 'principal governing institution', nothing else changed much. The Council of Ministers moved from having responsibility to 'keep under review the functioning and development of the Community' to 'having responsibility for the functioning and development of the Community'. Since the Executive Secretariat basically retained its secretarial role and the additional institutions – the Community Parliament and the Economic and Social Council were given essentially advisory roles, the balance of power in ECOWAS remained firmly in the hands of the Member States. The additional institutions and the more elaborate enumeration of functions in the revised Treaty amounted to 'motion without movement' in the ECOWAS.

Although, the States retained their grip and control of the organisation, the revised Treaty came with a more extensive statement of commitment on the part of Member States to the objectives of the organisation and arguably, the creation of an ECOWAS market. Thus, as against the single

paragraph statement of general undertaking in the 1975 Treaty in which they pledged to 'make every effort to plan and direct their policies with a view to creating favourable conditions for the achievement of the aims of the Community', the revised Treaty has a three-paragraph declaration of general undertakings. Article 5 of the revised Treaty reiterates the commitments in the 1975 regime, but pledges Member States to 'refrain from any action that may hinder the attainment' of Community objectives. States also undertake to take measures in accordance with their constitutional procedures to enact and disseminate legislation and statutory texts necessary for the implementation of the Treaty. These provisions suggest that ECOWAS Member States understood only constitutionally valid national legislative and other actions could facilitate effective creation of the ECOWAS market and overall realisation of the organisational objectives. Article 5 also contains an affirmation that Member States have taken on legal obligations under the Community framework in the form of decisions and regulations, which they commit to honour.

Thus, under the second epoch, as far as legislation and policy making go, ECOWAS States neither transferred powers of a sovereign nature to any supranational organs of the Community nor did they envisage that any institutions of the Community would have powers to directly bind actors within the national spaces. States retained their normative veto and maintained their gate keeping roles at the boundaries of their respective national legal systems. Member State consent and involvement either through national legislation or some other transformatory action remained a requirement for ECOWAS legal outputs to have legal effect within national spaces. As for the pooling of sovereignty for collective exercise by the states themselves, there was a clear preference for the intergovernmental approach to integration governance by way of adoption of treaties and protocols by Member States in accordance with the rules of international law. Where the Authority had to act by decisions, Article 9 of the revised Treaty was emphatic in stipulating that such decisions had to be by unanimity failing which, they may be by consensus or a two-third majority of members in that order. As for the other independent and therefore potentially supranational institution – the ECOWAS Court of Justice, limited access and jurisdictional rules under its 1991 Protocol effectively eliminated any supranational effect it could have had on the integration process. In this second epoch, the rhetoric of integration replaced that of cooperation but with little if any concrete translation into action. In summary, none of the elements of supranationalism existed in the ECOWAS under the 1993 revised Treaty epoch, despite the apparent conviction Member States had regarding the benefits of, and need to accelerate integration in West Africa. The attempt to integrate continued on the basis of intergovernmentalism, with States retaining total control of both the ECOWAS framework and the effect of ECOWAS legal outputs in their national legal spaces. Significantly, no real ECOWAS market emerged. Member States' economies continued to operate as they did before the founding on ECOWAS while the organisation remained a forum for the initiation and execution of joint project and a platform for collective bargaining in international and regional affairs.

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A third epoch in the evolution of ECOWAS can be seen from 2006 when a series of amendments to the 1993 revised Treaty were adopted by the Member States. Again motivated among other things, by a desire to 'harmonise community … texts' with a view to endow the Community with 'modern legal instruments whose interpretation shall contribute to the acceleration of the integration process', ECOWAS Heads of State and Government acting under the auspices of the Authority adopted Supplementary Protocol A/SP.1/06/06. Acceleration of integration remained a key objective expressed by Member State in the amendments undertaken in this third epoch. However, the expression of this objective did not necessarily result in any wholesale change in the Community's approach to integration. For instance, the intent to 'transform the Executive Secretariat to enable it to adapt to the international environment and more successfully fulfil its role in the integration process', is not exactly an expression of intention to upgrade the capacity of the organ to affect integration in a more influential way. Accordingly, Supplementary Protocol A/SP.1/06/06 did not result in any significant change in governance status of Secretariat. While Article 1 changed the nomenclature of the organ from Executive Secretariat to the Commission of ECOWAS, the powers conferred on it remained

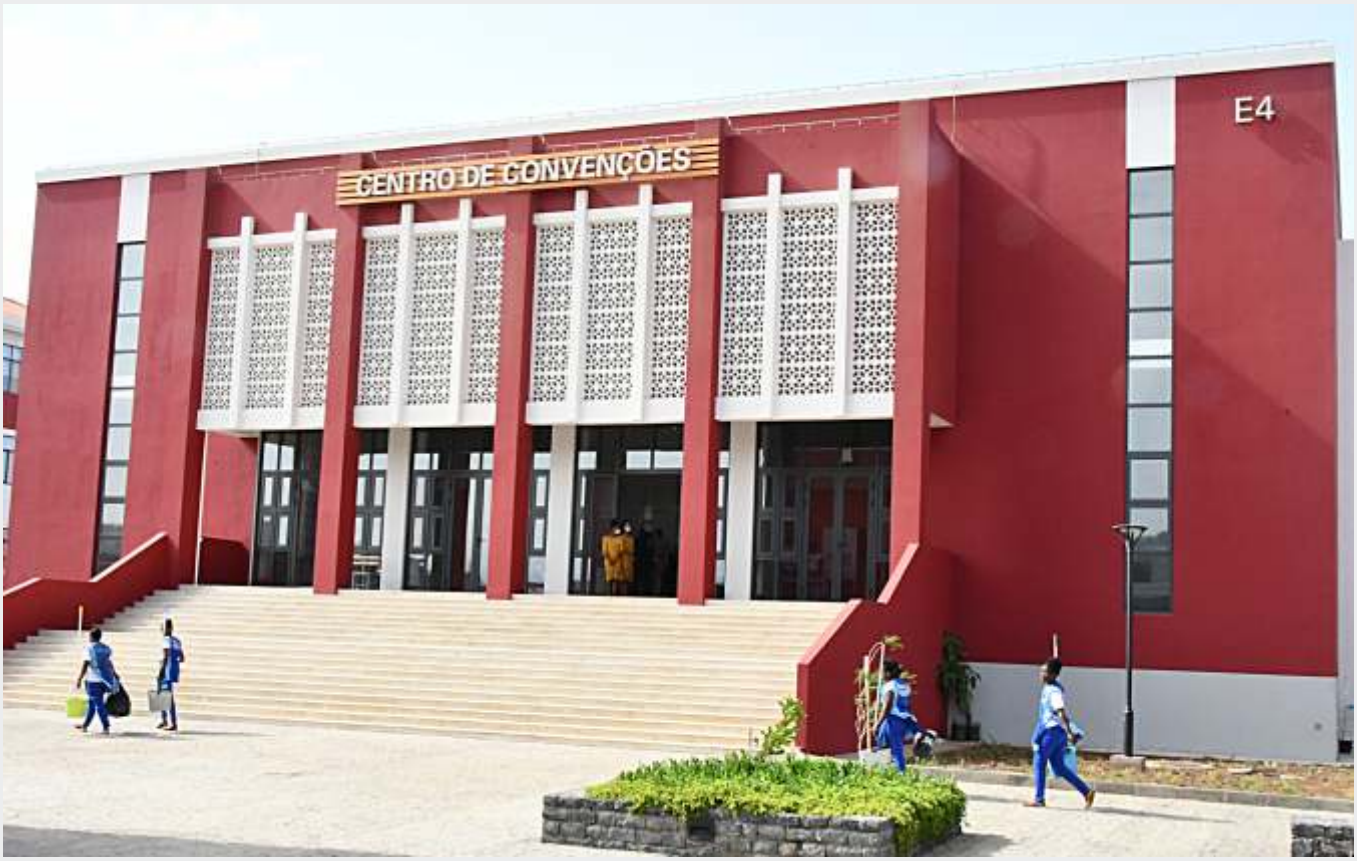
essentially the same. The new Article 9 which defined the legislative competences of ECOWAS institutions stipulated that the Commission 'may adopt rules' where necessary to execute Acts of State representative but 'shall formulate recommendations and opinions'. The Rules of Procedure of both the Authority and the Commission itself further attest to the mostly secretarial role of the Commission. A small area in which the Commission has potential to affect integration is the enforcement role conferred on it in the revised Article 10(a) of the 2005 Additional Protocol of the ECOWAS Community Court of Justice, but this potential has never been explored. No other independent institution of the Community fared better than the Commission in terms of legislative or policy-making powers. Thus, there was no delegation of powers to a supranational organ to either bind Member States or have direct legal effect within national legal spaces.

With regards to the Member States and their representative organs in ECOWAS, the third epoch saw some movement towards supranationalism. These movements were in relation to the capacity to legislate by instruments other than treaties and the competence to bind actors directly and authoritatively at the domestic level. In the new article 9 of the amended Treaty, the legal regime of the Community changed from the use of treaties, protocols and conventions adopted by Member States to Community Acts adopted by the Authority in the form of Supplementary Acts while the Council of Ministers was empowered to act through Regulations, Directives, Decisions, Recommendations and Opinions. Retaining their sovereign rights as Heads of State and Government of Member States, the Authority resolved that their Supplementary Acts 'shall be binding on Community institutions and Member States where they shall be directly applicable'. For their part, provisions of Regulations were also to be 'binding and directly applicable in member states'. ECOWAS political leaders acting as an organ of the Community had thus, moved to give some appearance of supranationality to the organisation as far as authority to bind within the legal system of member state was concerned. This, they sought to do by way of an international treaty, which each Member State was then expected to give constitutional, legislative and any other regulatory backing at the national level. Theoretically, by Supplementary Protocol A/SP.1/06/06, ECOWAS was supposed to have become at least partially supranational – its state-representative-organs had been capacitated to act without the need for treaties and the legislative instruments of those organs were in theory supposed to have direct and authoritative effect on actors within national spaces. Empirically, while several Supplementary Acts were adopted by the Authority and Regulations were enacted by the Council of Ministers, there was very little if any evidence that such Community legal outputs touched on issues of relevance to the creation of an ECOWAS market or the regulation of business in such a market. The vast majority (if not all) Community legal output continued to focus on matters outside the daily lives of citizens and businesses. Where legal outputs involved matters relevant to business or daily lives of citizens, they were adopted in formats that allowed member states only to harmonise national policies and laws at their own pace to Community policy-documents. In this manner, the political leaders of ECOWAS were able to 'advance' integration by 'empowering' the Community at the ECOWAS level without causing the Member State to lose their normative veto at the national level. Effectively, more motion without movement since the goings-on in ECOWAS still had little impact on the daily lives of natural and legal persons within the region.

In 2010, another minor shift occurred in the ECOWAS governance structure still as part of the third epoch. Concerned that the legal regime introduced by Supplementary Protocol A/SP.1/06/06 had the effect of reducing the capacity of the ECOWAS Authority to undertake certain legislative, constitutive and supervisory actions, the Authority adopted Supplementary Act A/SA.3/01/10 Amending New Article 9 of the ECOWAS Treaty as amended by Supplementary Protocol A/SP.1/06/06 (Supplementary Act A/SA.3/01/10). Basically, the new Article 9(2) introduced by Supplementary Act A/SA.3/01/10 added Directives, Decisions, Declarations and Recommendations as means by which the Authority could act within the ECOWAS framework. With this 'new' legal regime, the Authority could make appointments and issue directives to other institutions of the Community – acts that did not require the adoption of supplementary acts. More significantly for our purposes, the supranational effect of ECOWAS Supplementary Acts was arguably toned down by sub-article 3 which now provides that 'it is incumbent on Member States and the Institutions of the Community to abide by the Supplementary Acts'. Effectively, this formulation was a statement of reality as it reflects a recognition that direct effect

of Community legislation is not a function merely of treaty declaration. While Community institutions could be bound to act simply on pronouncement by the Authority in its capacity as the Supreme Institution, the same cannot be said of Member States where governmental powers are shared (with national legislatures and judiciaries) under supreme national constitutions. As any constitutional lawyer knows, the Authority (or any other ECOWAS institution for that matter) not being part of the national governance structure, realistically lacked the legal authority to command, the concession of sovereignty notwithstanding.

While it struggled with transforming ECOWAS into a supranational organisation in all other respects, the Authority had full prerogative to determine decisional supranationality within its framework. However, in its Rules of Procedure adopted in 2010, the Authority expressed a preference for decision-making by unanimity or consensus. It is only 'where it is impossible to achieve unanimity or consensus, the Authority shall take its decision by two-thirds majority of the Member States present and eligible to vote'. To the extent that there is room for majority vote that can bind those not in agreement, the Community could have claimed a real move in the direction of supranationality. However, the text of the Acts adopted after the commencement of this new regime do not support such a conclusion as Member States continue to have a choice whether to be bound or not. In this regard, for Community Acts that should be applicable within national spaces, States can withhold their signature as only signatory states 'undertake to commence the implementation' of the provisions of an Act when it enters into force upon publication in the Community journal. Arguably, a big obstacle remains the fact that no real ECOWAS Market outside the national control of the Member States exists, over which the Authority or any other Community institution can exercise regulatory control. Member States' laws and policies continue to reign supreme in the national legal space while ECOWAS and its organs and institutions focus on joint projects outside the national space and on recommending legal and policy frameworks which members may consider adopting or harmonising their laws with. Similarly, the Regulations of the Council Ministers which are required to be 'binding in all respects and applicable directly in all Member States' generally target administrative and related issues within the Community governance framework. In other words, while the frame for supranationalisation of ECOWAS began to take some shape in 2006, the absence of a market to regulate and the near impossibility of creating a market by supranational action of Community institutions has constrained the progress that ought



The University convention Center, venue of the Conference

to have been made. Thus, it is safe to conclude that notwithstanding the seeming translation of integration rhetoric into concrete action in the third epoch, it is economic cooperation that continues to take place the framework of ECOWAS.

4. Realities and legal implications in the ECOWAS integration

If my analysis up to this point is correct, ECOWAS has moved its objectives from cooperation to integration over three epochs. There has also been a slight change in the institutional structure of the organisation, but the balance of powers remains with the Member States while the independent Community institutions are left on the fringes and therefore lack any significant capacity to shape the course of integration. Member States have elected to engage in some pooling of sovereignties instead of a delegation of sovereignties to Community organs or institutions. In pooling their sovereignties, Member States have abandoned the use of treaties for Community governance, and instead resorted to a new legal regime that has the frame of supernationalism yet lacks the quality to bind Member States against their will. Acts of the Community still have no practical direct and authoritative binding effect within national legal spaces, requiring the transformatory intervention of Member States before they can have any legal consequences within those spaces.

Notwithstanding the general undertakings made by Member States, implementation of Community legal output remains challenging so that obstacles to the creation of the ECOWAS market remains significant since the Community institutions lack the capacity to drive integration on their own. What do these mean in legal terms and what are the implications for Member States and the Community?

As between regional economic cooperation and regional economic integration, the discourse has shown that sovereignty stands out as a major consideration. In the face of the evolution over the three epochs, the question is not whether ECOWAS Member States have agreed to cede some part of their sovereignties but how much of sovereignties have been ceded and what that means both for Community governance and the national governance configuration. As Raustiala observed in a different context, the subtle question is "have we delegated away a significant part of our capacity for, and manner of self-government in the process of international cooperation?". To engage

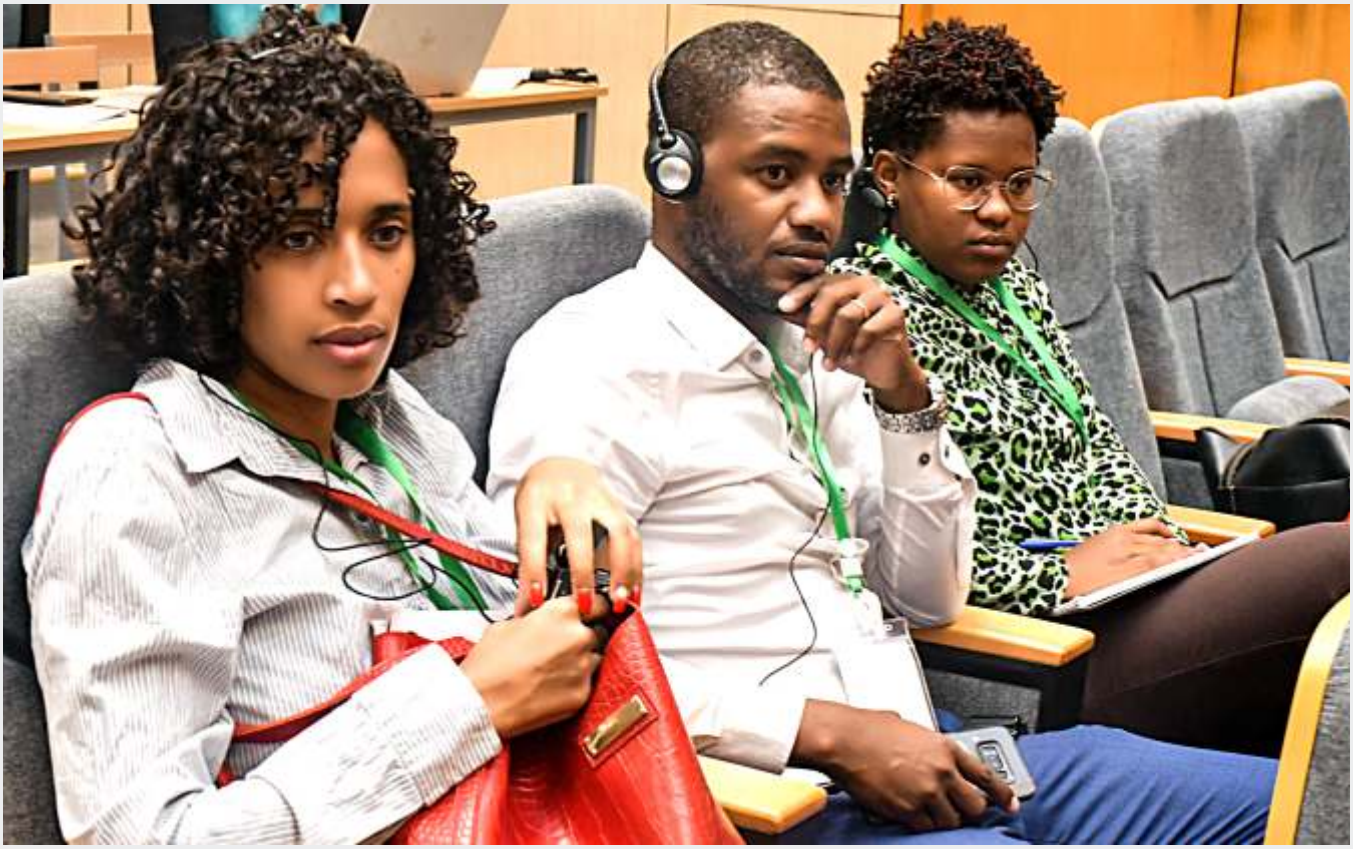
"...have we delegated away a significant part of our capacity for, and manner of self-government in the process of international cooperation?"

this question, it might be necessary to recall that at a very simplistic and general level, sovereignty comprises of an internal aspect – absolute power within a national community and an external aspect – legal personality to act in international law and absolute independence of action vis-à-vis other states and entities. It is in exercise of their legal personality as sovereign states that the ECOWAS Member States are competent to converge. But the question relates more to the impact on their internal and external sovereignties. The quick and short answer, I suggest is that even in terms of integration rather cooperation, each ECOWAS Member State ceded a small part of their external sovereignty to the Community while they retained all their internal sovereignty. In terms of the power to commit a state in international law, the Vienna Convention on the Law of Treaties (VCLT) recognises that certain categories of officials in the executive arm of a state's government, including the head of government can commit that state to a treaty. This is matched by a domestic (national) allocation of treaty making powers to the executive arm under most domestic constitutional frameworks. Read together with the principle of Pacta Sunt Servanda in article 26 of the VCLT, ECOWAS Member States lose a bit of their external sovereignty to the extent that they are bound by international obligations they voluntarily take, including for instance financial obligations to the Community.

As regards internal sovereignty - the governance structure set out in a national constitution, the balance of powers between the arms of government, as well as the condition(s) on which obligations in international treaties can have binding legal effect within the legal system –national constitutions govern. It goes without saying that the ratification of, or accession to a treaty at international law is not legally sufficient to pierce the internal sovereignty of the states. Appropriate national action as required by the constitution of each state needs to be taken for integration to affect international sovereignty. The European experience in this regard is quite instructive. Baring such national action,

integration remains an intergovernmentalist affair where states negotiate agreements, and the executive arm of each government remains the critical actors.

Concerning the institutional structure of ECOWAS in which the balance of power has remained with the Member States across the three epochs, it is the compliance-monitoring role of the ECOWAS Commission and the adjudicatory mandate of the ECOWAS Court of Justice that call for some attention. Can the ECOWAS Commission which only has and performs a secretarial role more than anything else, validly monitor and enforce state compliance with Community obligations in the current ECOWAS intergovernmental arrangement? As already mentioned above, one of the main attributes of statehood in international is the legal personality of the state which carries with it the legal power to bind itself and to empower any other entity to act on its behalf. ECOWAS Member States in exercise of this power are competent to empower the Commission to exercise part of the powers of the States on behalf of those states. In this regard, the distinction that some scholars have made between 'conferral or transfer of sovereignty' and the 'transfer of power' becomes useful. The exercise of enforcement power, being done on behalf of the states as a collective, is the consequence of the transfer of power even as the sovereignty remains with the states. Similar to the manner in which the coordination and information gathering role of the Secretariat was found useful as support for the Member States, the compliance monitoring role of the Commission removes the potential acrimony that could arise where such an obligation is left entirely to Member State. The decision of the International Court of Justice in the WHO Advisory case indicates that states may validly empower an organ of an international organisation to exercise enforcement (or in this case, compliance monitoring) roles. As for the ECOWAS Community Court, the roles assigned to it by the Member States are regular functions performed by judicial organs of international organisations. The striking aspect of the Court's function within the ECOWAS framework is the Court's almost total absence from the field of integration and almost full spill-over into the field of human rights protection. Following Haas's theory, the Court's presence in the field of human rights rather than the field of economic integration can be explained as an enabling action to assist Member States in their market creation efforts since no ECOWAS market currently exist from which disputes of an economic or market regulatory nature have emerged. While the implied powers doctrine may not properly explain this trend, in the



Some of the Law Students who attended the Conference

exercise of their sovereignties, Member States have validly empowered the Community in this direction.

Generally, the preference for pooling of sovereignty by ECOWAS Member States instead of a delegation of sovereignty to supranational organ has the effect of denying the independent institutions of the Community any right to bind the States both in international law and in the national legal space. With respect to the competence to bind Member States, the legal products of the Community which result from the exercise of pooled sovereignties have the same legal quality and therefore, the same force as treaties in international law. As the recognised repositories of the legal personality of the states, the heads of government in the Authority or the representatives of states in the Council of Ministers can and do bind their respective states externally when they partake in the making of law or policy within Community framework. Taken together with the general undertakings made by Member States in the 1993 revised ECOWAS Treaty, compliance obligations under the VCLT are triggered for each Member State signatory to the Acts of the Community. Thus, the undertakings to create favourable conditions for the attainment of Community objectives, to refrain from obstructing action and to take positive steps in accordance with constitutional procedures all constitute binding obligations, albeit of an intergovernmental nature, which Member States should not be able to escape before the ECOWAS Court. However, as Koh argues (quite persuasively), the nature of compliance obligation at the transnational place (in international law) that arises for Member States in respect of the legal outputs from the exercise of pooled sovereignties need to be distinguished from what he calls the 'penetration of international rules into a domestic legal system'. In their effort to create an ECOWAS common market to which citizens and firms can connect, ECOWAS Member States must take Treaty commitments serious even if this requires intergovernmental action and only attracts international legal responsibility. Once this market is successfully created and the need for a common regulation of the created market arises, the supranational angle to ECOWAS would come into play, requiring the penetration of Community rules into the national legal spaces.

Conclusion

If the intentions of various generations of political leaders in West Africa were the bases for evaluating the performance of ECOWAS in the pursuit of the

"...Member States must take Treaty commitments serious even if this requires intergovernmental action and only attracts international legal responsibility."

objectives of integration, the Community might well have stood tall in the field of initiatives for regional economic integration. The evolution of the organisation over the past four decades shows clearly that for reasons that may not necessarily coincide, different stakeholders and actors desire to see concrete movement towards the realisation of the objectives of ECOWAS. The anxiety to tag the organisation as supranational in the mould of the EC/EU instead of the intergovernmentalist organisation that it currently is, can only be as a result of the desire to fast-track ECOWAS integration in West Africa.

For some, mostly in the civil society sector and in the Community bureaucracy, the actions of the Member States are a clear demonstration of a lack of political will. Perceiving Member States lingering attachment to state sovereignty as a major cause of the slow pace of the organisation and a factor inhibiting compliance with and implementation of Community obligation, concepts such as supranationalism have often been invoked to compel some form of action. This paper has tried to show that it is fanciful thinking to assume that by a labelling the nature of interaction, ECOWAS Member States can be propelled forward towards deeper integration. Instead, this paper has hopefully demonstrated that the deeper challenge lies in the inability to create a functional ECOWAS Community market. In agreement with existing scholarship, it has been argued that integration requires intergovernmental actions on the part of Member States as a precondition for the creation of a Community market which will then require regulatory rules of a supranational nature. On

these grounds, the paper has argued that the nature of compliance obligations within the ECOWAS Community may be different depending on the action required, but no compliance obligation is lower by reason of a label of the nature of interaction.

PICTURES OF THE PANELISTS

MORE PICTURES OF PANELISTS

FINAL COMMUNIQUÉ AND RECOMMENDATIONS

INTRODUCTION

1. The ECOWAS Court of Justice hosted an International Conference from 9 to 12 May 2022, at the amphitheater of the University of Cape Verde, Praia with the theme "ECOWAS Integration Model: The Legal Implications of Regionalism, Sovereignty and Supranationalism". The Conference was attended by over two hundred and fifty participants, some of whom were physically present at Praia, while others joined virtually via zoom.

OBJECTIVES

2. The objectives of the International Conference are to critically assess the Community legal environment and the impact of supranationalism and national sovereignties on the integration process; analyse whether at the level of the ECOWAS institutions and at the national level, there is a favourable legal environment for the development of Community law, particularly in view of the respective roles of the ECOWAS Court and the national courts. Finally, to identify the obstacles to the realization of an integrated Community legal order, which is essential for the success of the ECOWAS' regional economic integration objective.

PARTICIPATION

3. Participants at the conference included; Judges of the ECOWAS Court, Chief Justices of the Supreme Courts of Cape Verde, Ghana (represented), Guinea Bissau and Sierra Leone, President of the ECOWAS Bank for Investment and Development (EBID), A Commissioner of the African Commission on Human and Peoples' Rights, Representatives of Member States, ECOWAS Institutions, and National Human Rights Institutions, members of the academia, the judiciary and bar associations of Member States, Public servants of the Republic of Cape Verde, Civil Society Organisations, students and members of Staff of the ECOWAS Court.

OPENING CEREMONY

4. The opening ceremony of the Conference on Monday 9 May 2022 was attended by senior Government officials of the Republic of Cape Verde and other dignitaries within the ECOWAS Member States. His Excellency Dr. José Maria Neves, President of the Republic of Cape Verde was present to officially declare open the Conference.

5. Other dignitaries from the host Government who attended the ceremony are the Honourable Minister of Justice Madam Joana Rosa and the Chief Justice of the Supreme Court, Honourable Justice Benfeito Mosso Ramos. Dignitaries from ECOWAS Institutions were the Honourable President of the ECOWAS Court of Justice, the Hon. Justice Edward Amoako Asante and the Honourable Vice-President and Judges of the Court, the President of the ECOWAS Bank for Investment and Development (EBID) Dr. George Agyekum Nana Donkor, Special Representative of ECOWAS in Cabo Verde, and some members of staff of the Court. Also in attendance were members of the diplomatic corps, judiciary of Member States, Heads of ECOWAS National Offices in Member States or their representatives, Presidents/Representatives of Bar Associations of Member States, the President of the African Bar Association, Members of the Academia, Director of Amnesty International, Nigeria and the East African Regional Director of The Raoul Wallenberg Institute of Human Rights and Humanitarian Law.

6. The President of the Court delivered the welcome address. In his speech, he noted that the legal standard in most regional integration systems implies a direct

applicability of community norms by Member States and the right of community citizens to invoke community norms before national courts of such integrating Member States. He stressed that Member States are the most important stakeholders in the integration process, as they are recognizably sovereign, and their political will is a necessary factor for the achievement of Community objectives. For this reason, stakeholders from Member States have been invited to participate in the Conference, as the integration process revolves around them.

7. He made a call on Member States to revert to the former composition and tenure of judges of the ECOWAS Court from five judges to seven and from 4 years non-renewable tenure to 5 years renewable tenure, due to the negative impact these changes are having on the Court.

8. Following the welcome address by the President of the Court, the President of ECOWAS Bank for Investment and Development (EBID) Dr. George Agyekum Nana Donkor delivered a goodwill message. He highlighted the legal barriers that hinder the conduct of business in the sub-region and stated that the legal environment negatively impacts the attractiveness of the sub-region for international investments. According to him, predictability and security must be guaranteed to small and medium-sized enterprises for regional economic integration to be successful. He recognised that the legal framework is an important element in risk assessment and for the success of business initiatives and economic growth. It is therefore important to develop solutions to improve this legal framework.

9. The Hon. Minister of Justice of the Republic of Cape Verde, Madam Joana Rosa, in her statement recognised that the true integration of Cape Verde in the sub-region has not always been satisfactory, and there is still a long way to go in developing an engaging and profitable integration for Cape Verde as well as for the other countries of the Community. She stated that for Cape Verde, the desired regional integration is the broadest possible one and should always be carried out taking into consideration the country's territorial, population, economic, and cultural specificities.

10. The Hon Chief Justice of the Supreme Court of Cape Verde, Dr. Benfeito Mosso Ramos in his statement highlighted that the Court has delivered landmark decisions in the legal Community, thereby reaching a level of irreversibility, where ECOWAS cannot be conceived without the Court. He stated that an outstanding feature of the Court is the fact that it looks at reality with a critical sense, always finding the best solutions to the problems it faces. He said that the Court is internationally recognized for the reasonableness and prudence of its decisions, and concluded by wishing the Conference fruitful outcomes.

11. The keynote speaker, Prof Solomon Ebobrah, Professor of International Law, Niger Delta University, Nigeria, in his thought provoking address, was of the opinion that in reality, ECOWAS is currently operating an intergovernmental model with very little elements of supranationalism. That ECOWAS is ill prepared to take on the obligations that supranationalism entails. He recognised the visible changes in the institutional structure of the organisation, but stated that the balance of power is still in the hands of the Member States, who have decided to use a new legal regime that takes on the appearance of supranationalism but without the binding effect on State wills. Similarly, between regional economic cooperation and regional economic integration, he highlights sovereignty as a major consideration. He argued that integration requires intergovernmental actions by Member States as a precondition for the creation of a community market which will then require regulatory rules of

a supranational nature. He suggested that to achieve integration, each Member State should consider giving up a small part of its external sovereignty while retaining all its internal sovereignty.

12. His Excellency, President of the Republic of Cape Verde, Dr. José Maria Neves, in his opening statement welcomed all participants to the Republic of Cape Verde. He underlined that regional integration is a fundamental option of the Cape Verdean State and a defining axis of its action in the external and internal plan, due to its consequences for the formulation of national public policies. His Excellency emphasized that as for the scope and speed of integration, it is necessary to be in tune with the practices and norms of similar institutions, which were able to innovate in the face of complex situations, which may be similar to those the Community is currently going through.

13. He stressed that the promotion and consolidation of democratic systems of government, tolerance and respect for human rights, the elimination of all types of discrimination, should be a permanent part of the ECOWAS catalogue of concerns, and of its Court in particular. Further, in relation to the protection of human rights, which has been exercised by the ECOWAS Court of Justice, he recognised that the main challenge facing our Community is the creation of a legal-institutional framework that ensures the principle of complementarity between National Jurisdictions and the Community Court of Justice.

14. He thereafter declared the International Conference open.

METHODOLOGY

15. The Conference was divided into seven (7) plenary sessions, whereby presentations were made by resource persons on sub-themes and discussions were devoted to the issues for consideration under each sub-theme. Each of the seven sessions was moderated by one of the judges of the ECOWAS Court, President of the Supreme Court of Cape Verde, Representative of the Chief Justice of Ghana and President of the African Bar Association, while the session on the adoption of the report of the conference was moderated by the Chief Justice of Sierra Leone. Each sub-theme was addressed by three or four resource persons with a focus on the issues for consideration as stated in the agenda. After presentations by the Resource Persons, the floor was open for general discussions by the plenary. Recommendations were thereafter developed from these presentations and ensuing discussions.

PLENARY SESSIONS

16. The work of the Conference took place in plenary sessions where the following sub-themes were discussed:
    a. Sub-theme 1: ECOWAS Integration Model
    b. Sub-theme 2: Regional Economic Integration
    c. Sub-theme 3: Sovereignty and Regionalism
    d. Sub-theme 4: Supranationalism and Regionalism
    e. Sub-theme 5: Regional Courts in Regional Integration Process
    f. Sub-theme 6: Regional Integration and Regional Protection of Human Rights
    g. Sub-theme 7: Free Movement of Persons, Goods and Services as an Important Factor in Regional Economic Integration.

COMMENDATION

17. The participants commended the ECOWAS Court of Justice for organising this Conference, on the very important theme and sub-themes, which gave them an opportunity to review holistically, key legal issues on the ECOWAS integration arrangement.

18. The participants also commended the University of Cape Coast, Ghana, which announced through its Dean of the Faculty of Law, Prof. Phillip Ebow Bondzi-

The Chief Justice of Sierra Leone with the Rapporteurs General

Simpson, an offer of scholarships to two prospective Cape Verdean students (female and male), who wish to study any four year course at the University of Cape Coast, Ghana.

CONCLUSIONS AND RECOMMENDATIONS FROM THE CONFERENCE

19. The following general conclusions and recommendations were reached by participants at the Conference:

CONCLUSIONS

i. That ECOWAS is an integration organization and not merely a cooperation arrangement.

ii. That the ECOWAS integration model is a hybrid, predominantly based on intergovernmentalism with some features of supranationalism. Its evolution from intergovernmentalism to supranationalism has been incremental. Intergovernmentalism and supranationalism are not mutually exclusive as both can conveniently be accommodated in an integration arrangement. However, a higher degree of supranationalism is necessary in order to deepen the regional integration, strengthen regulatory functions and commonality.

iii. There cannot be an integration arrangement without a Community. ECOWAS must therefore create initiatives and opportunities to enable Community citizens to play a greater role in the integration process.

iv. That the international obligations of Member States under the ECOWAS Treaty are not diminished by the fact of intergovernmentalism.

v. The conference commended the regional integration arrangement of ECOWAS and noted that there are obvious benefits for all the Member States and Community citizens in having an integration arrangement for West Africa. Although ECOWAS has not been able to attain some targets that it set for itself, it has achieved many successes and remains the pacesetter amongst RECs in Africa. The conference prefers to see the glass as half full rather than half empty.

vi. The concept of national sovereignty has evolved overtime. In an integration arrangement, the integrating Member States will necessarily have to cede a part of their sovereignty or delegate competences to the supranational authority created by them for the purpose of acting on their behalf in areas of their common interest. ECOWAS Member States should not see this as a general loss of sovereignty as the supranational authority (ECOWAS), only has exclusive or shared competences with the Member States in the areas of their common interest in which it has been authorized to act on their behalf.

vii. That Community Courts have an important role in any regional integration process. The focus of the ECOWAS Court of Justice has been predominantly on human rights because of the very few number of cases before the Court in relation to the Community objectives. This is traceable to the lack of or limited access individuals and corporate bodies have to the Court in respect of the integration agenda of the Community.

viii. The importance of an enabling legal environment in an integration arrangement cannot be overemphasized. It is the pivot and the fulcrum on which an integration arrangement is anchored. Although ECOWAS has a copious legal regime; consisting of the Revised Treaty, numerous Protocols, Conventions, Supplementary Acts, Regulations and other subsidiary legal texts, it is yet to evolve into a community legal order. A Community legal order should clearly manifest the legal relationship between the ECOWAS Court of Justice and the national courts of Member States, the harmonization of the legal and judicial systems of the Community as envisaged in the Revised Treaty, the direct applicability of Community norms before municipal courts and the rights of ECOWAS Community citizens to invoke Community norms before national courts.

ix. The conference also noted that not a single referral has been made by any national court to the ECOWAS Court of Justice as provided for by the Supplementary Protocol on the Court, since 2005 and that the national courts also have challenges in the enforcement of the judgments of the Court. Some of which include: the non-ratification or domestication of the ECOWAS Revised Treaty and Protocols of the Court by Member States and the absence of national implementing legislation. Although treaties signed by Member States are binding on them in the international realm, there is still a need for Member States to discharge their local duty by publishing (for the monist States), ratifying and domesticating the ECOWAS Revised Treaty in accordance with Articles 5(2) and 89 of the Revised Treaty. Member States have not demonstrated the necessary political will to domesticate the ECOWAS Revised Treaty, and the annexed Protocols, Conventions and Supplementary Acts.

x. That the protection of human rights is a fundamental and cardinal value of the Community as provided for in Article 4(g) of the Revised Treaty. The conference affirms that there is a direct relationship between regional integration and regional protection of human rights because gross human rights violations can negatively impact, derail or destabilize the integration arrangement. Participants commended the ECOWAS Court of Justice for its bold human rights mechanism which has received global attention and encouraged national courts to cite the judgments of the ECOWAS Court of Justice in their jurisprudence. The conference also noted that there are obvious benefits for ECOWAS Community citizens by the non-requirement of the rule on exhaustion of local remedies as a condition for the admissibility of human rights violation applications before the Court, but that the Court should put measures in place to avoid forum shopping that could lead to conflicts with national courts.

xi. That the ECOWAS Protocol on Free Movement of Persons, Right of Residence and Establishment, is vital for the integration process of the Community. The conference however noted with commendation, that because of the Protocol, there is no longer a requirement for Visa in the Community but that the free movement of Community citizens under the Protocol is bedeviled by many obstacles and challenges and that the right of residence and establishment are still subject to discriminatory practices contrary to the provisions of the Protocol. It was also noted that 14 Member States are using the ECOWAS Common Passport with the exception of Cabo Verde. Also, that 5 Members States (Senegal, Guinea Bissau, Ghana, Benin Republic and The Gambia) have gone a step further by deploying the ECOWAS National Biometric Identity Card (ENBIC), while the other Member States are yet to do so. It is imperative for ECOWAS Member States to key into the ENBIC regime in order to facilitate the mobility of ECOWAS Community citizens and enhance the security architecture of the Community. It is also necessary for ECOWAS Member States to recognize ENBIC as a travel document in accordance with the Protocol.

xii. The conference noted that only 6 Member States (Guinea, Nigeria, Mali, Burkina Faso, Togo and Ghana) have appointed the Competent National Authority for the enforcement of the judgments of the Court and that the compliance rate with the judgments of the Court is about 30 percent and that the situation is unsatisfactory.

xiii. The participants observed that the reduction of the number of judges of the ECOWAS Court of Justice from 7 to 5 and the reduction of their tenure from 5 years renewable to 4 years nonrenewable is also not in the interests of the Court or the Community.

RECOMMENDATIONS

i. That due to barriers/obstacles, posed by Member States, the community status of ECOWAS has not fully evolved to contain integration and supranationalism. Member States are therefore urged to respect their undertakings in Article 5 of the Revised Treaty. Also, Member States and Civil Society Organizations (CSOs) should be sensitized on the need for a meaningful legal integration and through advocacy, social and economic integration agenda could be promoted.

ii. That despite the supranational features of ECOWAS as achieved by way of successive treaty instructions, ECOWAS still runs on the intergovernmental model. It is recommended that the supranational features of ECOWAS should be strengthened by enhancing the powers of the Commission and granting the Court the jurisdiction to hear cases filed by individuals in respect of ECOWAS laws.

iii. Deadlines are hardly met by ECOWAS, thus making the integration process and expectations cumbersome. It is recommended that a monitoring and evaluation mechanism be put in place to continuously appraise the preparedness of each Member State towards targets set with a view to assisting those not committed or making good progress to meet the targets.

iv. It is recommended that ECOWAS should put a system in place to monitor the implementation by Member States of Community laws and to strengthen regulatory functions and commonality in order to achieve a higher degree of supranationalism necessary for integration.

v. Member States and ECOWAS should endeavour to give ECOWAS citizens an opportunity to play a greater role in the integration process by taking steps to ensure political stability and the creation of an enabling legal environment for the implementation of economic integration policies.

vi. Member States, host communities and investors should explore the dispute resolution mechanism of the ECOWAS Court in compliance with the ECOWAS Investment Code, in order to enhance foreign direct investment in the Community.

vii. Member States should ensure the smooth implementation of the ECOWAS Investment Policy and Codes as a single economic legal framework for promotion, facilitation, protection and sustainable cross border investment.

viii. Member States are urged to support ECOWAS Business Council (EBC) in economic development and job creation, through capacity building of Small and Medium - sized Enterprises (SMEs).

ix. The ECOWAS current legal regime should be reviewed with the aim of ensuring the direct applicability of Community Texts in Member States and empowering Community citizens to invoke ECOWAS Community laws before the national courts of Member States.

x. Member States are urged to establish a peer review mechanism like the African Union peer review mechanism, to monitor compliance of Member States with their Community obligations.

xi. Member States and the ECOWAS Commission should take steps to harmonize the legal and judicial systems of the Community in accordance with the Revised Treaty and promote synergy between the ECOWAS Court and the national courts.

xii. National courts of Member States are encouraged to make referrals to the ECOWAS Court on questions of ECOWAS Community Law and to make reference to the judgments of the ECOWAS Court in their jurisprudence.

xiii. In dealing with the challenge of lack of awareness about the Court and its work, the Court should engage in advocacy across the Community by collaborating with the civil society organisations and relevant stakeholders in Member States and make available to the national judiciaries and bar associations its Protocols, Law Reports, and Rules of Procedure.

xiv. There should be frequent judicial dialogue between judges of the ECOWAS Court and the municipal judges of Member States.

xv. Bar associations and the academia should meet frequently to exchange and share germane experiences and information on how to ensure the integration of Community laws into the domestic legal system.

xvi. Wider participation is recommended in the international conferences organised by the Court to include breakout sessions for students, women's groups and the civil society.

xvii. Member States should endeavour to include Community education; objectives, goals and norms of ECOWAS at all levels of schools' curriculum to create a sense of community identity. Universities should also include Community studies and Community law in their curriculum.

xviii. The Court should continue its training programmes for lawyers, judges and the academia in the Member States.

xix. The remaining 9 Member States that are yet to appoint competent national authorities for the enforcement of the judgments of the Court, are advised to do so without further delay.

xx. The Authority of Heads of States and Government is humbly requested to restore the composition and tenure of judges of the Court back to the position it

(L-R) Dr. Rosa, Justice Asante, Dr. Soares and Justice Ouattara at the closing

was under the 1991 Protocol on the Court by increasing the number of judges of the Court from 5 to 7 and their tenures from 4 years non-renewable to 5 years renewable for another term of 5 years.

xxi. Member States should domesticate the Revised Treaty and Protocols on the Court and enact implementing legislation to facilitate the enforcement of judgments of the Court by national courts.

xxii. ECOWAS should establish a mechanism for the effective implementation of the Protocol on Free Movement, in order to ease mobility of Community citizens and remove all barriers and obstacles. Member States should faithfully implement the provisions regarding the right of residence and establishment and ensure the removal of all discriminatory practices.

xxiii. The ECOWAS Commission should ensure compliance by Member States with the provisions of the Protocol on Free Movement and play the coordinating role in the implementation of ECOWAS Community texts.

xxiv. Member States should recognize ENBIC as a travel document in accordance with the Protocol and integrate into the ENBIC regime in order to facilitate the unfettered mobility of ECOWAS Citizens and enhance the security architecture of the Community. Member States that are yet to adopt the ENBIC are encouraged to do so as soon as possible.

xxv. For ease of communication with immigration officials, and to aid the free movement of Community citizens between borders, Member States are urged to ensure the training of immigration officials on basic communication in the three languages of the Community.

xxvi. The conference recommended advocacy and sensitization of Community citizens, Judges, critical stakeholders in ECOWAS Institutions and in Member States about the provisions of the ECOWAS Protocol on Free Movement and other key ECOWAS Community texts.

xxvii. ECOWAS Commission should take necessary steps to trigger the sanctions mechanism in relation to Member States that fail to fulfil their Community obligations.

CLOSING CEREMONY

17. The Conference came to a conclusion on Thursday 12 May 2022, with a closing ceremony details of which are contained in the General Report of the Conference.

Done at Praia on 12 May 2022
Deputy Rapporteur General

VOTE OF THANKS OF VICE PRESIDENT JUSTICE GBERI-BÈ OUATTARA,

Considering the legendary hospitality of the Republic of Cabo Verde and its people which has been shown towards the ECOWAS Court of Justice, that is to say, the college of judges and all the participants, by a particularly warm, fraternal and enthusiastic welcome on the occasion of the International Conference of the Court from 09 to 12 May 2022;

Considering that this legendary hospitality was unanimously recognized by all the members of the Court's delegation but also by all the other participants who made the trip to Praia, the capital of Cabo Verde, remarkable above all and particularly for its tourist relief in which, the sea and the mountains compete in the exhibition of their reciprocal charms, so much so that many participants have fallen under the spell and the unlimited tourist attractions of Praia and have not hidden their desire either to extend the stay , either to return there immediately upon returning to Abuja or returning to their destination;

Considering the innumerable facilities made by the Cabo Verdean authorities for our delegation and the infrastructures made available to the Court, in particular the sumptuous offices and above all the amphitheater of this magnificent university, a temple of knowledge and served as a conference room for the conduct of our work, which was very rewarding given the very high level of the debates.

Considering the availability of the Cabo Verdean authorities and people, but also their constant concern, assistance and generosity towards our delegation and the climate of peace and security, pledge of the serenity which guaranteed the success of our different sessions.

Considering the concern of the Cabo Verdean judicial and administrative authorities for the proper functioning of the Court of Justice of the ECOWAS Community;

Considering especially and particularly the constant concern, the permanent concern and the unfailing support of His Excellency Jose Maria Neves, to the principal judicial organ of the Community;

We, the College of Honorable Judges and all the participants in the Conference in their respective capacities and titles respectfully greet His Excellency Jose Maria Neves, President of the Republic of Cabo Verde, whose leadership is undeniable within the Community - ECOWAS.
In addition, we pay him a vibrant tribute and express our deep gratitude to him for the particular attention and unfailing support he gives to the Court, as well as for his personal involvement in the proper functioning of this judicial and institutional body of our Community, without forgetting his effective presence which enhanced the opening ceremony of the Conference with particular brilliance.

Following His Excellency, the President of the

Republic of Cabo Verde, we address our heartfelt thanks to the Cabo Verdean judicial authorities, but especially to the President of the Supreme Court and to the Minister of Justice who have allowed Conference participants to discover another dimension of the Republic of Cabo Verde.

Are also recipients of our thanks, the authorities and staff of the host University, the President of the ECOWAS Development and Investment Bank - (BDIC), the President of the Supreme Court of Sierra Leone , the Representative of the President of the Supreme Court of the Republic of Ghana, the High Magistrates of the jurisdictions of our respective States, the Representatives of the ECOWAS Units, the eminent and emeritus Professors of Law, the Brilliant Lawyers of international renown, the Representatives of Amnesty International as well as the Representatives of other Non-Governmental Organizations and in general all the administrative, diplomatic and judicial authorities in their respective capacities and titles who honored either by their physical presence the opening ceremony, or by their involvement in the organization or holding of the Court's International Conference.

We associate with these thanks as well the local staff placed at our disposal, the press and the other media, the catering service which took care of the meals, the hostesses who distinguished themselves by their discretion and their efficiency, the security service , drivers etc.

Special thanks to Professor Philip Ebow Bondzi Simpson, Founding Dean, Faculty of Law, University of Cabo Coast, Rector Emeritus, Ghana Institute of Management and Public Administration who has taken a strong step towards integration by offering two scholarships studies, one to a girl and the other to a boy at the University of Accra in Ghana.

Ladies and Gentlemen, it would be particularly ungrateful not to respectfully thank the Exhibitors, Speakers and Moderators for the quality of their intellectual work, a real asset for the Court.

Moreover, unless you want to plunge the General Reporter and the Reporters as well as the Secretariat into unspeakable despair, it is absolutely necessary to shower them with tons of thanks and congratulations for the quality of the enormous work they have done, result of several nights of sleep deprivation.
This list is not and cannot be exhaustive.

- This is why, in the inability to quote

individually all those who have been involved in the success of this Conference, we fervently hope that all these people recognize themselves in our thanks as well as in the expression of our deep gratitude and our infinite gratitude to them.

May God, in his infinite mercy, bless us all and cover us with his Grace and Mercy.

Welcome back to everyone and to all of us for those who travel.
Long live the Republic of Cabo Verde, host country;

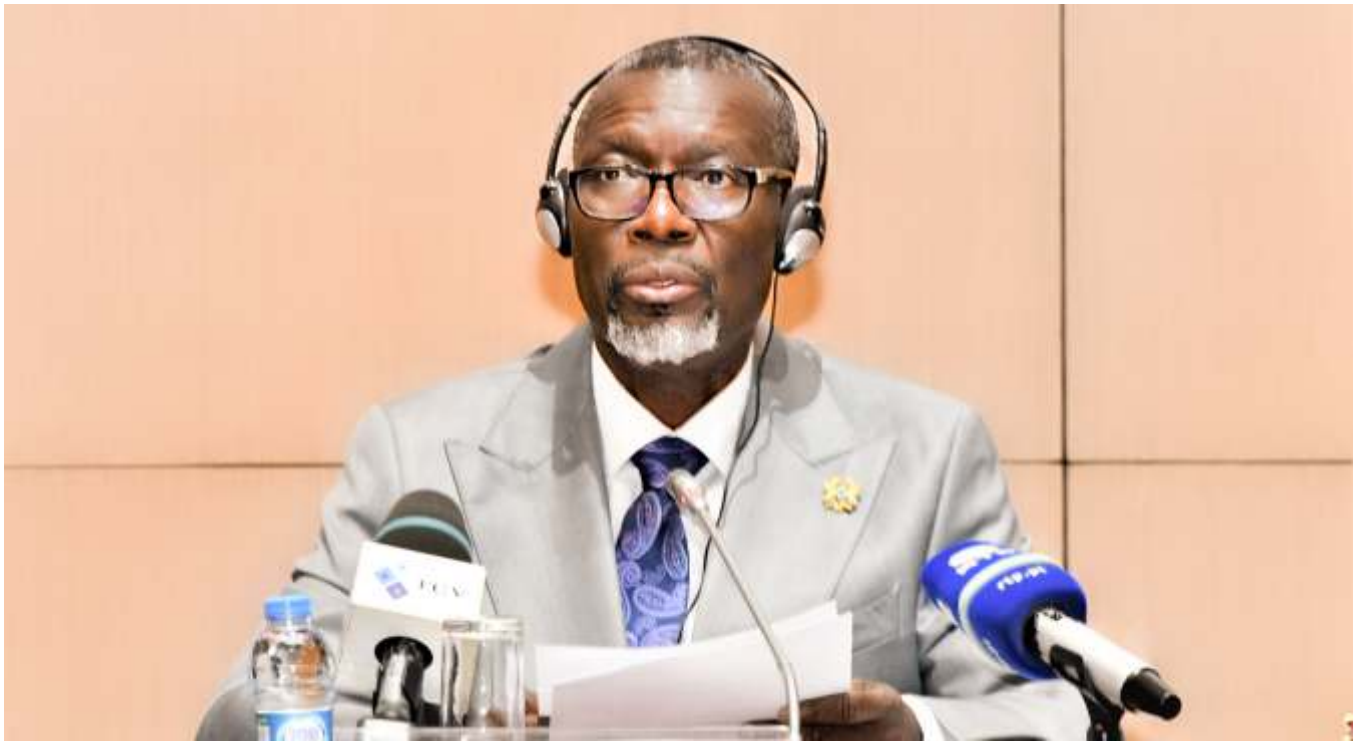
Thank you very much.

Done in Praia, May 12, 2022.

Hon. Judge Gberi-Bè Ouatatra
Vice-president

Judges of the Court with some special guests

CLOSING STATEMENT OF THE HON. PRESIDENT, JUSTICE EDWARD AMOAKO ASANTE



Justice Asante delivering his closing statement

Protocol

1. Your Excellencies, our distinguished participants, ladies and gentlemen, may I formally welcome you to the closing ceremony of the 2022 Praia International Conference hosted by the ECOWAS Court of Justice in this beautiful city of Praia. After three days of very fruitful and interactive deliberations, it is with mixed feelings that we have now come to the closing ceremony of this International Conference that started here in Praia on Monday, 9th May, 2022. It has indeed been an intellectually stimulating exercise. I therefore want to express the profound appreciation of the ECOWAS Court of Justice to all our collaborators that made this possible and to the Government and the good people of Cabo Verde for providing a conducive environment for us to hold this event. Permit me to single out for special mention His Excellency, Jose Maria Neves, the President of the Republic of Cabo Verde, for physically participating in the open ceremony of this international conference and for declaring the conference open.

2. Your Excellencies and our distinguished participants, the theme of the conference, 'ECOWAS Integration Model: The Legal Implications of Regionalism, Sovereignty and Supranationalism'', speaks for itself. The seven sub-themes and the various issues for considerations under each sub-theme, were ably discussed by our very distinguished panelists, who were physically present here in the hall and a few others that did so through remote presentation. By your various contributions, you have definitely expanded the frontiers of knowledge in the various thematic areas covered by the conference.

3. Your Excellencies and our distinguished participants, after three days of excellent presentations by our very knowledgeable resource persons, robust contributions by our distinguished participants and cross fertilization of ideas, we can proudly say that this has been a very fruitful and successful conference. I am glad that there were no dull moments. We have all been enriched by the knowledge we have acquired at this conference because of the high quality of the seminar papers that were presented and the quality of contributions from the floor.

4. As stated in the Concept Note for this conference, the general objective of this International Conference is to critically appraise the legal environment for the implementation of the regional integration agenda of ECOWAS and the impact of regionalism, supranationalism and national sovereignties of Member States on the integration process. We deliberately chose this theme and the sub themes in order to critically

analyze the ECOWAS integration model and the challenges militating against the attainment of our Community objectives. Regional Economic Communities (RECs) are spread all over the various regions of the World for very good reasons and this RECs are at different levels of regional integration. It is an arrangement between neighboring countries in a geographic region to integrate their economies by removing tariff and non-tariff barriers to enable the free flow of goods, services, and factors of production between each other for the purpose of improving the living standards of their people. Without doubt, the European Union integration process remains the model for regional integration.

5. Your Excellencies and our distinguished participants, the focus of this conference is the ECOWAS integration process and the conference threw up many pertinent questions regarding the ECOWAS integration process with the aim of drawing attention to what the various stakeholders need to do to strengthen our integration arrangement. These include the following: Is there an ECOWAS model or are we merely just trying to reinvent the will? What is an integration organization? Is ECOWAS an integration organization or a cooperation organization? Whether the ECOWAS model is one anchored purely on inter-governmentalism or suprantaionalism or a hybrid of both or whether it can be said to be an inchoate arrangement? Do we indeed have a Community and can we truly integrate without the full involvement of ECOWAS Community citizens? Is ECOWAS a supranational Organization and can we attain our Community objectives without creating a super state with powerful regulatory agencies and the assurance of commonality? Whether the model has evolved overtime or has remained an arrangement to foster cooperation among Member States? Whether or not sovereignty is a limiting factor or can it be said that the concept has radically evolved overtime and when Member States agree to the pulling of sovereignties, was it intended to be a mere cession of sovereignties on issues of common interest or merely a delegation of authority?

6. There was also the question of the enabling legal environment; the relationship between the ECOWAS Court of Justice and the national courts of Member States and the need for harmonization of the legal and judicial systems of the Community and can the enabling legal environment be achieved without a Community legal order? The human rights mandate of the ECOWAS Court of

> *"...is an arrangement between neighboring countries in a geographic region to integrate their economies by removing tariff and non-tariff barriers to enable the free flow of goods, services, and factors of production..."*

Justice and the linkage between regional integration and regional protection of human rights. Furthermore, can the rich legal regime of ECOWAS evolve into a Community legal order without ratification and domestication of ECOWAS enactments by Member States, or without the enactment by Member States of national implementing legislation or the direct applicability of ECOWAS Supplementary Acts and Regulations in Member States or the invocation of Community norms by Community citizens before national courts? What is the role of Member States in the integration process and how do we hold them accountable for their treaty obligations? What is the role of the ECOWAS Commission? It was generally acknowledged that the ECOWAS Protocol on Free Movement has been a pivotal instrument for regional integration but there are obvious challenges that have made it difficult for the ECOWAS Community citizens to fully reap the benefits of this very important Protocol. And regarding our regional integration journey since 1975, is the glass half full or half empty?

7. Your Excellencies and our distinguished participants, we are indeed delighted that this questions were fully debated by the participants at this conference and solutions were proffered as can be seen in the robust recommendations of the conference. It is therefore important that the Member States and the ECOWAS Commission put in place measures to carry out the recommendations of this conference. We must emphasize that ECOWAS and ECOWAS Community citizens remain the most important stakeholders in the integration arrangement. ECOWAS and its Institutions therefore belong to the Member States and the Community citizens. A successful regional integration arrangement will therefore be to the benefit of the Member States and ECOWAS Community citizens. We must therefore explore ways for greater engagement of Community citizens in the integration process. However, we can only achieve this if there is an enabling legal

"It is therefore important that the Member States and the ECOWAS Commission put in place measures to carry out the recommendations of this conference."

environment and a Community legal order.

8. We cannot overemphasize the point that there are legal implications in the coming together of the fifteen Member States of the Community as sovereign nations, to establish by Treaty, a Regional Economic Community (REC) in the name of ECOWAS. Member States must therefore recognize that we cannot attain our Community objectives without a measure of supranationalism for ECOWAS and the pulling of national sovereignties or the erosion of national sovereignties in the areas in which ECOWAS has been given authority to act on their behalf. Therefore, national sovereignties should not be an obstacle for the attainment of our Community objectives. We recognize that ECOWAS integration arrangement is more of intergovernmentalism but it is gradually evolving towards suprantaionalism in order to make it more efficient, purpose driven and result oriented. We must therefore continue to appeal to all the Member States to muster the necessary political will to effectively carry out the Community obligations they have assumed under the Treaty.

9. Your Excellencies and our distinguished participants, it is crystal clear that ECOWAS has indeed made a lot of progress since its establishment in 1975. Without doubt, we all need ECOWAS. There are costs to regional integration but the benefits outweigh the costs. ECOWAS might not be where we want it to be in 2022 but all we need do, is to make it more effective. ECOWAS still remains the pace setter among RECs in Africa but we should not rest on our oars.

10. Your Excellencies and our distinguished participants, it is not in dispute that ECOWAS Court of Justice has a critical role to play in the integration process. It is therefore necessary to strengthen the Court rather than weaken it. We therefore humbly urge the Authority of Heads of State and Government of ECOWAS, to restore the Membership of the Court to seven independent judges and the tenure of the judges of the Court, to five year renewable for another term of five years as was contemplated in the initial Protocol on the Court. Although the importance of the human

Our language colleagues at the conference

> *"...therefore continue to appeal to all the Member States to muster the necessary political will to effectively carry out the Community obligations they have assumed under the Treaty."*

rights mandate of the ECOWAS Court of Justice cannot be overemphasized, the Community needs to focus attention on the role of the Court as a Community Court by expanding access to the Court to Community citizens on issues bordering on our regional integration. There is also a need for Member States to comply with the judgments of the Court and for the Member States that are yet to do so, to appoint the competent national authority for the enforcement of the judgements of the Court.

11. In conclusion, may I on behalf of the college of Judges and staff of the ECOWAS Court of Justice express the profound appreciation of the Court to all our highly valued participants at the conference for your various contributions towards the success of this conference. I also wish to thank the President of the Supreme Court of Cabo Verde, Hon. Justice Benfeito Mosso Ramos, (a former Vice-President of the ECOWAS Court of Justice) and the Hon. Minister for Justice of Cabo Verde, for hosting dinners in honor of the conference participants. May I also tender our unreserved apology to some of our resource persons that were subjected to undue hardship in the course of their travels to this conference.

12. The ECOWAS Court of Justice also owes a debt of gratitude to the Chief Justices of Member States here present, The Hon Minister of Foreign Affairs and Regional Integration of Cabo Verde, who is here with us at this closing ceremony, the Hon. Minister of Justice of Cabo Verde and other high Government Officials of the Republic of Cabo Verde, President of EBID, Hon. Judges of the Court and all the moderators of the various sessions of the conference, Presidents of Bar Associations, International Development Partners, Heads of ECOWAS National Offices, our distinguished panelists, Interpreters and translators, Members of the Secretariat, IT team, Communication team and the Protocol team, for their active participation in the conference. I also want Members of the Press for the excellent coverage of this conference. Permit me to single out for special mention, the Chief Registrar and his team who labored tirelessly for many months to ensure the success of this conference. I wish you all journey mercies back to your various destinations.

I thank you for your attention.
Muito Obrigado
Merci beacoup

Hon. Justice Edward Amoako Asante,
President

Cont'd from page 17

of Justice through legislations in the various jurisdictions across the ECOWAS Member States.

8. As a legal practitioner, I am cognizant of the influence of national cultures and belief systems on the legislature, and in the evolution of the judicial framework which justifiably generate hesitance to adhere to universalized norms that may not take a country's specific nuances into account.

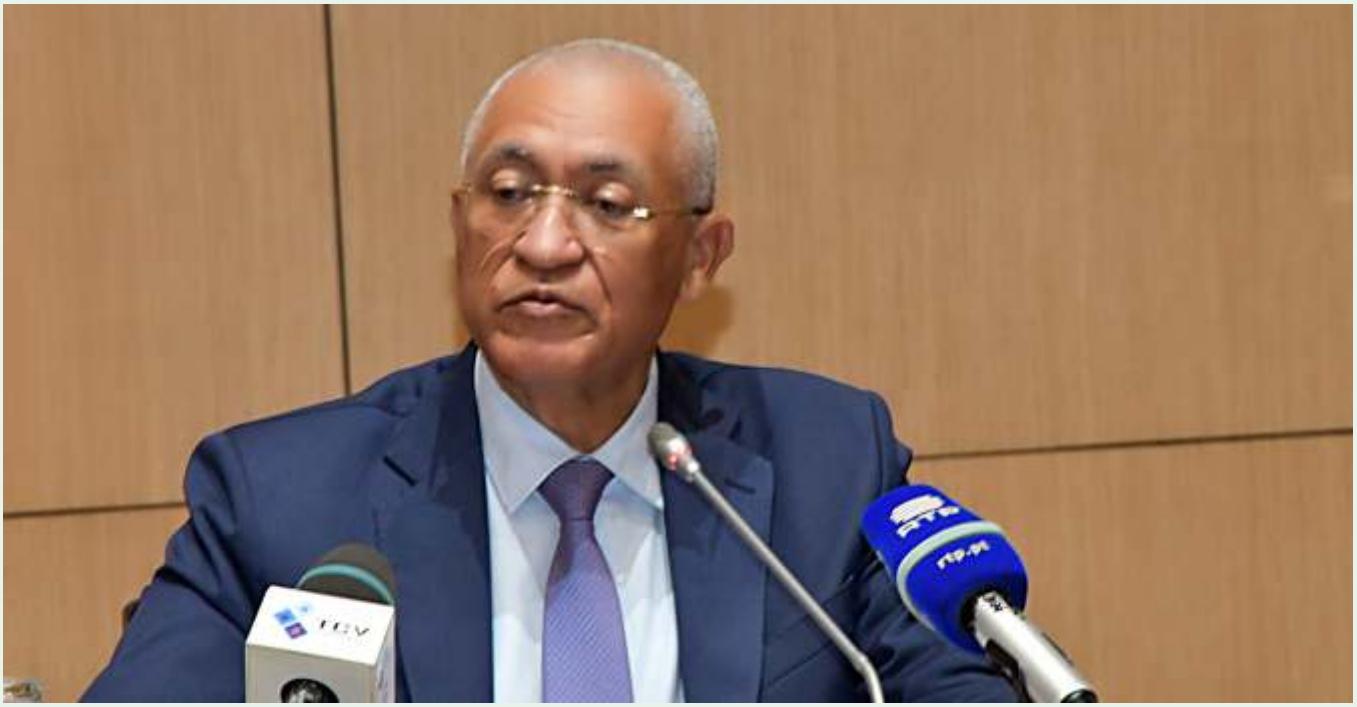
9. However, having seen the successes chalked by the European Union, not only in terms of facilitating free movement of goods and persons but also as a negotiating bloc, we should be more persuaded of the value of supranational policies and structures.

10. Permit me to close by summarizing the objectives of our Community as set in article 3 of the revised ECOWAS Treaty which is " ….. to promote cooperation and integration… in order to raise the living standards of its peoples…. and contribute to the progress and development of the African Continent." It is my hope that by focusing on our aims for the community we will be able to resolve the issues confronting our legal environment.

11. Learned colleagues, distinguished guests, I wish you fruitful deliberations throughout this program.

Merci beaucoup pour votre attention.
Thank you for your kind attention.
Muito obrigado.

CLOSING SPEECH OF THE MINISTER OF FOREIGN AFFAIRS, COOPERATION AND REGIONAL INTEGRATION, DR. RUI FIGUEIREDO SOARES



Dr. Soares

Honourable Minister of Justice

Honorable Judge President of ECOWAS Court of Justice,
Honorable Judges of ECOWAS Court of Justice,

Honorable President of the Supreme Court of Justice,
Mr. Ombudsman,

Distinguised Panelists,

Ladies and Gentlemen,

To begin with, allow me to express my profound gratitude to the Honorable Judge President of the Community Court of Justice, ECOWAS, for inviting me to deliver the closing speech of this international Conference aimed at brainstorming on the theme "The ECOWAS integration model: the legal implications of regionalism, sovereignty and supranationalism".

I would like to reiterate the Cabo Verde Government's satisfaction in engaging in this partnership, which has allowed the successful holding of this conference, which represents a relevant contribution to the continuous consolidation of our Community and its institutions, with emphasis on its Court, one of the essential pillars in the achievement of Justice in the community space.

Allow me to recognize, commend and appreciate, in particular, the vital collaboration of our distinguished compatriot, Honorable Justice Januária Costa, for the holding of this conference in the City of Praia.
Furthermore, we are fully available to participate in future initiatives of the like, that the Court or other community institutions would like to undertake in Cabo Verde.

Such moments enable us to know one another, which is so necessary for the integration that we long for.
Cabo Verde seeks full participation in ECOWAS, and is doing its best to achieve that goal despite the specific difficulties resulting from its insularity, which will be discussed in due course at the appropriate level.

Ladies and Gentlemen

The Statement we have just heard reflects as accurately as possible the wealth and diversity of the contributions of this Conference to the achievement of the goal of a more robust ECOWAS as an institution and, above all, as a reality that is increasingly evident and relevant to our citizens, translating the objective of a true community of peoples that we aspire to.

The wealth of these contributions results, from the assertive choice of the themes and sub-themes discussed, the high qualification of the guest speakers, as well as the active participation of the panelists. We strongly commend all of them.

On a large number of issues ranging from the integration model we have or wish to have, to the legal implications of the partial surrender of sovereignty in a framework of supranationalism under construction, to the role of regional courts in regional integration processes, including the burning and complex issue of strengthening the relationship between national courts and ECOWAS Court to the protection of human rights within the framework of regional integration and the free movement of persons, goods and services, has provided this Conference with a rich source of reflections and suggestions that will certainly deserve due appreciation by the ECOWAS decision making bodies, and the other actors involved in their implementation on the field.

Naturally, there is no need reanalysing here this wide range of issues, all of them being undeniably relevant.
Allow me, however, to insist on one crucial issue, and that is the need to continually strengthen the institutions on which the functioning of the State is based in all our countries. Our institutions must be instruments for achieving the common good; they must be effective and transparent. Only in this way can we have inclusive development, the foundation of stability and security. Stability and security, two assets that are currently under strong threat in our sub-region.

And it is important to emphasize that if the principles of constitutional convergence established in the Protocol on Good Governance were respected by all, we would have stronger States today, served by institutions of the democratic rule of law that promote individual guarantees and freedoms. Unfortunately, we are witnessing a worrying regression in this domain, a situation that we will surely take advantage of to proceed with the necessary normative and institutional development. As far as Cabo Verde is concerned, we strongly expect that the review process of the aforementioned protocol will enable to meet this need.

In this regard, there is also the proposal presented by this Conference for the creation of mechanisms for monitoring and evaluating the legal instruments adopted by ECOWAS, in the pursuit of greater effectiveness, a proposal that we endorse, while expecting that, by so doing, we will achieve the effectiveness we seek.

One of the hallmarks of ECOWAS has been its ability to adapt to reality, and it would not fail to do so this time, at a highly demanding moment and in a fundamental area, since it is intrinsically linked to stability and security, and therefore to the development of its Member States and the sub-region as a whole.

Now, why not emphasize the close relationship that exists between the prevalence of strong states and the affirmation of supranationalism? It is very difficult to imagine a weak state willing to surrender relevant aspects of its sovereignty.

Regarding human rights protection, an area of major development in the jurisprudence of ECOWAS Court, it is difficult to follow a path other than clarifying a legal framework of healthy complementarity between national courts and ECOWAS Court, in line with what was proposed by the Conference.

Ladies and gentlemen,

I was almost tempted to return to the issues so aptly discussed by the distinguished panelists. Well, I resist!
I would like to end with words of thanks for the important and generous gesture of Professor Philip Ebow Bondzi-Simpson, Founding Dean of the Faculty of Law of the University of Cabo Coast, Ghana, who yesterday announced the availability of two four-year scholarships for young Cabo Verdeans who wish to study in this prestigious university. Professor, you can be sure that this offer of yours will be taken up promptly.

I wish a peaceful homewards journey to all participants in the Conference who visited us on this auspicious occasion, while inviting them to come back to Cabo Verde in order to better know this Cabo Verde of Cesária Évora.

Cabo Verde is music.

I declare closed the International Conference organized by ECOWAS Court of Justice in the city of Praia from 9th to 12th May 2022.

Thank you very much.

Dr. Rui Figueiredo Soares , Minister of Foreign Affairs, Cooperation and Regional Integration