

LEGITIMACY OF THE ROLE OF AFRICAN REGIONAL ORGANISATIONS IN ENFORCING DEMOCRATIC CONSOLIDATION IN MEMBER STATES*

Abstract

States voluntarily form or join international organisations in order to benefit from the advantages of collectivism in the implementation of common objectives and shared values instruments which they adopted. The overall aim is to promote international peace, security, stability and cordial relationships in the international arena while pursuing their national interests. Thus, African leaders are convinced that the socio-economic development of Africa can only be accelerated within the framework of increased and well co-ordinated multilateral co-operation. Accordingly, in order to confront the challenges posed by political instability and democratic governance deficit sometimes leading to unconstitutional changes of government with its debilitating effect on the consolidation of democracy, regional and sub-regional organizations in Africa have adopted shared values instruments and established mechanisms for their implementation with the objective of democratic consolidation. In this connection, this article focused on the role of African Union and the Economic Community of West African States respectively and argued, that the formation of regional organisations as a means to solve their common problems in a concerted manner implies that these organisations have adopted the idea of 'pooled sovereignty' or 'supranationalism' as a necessary approach for the achievement of Africa's development agenda. Against the above background, the justification for regional organisations' intervention in States in order to enforce regional decisions on democratic consolidation is analysed vis a vis the challenge of sovereignty. The article adopted the doctrinal methodology and predicated the analysis on the theory of collective security and the functionalist theory. It is then concluded, that both global and regional organizations have a justification for developing legal frameworks and policies aimed at upholding fundamental constitutional values, including the rule of law, democracy and the protection of human rights extra-territorially.

Keywords: Democratic Consolidation; Democratic Governance; Legitimacy; Sovereignty

1. Introduction

In the past, diplomacy was solely conducted through the instrumentality of States as the only subjects of international law. International relations were then based mainly on bilateral and private arrangements and cooperation between states on their areas of mutual interests. Hence, under classical international law, the establishment and enforcement of the core principles of constitutionalism and rule of law can be classified among those matters that come within the domestic jurisdiction of individual States. Accordingly, in exercise of their sovereign powers, States make provisions for their entrenchment and enforcement in their national laws. Accordingly, national governments had exclusive right to enforce them domestically using their own established institutions for that purpose without external interference. This is based on the principle of state sovereignty as hallowed principle of international law. Therefore, it cannot be gainsaid, that traditionally, the application of the principle rule of law, constitutionalism and democratic governance are embedded in the modern states. Thus, international organisations have presently proliferated and assumed increased regulatory role in diplomacy and global governance by making trans-national regulatory instruments enforceable domestically.

In response to the challenges posed by political conflicts and instability and its attendant democratic governance deficit, African regional organizations have been recently playing important role in strengthening and upholding constitutionalism and democratic governance in their member states. Thus, in order to achieve democratic consolidation, regional organisations develop international democratic governance standards or benchmarks, as well as regulatory frameworks by their treaties and various instruments. This however, depends on regional peculiarities for adoption by their member states.¹ Such treaties in some cases make provisions for sanctions in case of non-compliance and even go further to provide enforcement measures compliance in more serious cases of violations leading to total breakdown of law and order or civil war. In this way, regional bodies directly intervene through the organs established for that purpose, in order to restore constitutional order.

Against the above background, this article analyses the legitimacy of regional organisations in intervening in their member states in order to consolidate democratic governance. The analysis focuses on the role of African regional organisations with particular focus on the African Union (AU) and the Economic Community of West African States (ECOWAS) in consolidating democracy in their member States. In particular, it interrogates the

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¹OE Nwebo, 'The Role of the Pan African Parliament in the Promotion of Constitutionalism and Democratic Governance in Africa: Lessons from Other Parliaments', Thesis (LLD) University of Pretoria (2019). URI: <http://hdl.handle.net/2263/69961>.

constitutionality of the establishment of democratic principles and the enforcement mechanisms aimed at institutionalising constitutionalism and democratic governance in member states in order to restore peace and order in case of internal conflict and instability *vis a vis* the challenge of states sovereignty. The paper adopts the doctrinal methodology and relies on the theories of collective security, functionalism and supranationalism. It concludes that African regional organisations have legitimacy or justification for developing and adopting legal frameworks and policies with enforcement mechanisms aimed at upholding shared fundamental constitutional values.

2. Explanation of Key Concepts

Democratic Consolidation

From the onset, it must be stated that the term ‘democratic consolidation’ is a nebulous concept hence scholars in the field of study do not share a common understanding of the terms. We can only ascribe meaning to the concept by looking at the concrete realities as well as the practical tasks the term is meant to address. Therefore, the meaning that is ascribed to the notion of democratic consolidation depends on where we stand (our empirical viewpoints) and where we aim to reach (our normative horizons). Hence, the meaning varies according to the contexts and the goals we have in mind. However, the current wave of global democratization especially, regime changes from authoritarian rule to democratic rule has given rise to the challenge of not only the task of establishing democratic regime but also the task of sustaining it. Hence, the increasingly focus on what has come to be called ‘democratic consolidation.’²

Originally, the term ‘democratic consolidation’ was meant to describe the challenge of making new democracies secure, of extending their life expectancy beyond the short term, of making them immune against the threat of authoritarian regression, of building dams against eventual ‘reverse waves.’ Beyond the original understanding, countless other tasks have been added to include the list of ‘problems of democratic consolidation’ (as well as the corresponding list of ‘conditions of democratic consolidation’. Thus, the concept has come to include such divergent items as popular legitimation, the diffusion of democratic values, the neutralization of anti-system actors, civilian supremacy over the military, the elimination of authoritarian enclaves, party building, the organization of functional interests, the stabilization of electoral rules, the routinization of politics, the decentralization of state power, the introduction of mechanisms of direct democracy, judicial reform, the alleviation of poverty, and economic stabilization.³

In a nutshell, democratic consolidation is achieved when democracy matures and endures, such that the political actors accept the legitimacy of democracy as a form of government. Beitam identified four factors which facilitate *democratic consolidation* as-the experience of transition itself, a country's economic system, its political culture and its constitutional arrangement.⁴ Liberal democracies are those where there are civil and political rights, free, fair, competitive and inclusive elections as against authoritarian systems where these attributes are absent. Between the two extremes are the semi-democracies or electoral democracies which are still struggling to be competitive and inclusive. Thus, democracy is a matter of degree to which basic principles are realized and democratization is always everywhere an unfinished process.⁵ Thus, democratic consolidation implies the need for durability or permanence of democracy over time, including (but by no means limited to) adherence to democratic principles such as rule of law, independent judiciary, competitive and fair elections, and a vibrant civil society that promotes democratic governance.

Democratic Governance

Democratic governance is the derivative of the idea of democracy. Therefore, to better understand the concept of democratic governance, an understanding of the concepts of ‘democracy’ on the one hand and ‘governance’ on the other is fundamental.⁶ First, it must be noted with regard to democracy, that it is a universally accepted way of life but without a universally accepted definition. Accordingly, the concept has been variously defined and explained depending on one’s context, circumstance or ideological inclination. In the context of this paper, it is presented as a form of government in which the power to govern is derived from the people either by direct referendum (direct democracy) or by means of elected representatives of the people (representative democracy).

²<https://muse.jhu.edu/article/16883>(accessed 18 August 2021).

³ As above.

⁴David Beitam, Conditions for Democratic Consolidation, <https://www.jstor.org/stable/4006202> (accessed 18 August 2021).

⁵ As above

⁶OE Nwebo, *Political Parties and Promotion of Constitutionalism and Democratic Governance in Nigeria: The Challenge of Internal Democracy*, Owerri: Imo State University Press (2021) pp. 16-18.

In the simplest and popularly accepted expression, democracy is best defined as ‘government of the people by the people and for the people’.⁷ From the above definition, it is apparent that the epicenter of democracy is ‘the people’, to whom sovereignty belongs and from whom government should derive all its powers and authority to govern. Therefore, their participation in the democratic process is imperative, if they have to determine their political destiny by themselves. Thus, the hallmark of a true democracy is rule by the consent of the people, which must be determined by their affirmative votes in a free, fair and credible election in accordance with the constitution of a country, which itself, must have been a product of a democratic process.⁸

With regard to the concept of governance, this has various dimensions, including its social, political and economic ones. It operates at every level of human enterprise, be it the household, village, municipality, nation, region or globe. In a nutshell, governance can simply be defined as the process of decision-making and the process by which decisions are implemented (or not implemented) by those in authority. This is why the concept can be used in several contexts such as corporate governance, international governance, national governance and local governance. In this chapter, the term is generally used in the sense of the governance of nation states or regional or sub-regional organizations of nation states.⁹ In this context, the Mo Ibrahim Foundation defines it as the provision of the political, social and economic public goods and services that a citizen has the right to expect from his or her state and that the state has the responsibility to deliver to its citizens.¹⁰ The above definition is apt in the context of democratic governance in this article. Based on the above, democratic governance, otherwise sometimes referred to as good governance is presented in this article as the key to development.¹¹ In this sense, it is simply defined as a government that is legitimate in that it emanates from a democratic process and is based on fundamental democratic principles that satisfy the developmental needs and aspirations of the members of the society.

Legitimacy

In simple terms, legitimacy means any of the following: lawfulness, legality, rightfulness and Legitimacy.¹² It is a multi-dimensional concept, encompassing beliefs on the proper source, procedures, goals, values, and performance of a given institution.¹³ It is a crucial aspect of all power relations. Without legitimacy, power is exerted through coercion; with legitimacy, power can be exerted through voluntary or quasi-voluntary compliance.¹⁴ Therefore, legitimacy of an entity or subject in the context of this article refers to the authority or justification of African regional organisations to carry out their democratic mandates in member states, usually in conformity with the founding treaties, protocols and other instruments.

Sovereignty

Sovereignty as a concept can be defined as ‘the absolute, supreme and ultimate dominion and authority of a political state subject to no higher power, expressed within its territory in full self-government and in complete freedom from any outside influence’.¹⁵ However, as we argue in this work, membership of international organizations and their obligations thereby may constitute an obstacle to full political control of state activities and the rights of the citizens. Max Huber, Arbitrator in the *Island of Palmers Arbitration* case described territorial sovereignty as signifying independence to a portion of the globe in ‘the right to exercise therein, to the exclusion of any other state, the functions of a state’.¹⁶ The exercise of the functions of the state which is hallmark of the existence of territorial sovereignty include the making and enforcement of law and order. Accordingly, International relations are based on the principle of sovereign equality of all states.¹⁷

Thus, going by the logic of sovereignty, a state is sovereign to the extent that it monopolizes the exercise of governmental authority at home, rejecting the right of foreign states or other external actors to impose their own

⁷ A. Lincoln, in his famous speech called *the Gettysburg Address* a ‘monumental act’ (19 November 1863). available at: <<http://www.abrahamlincolnonline.org/lincoln/speeches/gettysburg.htm>>, accessed 5 May 2017.

⁸ See OE Nwebo, *Political Parties and Promotion of Constitutionalism and Democratic Governance in Nigeria: The Challenge of Internal Democracy*, op. cit. (n 6 above).

⁹United Nations Economic and Social Commission for Asia and the Pacific, available at: <www.unescap.org/sites/default/files/good_governance.pdf> (accessed 20 September 2016).

¹⁰ Mo Ibrahim Foundation, available at: <www.moibrahimfoundation.org> , accessed 20 November 2015.

¹¹ Democratic Governance-The Key to Development *The Concept of Democracy and Governance* <<https://cuvillier.de/public-file>> (accessed 2 December 2016).

¹²<https://www.dictionary.com/browse/legitimacy>(accessed 19 August 2021).

¹³<https://resume.uni.lu/story/democratic-legitimacy>(accessed 19 August 2021).

¹⁴ As above.

¹⁵‘What is sovereignty? Definition and meaning’ www.businessdictionary.com/definition/sovereignty.html (accessed 12 July 2017).

¹⁶ See *The United States of America v. Netherlands* see *Year book of the ILC*.

¹⁷ See Articles 2(1) and 2(7) of the United Nations Charter.

laws from the outside or in any other manner interfere in its domestic political order. Sovereignty therefore means the exclusive legal authority of a government over its population and territory, independent of external authorities.¹⁸ This implies that the application of international instruments meant to promote constitutionalism and democratic governance in states must necessarily derogate from the concept of domestic jurisdiction in its absolute terms. However, this study argues that since regional organizations are created in accordance with international instruments, once a state ratifies the instrument, it has agreed to be bound by same and can no longer plead its sovereignty as a bar to international involvement in its domestic affairs based on the provisions of the instrument.

3. The Legitimacy of the Role of International Organisations in the Enforcement of Democratic Governance Principles in Member States' and the Sovereignty Conundrum

It cannot be gainsaid, that based on the principle of state sovereignty as hallowed principle of international law, traditionally, the application of the principles of rule of law, constitutionalism and democratic governance are embedded in the modern states. However, social interactions take place below and above the states. In today's world, International relations have been heightened by the forces of globalization and the convergence of global interests and challenges requiring collective salutary approaches. These interactions are normally carried out through the vehicle or instrumentality of international organizations formed in line with its aims and objectives under binding treaties. It cannot be disputed that international organizations can take decisions that are binding upon member states and that they can even exercise sovereign powers¹⁹ which is another form of supraconstitutionalism. In this context, supraconstitutionalism can be seen as an instrument through which international organizations can force or at least pressurize member states to change their domestic law in accordance with the judicial bodies' interpretation of international law, thus creating a new, vertical legal order. In this way, international institutions can through its organs, promote constitutionalism and democratic governance in member states. In this connection, it is instructive to note that though international organizations are formed for various purposes, the underlining purpose is the maintenance of international peace and security, the promotion of constitutionalism and democratic governance is its necessary adjunct. Furthermore, though the responsibility for the maintenance of international peace and security primarily rests on the United Nations Organization (UNO),²⁰ various regional organizations are to more or less extent also involved in the maintenance of peace and security amongst their other purposes.

The legitimacy of the role of the various international institutions especially regional groupings, in the maintenance of international peace and security as well as constitutionalism and democratic governance as its necessary adjunct can be traced to Article 52 of the Charter of the United Nations which provides thus:

52 (1) Nothing in the present charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangement or agencies and their activities are consistent with the purpose and principles of United-Nations'.

52 (2) The members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve peaceful settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the security council.

On the same issue, Article 33(1) provides that:

The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Furthermore, the General Assembly resolution on the duty of states to cooperate with one another in accordance with the charter also provides among others as follows:-

(a) States shall cooperate with other states in the maintenance of international peace and security;

(b) States shall cooperate in the promotion of universal respect for and observance of human rights and fundamental freedoms for all, and in the elimination of all forms of racial discrimination and all forms or religious intolerance;

¹⁸ It must be noted however that the principle of sovereignty cannot prejudice the application of enforcement powers under article 2 (7) of the UN charter.

¹⁹ See n 63 above.

²⁰ See art 2(1) of the Charter of the United Nations (1945).

It is argued, that the foregoing are authoritative instruments conferring international legal recognition to the existence of and role of regional organizations in carrying out various objectives in line with their constituent instruments, especially the promotion of international peace and security. In particular, it also goes to show that regional groupings as part of its objectives can promote the ideals contained in the Charter of the UN which of course includes the promotion of constitutionalism and democratic governance. Thus, as subjects of international law, international organisations are capable of enforcing rights and duties upon the international plane as distinct from operating merely within the confines of separate municipal jurisdictions. The precise extent of the legal powers of these international institutions depends on the constituent instrument creating the organization the relevant objectives and functions.

The justification for the direct external enforcement of these principles can be traced to three different concerns. The first concern is that a global or regional organization should act to prevent or address a security crisis that has possible regional implications. Such crisis usually arises in a military coup d'état which can cause negative externalities, including humanitarian crises which can threaten the security of neighbouring states. Second, when negotiating an international treaty states generally enshrine universal normative values or principles (sometimes protected under the constitutions of member states) to serve as a foundation of their organization and guide their conduct in realizing its objectives. Third, a global or regional intervention may be the only available option for upholding constitutionalism in a member state particularly, in circumstances in where the national constitutional order is overthrown or undermined to such extent that no other branch of government can hold the infringing power in check.

Based on the above concerns, Wiebusch argues that the involvement in national constitution enforcement can thus be viewed as efforts from a regional body to assist member states comply with their regional obligations and commitments.²¹ This is particularly important in cases of multiple or systematic infringement or in cases where elected leaders themselves engineer constitutional crises, by manipulating elections or presidential term limits, or unconstitutionally removing elected leaders or appointing elected officials or members of the judiciary. Such an erosion of the constitutional order is less obvious than a fundamental breach in the form of a military coup, but perhaps just as disruptive. This is even more so, bearing in mind that the consequences of their non-observance ultimately have spillover effects on the international community especially the immediate neighbours. The above situation raises the question of the implications of the principle of state sovereignty *vis a vis* the obligation of States to respect their international commitments. This question arises more frequently in the circumstances of pre-modern, fragile or failed states which are challenged by various forms of insecurities, human rights violations and humanitarian crises which the domestic system cannot contend with. It cannot be gainsaid that in the above circumstance, salutary interventions from the international community become inevitable thereby disregarding the concept of state sovereignty at least for that purpose. The above circumstance justifies the position of the then UN Secretary General, Javier Perez de Cuellar who in 1991 stated that all nations had a responsibility to live up to the UN Charter requirements concerning human rights and democracy. Failure to do so, he indicated, could provoke UN intervention. Also, in 1992, the then UN Secretary General, Boutros Boutros-Ghali stated that the time of absolute and exclusive sovereignty has gone. Its theory was never matched by reality.

Against the above background, it is strongly argued that States are no longer in exclusive control of their security and the means of violence in their domestic jurisdictions. Accordingly, sovereignty of states is constrained by their obligations under multilateral treaties to which they are parties, by the principle of *pacta sunt servanda*. For instances, the Universal Declaration of Human Rights, the African Charter on Human and Peoples Rights (Banjul Charter), the Vienna Convention on the Law of Diplomatic Relations, and several UN Resolutions that were passed in the period of emergencies, all have constraining effect on absolute national sovereignty. All these have constraining effect on the Westphalian sovereignty which emphasizes on absolute sovereignty in favour of limited sovereignty which emphasizes on the limitation of the claim of sovereignty within a larger supra-national arrangement. Thus, the strategy of supra-nationalism cumulatively diminishes the sovereignty status and regulatory capacity of the nation-states and promotes a concerted action across national barriers in the form of supra-national arrangement for interstate cooperation in solving common problems. These supra-national arrangements and responses were foreseen as viable strategy to address the challenges and harness the opportunities provided by globalization. The net result has been the gradual acceptance of a

²¹ M Wiebusch, *The role of regional organizations in the protection of constitutionalism* International IDEA Discussion Paper 17/2016. [https://www.google.com/search?client=firefox-b-d&q=Wiebusch+argues+that+the+involvement+in+national+constitution+enforcement+can+thus+be+viewed+as+efforts+from+a+regional+body+to+assist+member+states+comply+with+their+regional+obligations+and+commitments.+\(accessed+22+August+2022\).](https://www.google.com/search?client=firefox-b-d&q=Wiebusch+argues+that+the+involvement+in+national+constitution+enforcement+can+thus+be+viewed+as+efforts+from+a+regional+body+to+assist+member+states+comply+with+their+regional+obligations+and+commitments.+(accessed+22+August+2022).)

polycentric notion of sovereignty, which requires the alienation of part of the sovereignty of the nation states to supra-national entity, in federal, con-federal or similar devolutionist arrangements. Central to this evolving polycentric notion of state sovereignty, requiring its alienation or divisibility, is consistent with the principle of universality which not only imposes on the nation-states moral and legal obligations of conformity but also places responsibility on supra-national juristic entities and the international moral community to enforce the laws on violations of international crimes and humanitarian laws.

Based on the above analysis, it is argued, that African States, having voluntarily agreed to belong to a supranational institution with clear objectives in accordance with the founding treaty they have thereby alienated part of their sovereignty to such supranational entity. In the same vein, whenever such States ratify and domesticate any treaty or supranational instrument aimed at promoting rule of law and states' constitutionalism they thereby incur obligation to enforce same domestically or risk supranational intervention in order to enforce compliance in line with the enforcement mechanism provided in the instrument. Thus, African regional organisations are justified to intervene in member States in order to enforce the provisions of their treaties and decisions. In this context for instance, the outlawry of unconstitutional changes of government and the established mechanisms for the enforcement of same in member states are justified.

4. The Role of African Regional Organisations in the Enforcement of Democratic Consolidation in Member States

Role of African Union

It cannot be gainsaid, that the era of the Organisation of African Unity (OAU) witnessed the achievement of decolonization and independence and freedom from colonial rule and domination. There were also transitions from authoritarian rule to multi-party democratic governance in most African countries, especially in the 1980s and early 1990s.²² The expectations from the citizens were justifiably high as the people of Africa had hoped for strong, united and prosperous states in which the rule of law prevailed. Instead, after the euphoria and the optimism that greeted the strong wave of democratization, the people's hope remained unrealized due to a chain of related and mutually reinforcing factors including bad governance, impunity of the leaders and violent political conflicts. The point is not that the importance of democratic governance, peace, security, stability, cooperation and economic development was not recognized by the African leaders during the OAU era. Rather, the point is simply that the Charter of the OAU did not prioritize the promotion of these principles by any defined collective and systematic approach or method. Hence the observance of these principles was at the discretion of national governments and political leaders, who were obsessed with promoting peer solidarity and national sovereignty.

Thus, during the era of the OAU the importance of democratic governance, peace, security, stability, cooperation and economic development did not loom large. Besides, incessant crises and conflicts sapped the little resources at their disposal. The overarching principles guiding the relationships between the African heads of state and government during the OAU era were 'the sovereign equality of all member states' and 'non-interference in the internal affairs of States'. Having identified the overarching importance of democratic governance as the principal enabler of development in general, it became imperative to prioritise the promotion of the deepening of democratic governance hence, the transformation of the OAU to the AU. Thus, the AU was established with various objectives amongst which are: to promote democratic principles and institutions, popular participation and good governance²³; to promote and protect human and people's rights in accordance with the African Charter on Human and People's Rights and other relevant human rights instruments.²⁴ Thus, the AU agenda on constitutionalism and democratic governance was foreseen as the necessary adjunct of the AU integration and development programme.

It is apposite to note that one of the major challenges which confronted Africa before the birth of the AU was frequent unconstitutional changes of government', which hamper peace building and development and which the OAU was incapable of dealing with.²⁵ In its desire to address the above challenge, the AU had to chart a new course under the Constitutive Act, by shifting from a tradition of 'non-interference' which was the norm under its mother OAU, to the norm of 'non-indifference'. Of particular significance is 'the right of the Union to intervene in a member state pursuant to a decision of the Assembly in respect of grave circumstances, namely

²² J Appiah 'A Decade of the African Union and the Quest for Good Governance and Democracy in Africa: 2002-2012' (2015) *Constitutionalism, Democratic Governance and the African State* ed. Gebe Black Mask Ltd. Accra: p.93.

²³ See art 4(g), as above.

²⁴ See art 4(h).

²⁵OE Nwebo, 'Pan-Africanism and African Integration' in *Contemporary Issues in International Law and Diplomacy* Owerri: Zubic Infinity Concept (2020). P. 451

war crimes, genocide and crimes against humanity as well as serious threat to legitimate order to restore peace and stability to the member state of the Union upon the recommendation of the Peace and Security Council'.²⁶ The inclusion of the above principles in the Act marks a far reaching and significant departure from the predecessor.²⁷ These new and additional principles have been relied upon as the bases for the adoption of a number of AU declarations and decisions aimed at promoting or implementing shared democratic principles and values.

This implies that the AU has abandoned the old OAU doctrine of non-interference in the internal affairs of states and adopted a new and more proactive and progressive paradigm of non-indifference to political instability and human rights abuses within member states. This new doctrine gives the AU the power to intervene in the affairs of its member states especially in cases of grave human rights abuses and breakdown of constitutional and governance structures. It is argued that the doctrine of non-indifference challenges the concept of state sovereignty in Africa in its absolutist form. It encourages the concept of pooled or shared sovereignty in which states are supposed to subject their sovereignty to the observance of AU legal instruments which they have adopted and ratified, aimed at promoting democratic governance and integration.²⁸

In line with its new doctrine of non-indifference, the AU in its commitment to frontally address the challenges of democracy and good governance adopted the 'African Charter on Democracy, Elections and Governance'²⁹ on 30th January, 2007 during the 8th ordinary session of the Assembly of the African Union held in Addis Ababa, Ethiopia.³⁰ The general intendment is to encourage African states to imbibe democratic principles, build and strengthen democratic institutions as well as inculcate a culture of change of power based on the holding of regular, free, fair and transparent elections.³¹ In general, the objectives of the ACDEG are to promote democratic governance and accountability by establishing an African governance standards, common or shared values and principles including supremacy of the constitution, the rule of law, separation of powers, independence of the judiciary, respect for human rights, the regular, transparent, free and fair elections, outlawry of unconstitutional changes of governments, fight against corruption and impunity, political pluralism, participation and other democratic values.³² Thus, the ACDEG is an African continent-wide normative framework adopted for the consolidation of constitutionalism and democratic governance. This is a critical framework for the realization of one of the AU's aspirations, that is, a new democratic culture and collective responsibility towards improving the democratic experience for Africans, the 'Africa We Want'.³³

Economic Community of West African States

The Economic Community of West African States (ECOWAS) is a regional economic community of West African States. At its inception in 1975 ECOWAS saw itself essentially in economic terms with the initial objective of promoting cooperation and development in the fields of economic activity, accelerated and sustained economic development of member states through effective economic cooperation and progressive integration of economies. Thus, the Treaty of Lagos (1975) did not contain components relating to the issues of peace, security, stability and governance. However, ECOWAS like AU later recognised the ineluctable linkage between peace, security, stability, cooperation and economic development, hence under the Revised ECOWAS Treaty (1993) it incorporated fundamental principles which among others include: e) maintenance of regional peace, stability and security through the promotion and strengthening of good neighbourliness; f) peaceful settlement of disputes among Member States, active co-operation between neighbouring countries and promotion of a peaceful environment as a prerequisite for economic development; g) recognition, promotion and protection of human and peoples rights in accordance with the provisions of the African Charter on Human and Peoples Rights; j) promotion and consolidation of a democratic system of governance in each Member State.³⁴

Thus, beyond economic issues ECOWAS is equally conscious of the fact that good governance, the rule of law and sustainable development are essential for peace and conflict prevention. The 1999 Supplementary Protocol

²⁶ See art 4(h).

²⁷ See the Charter of the OAU (1963).

²⁸ O. E. Nwebo, 'Pan-Africanism and African Integration', op. cit, p 452

²⁹ Hereinafter referred to as ACDEG or 'the Charter'.

³⁰ See the Decision of the Assembly of the African Union Eighth Ordinary Session' <<https://au.int/sw/decisions/assembly-african-union-eighth-ordinary-session>> (accessed 19 November 2019).

³¹ See the Preamble of the ACDEG.

³² See generally, Articles 2-22, 27, 36-43 of the Charter.

³³ See Aspiration 3 of the AU Agenda 2063 which is 'An Africa of of good governance, democracy, respect for human rights, justice and the rule of law'.

³⁴ See Article 4 of the Revised ECOWAS Treaty (1993).

in Article 1 established within the Economic Community of West African States (ECOWAS), a mechanism for collective security and peace to be known as ‘Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security’. In Article 2, Member States reaffirmed their commitment to the principles contained in the Charters of the United Nations Organisation (UNO) and the Organization of African Unity (OAU) and to the Universal Declaration of Human Rights, as well as to the African Charter on Human and People’s Rights particularly, ‘the promotion and consolidation of a democratic government as well as democratic institutions in each Member State’³⁵ among others.

The Supplementary Protocol represents both a defining point and an important dimension in the regional process of building a democratic political governance framework for supporting economic and social development in West Africa. In particular, the Protocol unequivocally outlawed unconstitutional changes of government and established the necessary mechanisms for the consolidation of democratic governance in the West African sub-region. It emphatically demonstrated its commitment to the principle that military governance is incompatible with good governance and therefore must be condemned, prevented and frontally confronted whenever it occurs anywhere in West Africa so that it does not continue to rear its ugly head. The Conditions for Application of The Mechanism is as provided in Article 25 as follows: The mechanism shall be applied in any of the following circumstances: In cases of aggression or conflict in any Member State or threat thereof; In case of conflict between two or several Member States; . In case of internal conflict: (a) that threatens to trigger a humanitarian disaster or (b) that poses a serious threat to peace and security in the sub-region; In the event of serious and massive violation of human rights and the rule of law. In the event of an overthrow or attempted overthrow of a democratically elected government; Any other situation as may be decided by the Mediation and Security Council. The Mediation and Security Council shall take decisions on issues of peace and security in the sub-region on behalf of the Authority. It shall also implement all the provisions of this Protocol. The functions of the Mediation and Security Council which is the organ empowered to take decisions on issues of peace and security in the sub-region on behalf of the Authority are provided for in Article 10 while the procedure for the application of the mechanism is provided for in Article 27. It is instructive to note that the Mediation and Security Council, among other functions, authorises all forms of intervention and decide particularly on the deployment of political and military missions.

It cannot be gainsaid, that the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security constitutes the most comprehensive normative framework for confronting the threats to peace and security in the region.³⁶ This is on a more permanent basis by boosting the conflict prevention capabilities of ECOWAS to pre-empt potential outbreak of violence, resolve conflicts when they occur and to engage more effectively in post-conflict reconstruction in places, where peace has been restored. On the other hand, the ECOWAS Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol Relating to the Mechanism For Conflict Prevention, Management, Resolution, Peacekeeping and Security (2001) was meant primarily to complement the provisions of the Protocol on ‘Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security’ through the incorporation of provisions concerning issues such as prevention of internal crises, democracy and good governance, the rule of law, and human rights. Significantly, Article 1 declared the constitutional principles shared by all Member States among which are that ‘every accession to power must be made through free, fair and transparent elections’ and ‘Zero tolerance for power obtained or maintained by unconstitutional means’.³⁷ In the event that democracy is abruptly brought to an end by any means or where there is massive violation of Human Rights in a Member State, ECOWAS may impose sanctions on the State concerned.³⁸ The sanctions which shall be decided by the Authority may take the following forms, in increasing order of severity: Refusal to support the candidates presented by the Member State concerned for elective posts in international organisations; Refusal to organise ECOWAS meetings in the Member State concerned; Suspension of the Member State concerned from all ECOWAS decision-making bodies. During the period of the suspension the Member State concerned shall be obliged to pay its dues for the period. 3. During the period of suspension, ECOWAS shall continue to monitor, encourage and support the efforts being made by the suspended Member State to return to normalcy and constitutional order; 4. On the recommendation of the Mediation and Security Council, a decision may be taken at the appropriate time to proceed as stipulated in Article 45 of the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-keeping and Security.³⁹

³⁵ See Article 2(c).

³⁶ <https://archive.uneca.org/oria/pages/ecowas-peace-security-stability-and-governance> (accessed 9 December 2023).

³⁷ See Article 45 (!)

³⁸ See Article 45 (2)

³⁹ For the avoidance of doubt, Article 45 provides thus: Restoration of Political Authority in situations where the authority of government is absent or has been seriously eroded, ECOWAS shall support processes towards the restoration of political authority. Such support may include the preparation, organisation, monitoring and management of the electoral process, with

Another significant provision in the protocol is Article 19 which defined the role of the Armed Forces, the police and other security agencies. It provides particularly that the armed forces and police shall be non-partisan and shall remain loyal to the nation and that the armed forces, the police and other security agencies shall be under the authority of legally constituted civilian authorities.⁴⁰

It is also instructive to note that the ECOWAS Cease-fire Monitoring Group (ECOMOG) is a structure composed of several Stand-by multi-purpose modules (civilian and military) in their countries of origin and ready for immediate deployment.⁴¹ ECOMOG is charged, among others, with the following missions: (a) Observation and Monitoring; (b) Peacekeeping and restoration of peace; (c) Humanitarian intervention in support of humanitarian disaster; (d) Enforcement of sanctions, including embargo; (e) Preventive deployment; (f) Peace building, disarmament and demobilisation; (g) Policing activities, including the control of fraud and organised crime; (h) Any other operations as may be mandated by the Mediation and Security Council.⁴² It must be emphasized that the Council authorises all forms of intervention and decide particularly on the deployment of political and military missions and to review the mandates and terms of reference periodically, on the basis of evolving situations.

5. Conclusion

The foregoing has clearly demonstrated that international and regional organisations particularly, AU and ECOWAS possess supranational mandate to intervene in their member States in order to promote and enforce constitutionalism and democratic governance principles. It further demonstrates that in this contemporary era of globalization, there is no longer any absolute national sovereignty especially when member states by treaty agree to collectively uphold common fundamental democratic principles and norms as the foundation that can propel the acceleration of African development agenda. It has also been demonstrated that the AU and the ECOWAS have taken far reaching positive steps to consolidate democracy in Africa through the articulation of shared values instruments with implementation mechanisms. For instance, in the Gambian case, when it became obvious that President Yahya Jammeh who had conceded defeat to Adama Barrow later reneged, refused to hand over and rather called for a fresh election, ECOWAS deployed their troops under the umbrella of ECOMOG and were ready to remove him by force before he agreed to hand over power. Ordinarily, the Gambia's case could be interpreted as a clear domestic political issue which, going by the doctrine of sovereignty, ECOWAS was not supposed to intervene militarily. However, the Gambian case and the role of ECOWAS during the political turmoil in Ivory Coast, Liberia, Equatorial Guinea, Burkina Faso, and others,⁴³ show that state sovereignty is gradually subjecting itself to supranational sovereignty. Thus, with the necessary political will, regional organizations can effectively intervene in member States to maintain peace and security and in particular to enforce constitutionalism and democratic governance. It is however recommended, that the governance of African supranational organizations should be more people oriented than exclusively intergovernmental and controlled by political leaders who are more pre-occupied with political survival than the overarching challenges of regional stability and development.

the co-operation of relevant regional and international organisations. The restoration of political authority shall be undertaken at the same time as the development of respect for human rights, enhancement of the rule of law and the judiciary.

⁴⁰ See Article 19 (a) and (b) respectively.

⁴¹ See Article 21.

⁴² See Article 22.

⁴³ <https://www.africanews.com/2023/08/10/whats-the-role-of-ecowas/> (accessed 9 December 2023).