

ECOWAS' Operations under International Law: a Matter of Common Goals to Bring about Peace or a Shield for States' Self-Interests?

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Abstract

This article intends to discuss the reach of international responsibility of states when acting under the mandate of an international organization. More specifically, it argues on the role of Nigeria when taking action under ECOWAS, a sub-regional organization, within the internal disturbances that occurred in Liberia and Serra Leone in the 1990s, in which triggered a humanitarian crisis that demanded intervention. Therefore, it will describe the intentions and actions carried out by Nigeria under an ECOWAS' mandate in order to try distinguishing Member State's responsibilities from the organization itself, as it could reflect on the liability of such party for any international law violations carried out under peacekeeping operations. After all, if any abuse is currently foreseen, the (regional) international organization is the one held responsible, even if there was a clear abuse of its legal personality by the State. Thus, at the end, this article tries to reveal a need for a change in the understanding of international organization responsibility whenever a party is acting solely by its interests – as in the case of Nigeria – in order for it to be held liable.

Keywords: ECOWAS; Peacekeeping operations; International Organizations' Responsibility; International Responsibility of States; Legal Personality Abuse

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1. Introduction

The Economic Community of West African States (ECOWAS), a sub-regional organization created under the auspices of the United Nations Charter (UN Charter), has played a challenging role in Western Africa for a long time. Under its Treaty provisions, it has established the necessity to encourage, foster and accelerate the economic and social development of the States in order to improve the living standards of their own peoples.

However, conflict situations are still concrete and most of the time undermining real efforts to bring peace to Africa. Additionally, many States' private agendas have taken place over the Organization's common decisions, as it was the case of Nigeria, an ECOWAS Member State, in Sierra Leone in 1991. In view of self-interests involved it is arguable whether interventions by such organizations are truly aimed at the rescue of African States or, as in the case of Sierra Leone, serve as a means for actors to privately achieve results and promote them as their own goals.

In this venue, main inquiries in this article will address the role of the sub-regional organizations in Africa, as well as what is still needed to ensure that the organizations' initial commitments be maintained. It will also consist of a discussion on the way to identify and distinguish Member States from the organizations themselves when their conducts generate separate responsibilities. The article will be focused on such issues based on international law doctrine, study of cases, treaties and state practice.

2. ECOWAS as a Sub-Regional International Organization: Purposes and Limits

International organizations are subjects of international law that do not possess a general competence, whose limits are entrusted by their founding States, acting on common interests.³ They are absolutely autonomous *vis-à-vis* each/every members.⁴ The international organization personality will depend upon its establishing instrument⁵ and it may be inferred from its power, purposes and practice.⁶

³ Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion, I.C.J. Rep.(1986),para.25.

⁴ Istituto Internazionale di Agricoltura v. Profili, [Court of Cassation/ITA] (1931), par.386-389.

⁵ European Coal and Steel Community Treaty (1951), art.6; European Economic Community Treaty (1957), art.210; Costa (Flaminio) v. ENEL, E.C.J. (1964), para.585.

In this sense, regional arrangements may be defined as a union of states closely linked in territorial terms or an international organization based upon a collective treaty,⁷ as prescribed by the UN Charter in its Article 52.⁸ The *travaux préparatoires* of the Charter indicate that the main type of international organization contemplated by Chapter VIII was one designed to assist with the maintenance of international peace and security.⁹ Such organization would be equipped and empowered to address local disputes and, thereby, assist the UN in its mandate.¹⁰

The UN Charter also addresses in its Article 53(1) the so-called “enforcement action”, that might be carried out by these regional agencies. Although current practice has evolved to military actions in some cases,¹¹ it normally consists of measures short of the use of force.¹² However, in order for a regional organization to legally engage in an enforcement action, it must receive an authorization from the Security Council.¹³

⁶ Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Rep, (1949), para.174 and 179; *Cristiani v. Instituto Ibero-latino-americano*, Italian Court of Cassation, 1985, para. 146-152; SHAW, M. *International Law*, 4th ed., Cambridge: CUP, 1997, p.911.

⁷ HUMMER, Waldemar & SCHWEITZER, Michael, Article 52 in Bruno Simma et al. eds, *The Charter of the United Nations: A Commentary* (Oxford: OUP, 1994), p.679-699; WOLF, J. *Regional Arrangements and the U.N. Charter*, 6 *Encyclopedia of Public International Law* 289 (1984).

⁸ Charter of the United Nations (1945), Art. 52.

⁹ GOODRICH, Leland M. *et al.*, *Charter of the United Nations: Commentary and Documents*, 3rd ed., New York: CUP, 1969, p. 356; *Land and Maritime Boundary Between Cameroon and Nigeria, Preliminary Objections (Cameroon v. Nigeria)*, 1998 I.C.J. 275, para. 67.

¹⁰ HUMMER, Waldemar & SCHWEITZER, Michael, Article 52, in Bruno Simma et al. eds, *The Charter of the United Nations: A Commentary*, Oxford: OUP, 2002, para. 37, p.822.

¹¹ Charter of the United Nations (1945), Art.42; GOODRICH, Leland M. *et al.*, *Charter of the United Nations: Commentary and Documents*, 3rd ed., New York: CUP, 1969, p.365; RESS, Georg & BRÖHMER, Jürgen, Article 53 in Bruno Simma et al. eds, *The Charter of the United Nations: A Commentary*, Oxford: OUP, 2002, p. 854, 860; VILLANI, Ugo. *The Security Council's Authorization of Enforcement Action by Regional Organizations*, 6 *Max Planck UNYB*, 2002, p. 535, 536.

¹² Charter of the United Nations (1945), Art.41; ABASS, Ademola. *Regional Organisations and the Development of Collective Security: Beyond Chapter VIII of the UN Charter*, Oxford: Hart Publishing, 2004, p. 46–52.

¹³ Charter of the United Nations (1945), Art. 53, para.1; FRANCK, Thomas M., *The Power of Legitimacy and the Legitimacy of Power: International Law in an Age of Power Disequilibrium*, 100 *AM. J. INT'L L.*, 2006, p.100; RESS, Georg & BRÖHMER, Jürgen, Article 53 in Bruno Simma et al. eds, *The Charter of the United Nations: A Commentary*, Oxford: OUP, 2002, at 864; ROSTOW, Eugene V., *Agora: The Gulf Crisis in International and Foreign Relations Law, Continued: Until What? Enforcement Action or Collective Self-Defense?*, 85 *AM. J. INT'L L.* 506, 515 (1991).

ECOWAS is a regional agency composed by fifteen countries, founded in 1975.¹⁴ Originally, it was an economic organization, created to promote vast economic integration among its members.¹⁵ In the beginning, it was not even involved with peacekeeping operations, but only with the self-defense of its Members.¹⁶

ECOWAS has the goal of maintaining regional peace and security in its region.¹⁷ The evolution of its treaty structure¹⁸ demonstrates its reaction to a series of threats to regional peace and security – a response mechanism that has been widely lauded by the international community.¹⁹

Nevertheless, after a *coup d'état* in Liberia and a civil strife, ECOWAS established a Ceasefire Monitoring Group (ECOMOG) aiming at restore stability in that State.²⁰ In short, in 1993 its constitutive instrument was revised creating a framework of “regional peace and security observation system and peace-keeping forces”.²¹

¹⁴ Its fifteen members are: The Republic of Benin, Burkina Faso, The Republic of Cabo Verde, The Republic of Cote D'Ivoire, The Republic of Gambia, The Republic of Ghana, The Republic of Guinea, The Republic of Guinea Bissau, The Republic of Liberia, The Republic of Mali, The Republic of Niger, The Republic of Nigeria, The Republic of Senegal, The Republic of Sierra Leone and Togolese Republic.

¹⁵ Treaty of the Economic Community of West African States, May 28, 1975, 1010 U.N.T.S. 17, 14 I.L.M. 1200, Art. 2; DOKTORI, Daniel. Minding the Gap: International Law and Regional Enforcement in Sierra Leone, 20 Florida J. Int'l.L., 2008, p.331–32; LEVITT, Jeremy I. Pro-Democratic Intervention in Africa, 24 Wisconsin Int'l.L.J., 2006, p.795.

¹⁶ Protocol Relating to Mutual Assistance on Defence, May 29, 1981, 1690 U.N.T.S. 51, Preamble and Art.3; DOKTORI, Daniel. Minding the Gap: International Law and Regional Enforcement in Sierra Leone, 20 Florida J. Int'l.L., 2008, p.795.

¹⁷ Treaty of the Economic Community of West African States, Jul. 24, 1993, 35 I.L.M. 660, Art. 58; Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security, Dec. 10, 1999, ECOWAS Doc. A/P10/12/99, Art. 3.

¹⁸ DOKTORI, Daniel. Minding the Gap: International Law and Regional Enforcement in Sierra Leone, 20 Florida J. Int'l.L., 2008, p. 329; LEVITT, Jeremy I. Pro-Democratic Intervention in Africa, 24 Wisconsin Int'l. L.J., 2006, p. 785.

¹⁹ GREENWOOD, Christopher. Humanitarian Intervention: The Case of Kosovo, 10 FINNISH Y.B. Int'l. L., 1999, p. 141, 165; WEDGWOOD, Ruth. The Fall of Saddam Hussein: Security Council Mandates and Preemptive Self-Defense, 97 Am. J. Int'l. L., 2003, p.578.

²⁰ LEVITT, Jeremy I. Pro-Democratic Intervention in Africa, 24 Wisconsin Int'l .L.J., 2006, p.796–97.

²¹ Treaty of the Economic Community of West African States, Jul. 24, 1993, 35 I.L.M. 660, Art. 58, para.2(f); LEVITT, Jeremy I. Pro-Democratic Intervention in Africa, 24 Wisconsin Int'l .L.J., 2006, p.798-99.

ECOWAS has undertaken classic peacekeeping operations, involving the use of force within the sovereign jurisdiction of one of their member states, at times without prior Security Council authorization and at times in coordination with the Council.²²In the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security (ECOWAS Peacekeeping Protocol), ECOMOG is charged with a peacekeeping role but also bestowed upon it the mission of humanitarian intervention.²³

Accordingly, “ECOWAS shall inform the United Nations of any military intervention undertaken in pursuit of the objectives of [the ECOWAS Peacekeeping Protocol]” in accordance with Chapters VII and VIII of the Charter.²⁴ However, it does not state that ECOWAS-ECOMOG will seek Security Council authorization before undertaking peacekeeping or humanitarian intervention.²⁵

Although it is not the main discussion that we are triggering here, as an evolutionary step in international peacekeeping, it is imperative to note that the practices of regional organizations must be reconciled with the United Nations framework and related aspects of *jus ad bellum*.²⁶ Concerning the approval of the Security Council for the resort to the use of force in interventionist situations, some scholars have argued both in favor of the approval²⁷ and against such requirement, deeming not necessary the Council’s involvement.²⁸

²² PALIWAL, Suyash. The Primacy of Regional Organizations in International Peacekeeping: The African Example, *Virginia J. Int’l. L.* v. 51, issue 1, 2010, p.195.

²³ Treaty of the Economic Community of West African States, Jul. 24, 1993, 35 I.L.M. 660, Art.3; LEVITT, Jeremy I. Pro-Democratic Intervention in Africa, 24 *Wisconsin INT’L L.J.*, 2006, p.808.

²⁴ Treaty of the Economic Community of West African States, Jul. 24, 1993, 35 I.L.M. 660, Art.52.

²⁵ ABASS, Ademola. *Regional Organisations and the Development of Collective Security: Beyond Chapter VIII of the UN Charter*, Oxford: Hart Publishing, 2004, p.166–67; PALIWAL, S. The Primacy of Regional Organizations in International Peacekeeping: The African Example, *Virginia J. Int’l. L.*, v. 51, issue 1, 2010, p.208.

²⁶ PALIWAL, S. The Primacy of Regional Organizations in International Peacekeeping: The African Example, *Virginia J. Int’l. L.*, v. 51, issue 1, 2010, p.196.

²⁷ WALZER, Michael. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*, 3rd ed., New York: Basic Books, 2000, p.107; BYERS, M. & CHESTERMAN, S. Changing the Rules about Rules? Unilateral Humanitarian Intervention and the Future of International Law, in HOLZGREFE, J.L. & KEOHANE, Robert O. (eds.), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas*, Cambridge: CUP, 2004, p. 203; GOODMAN, Ryan. Humanitarian Intervention and Pretexts for War, 100 *Am. J. Int’l L.*, 2006, p.107; SCHACHTER, O.. The Lawful Resort to Unilateral Use of Force, 10 *Yale J. Int’l. L.* 1985, p.291-294.

²⁸ MURPHY, S. Calibrating Global Expectations Regarding Humanitarian Intervention, 14 Dec.2000, presented at the Harvard University Conference “After Kosovo: Humanitarian Intervention at the

Regional and sub-regional organizations tend to have specific advantages over actors from outside these regions. They often have a greater interest (than external actors) in the affairs of their surrounding areas, and a desire to manage conflict in their regions. It is unlikely, for instance, that member states of the Organization of the American States (OAS) would have a deeper interest in the resolution of conflict between Eritrea and Ethiopia or in the Democratic Republic of Congo (DRC), than the Organization of African Unity (OAU) or other African sub-regional organizations.²⁹

A second crucial advantage that regional and sub-regional actors possess is that they often have a superior knowledge of their regions, the prevailing cultures, the peoples, and their idiosyncrasies. However, within these strengths lie the inherent weaknesses of regional actors. They will not always be objective, neutral and impartial, given the fact that they may have vested interests in the resolution or course of a conflict in their surroundings.

Unfortunately this is a common fact when related to individuals or group actors, whether they are acting alone or under the umbrella of an organization. And, as a result, their credibility may be questioned when they respond to conflict or crises in their backyard.³⁰

3. ECOWAS' operations in Liberia and Sierra Leone: Common Goals or Self-Interests?

The Liberian Civil War began in 1989 when Charles Taylor and a group of so-called dissidents launched an attack against security personnel in Nimba County (located on the Liberia/Côte d'Ivoire border) and advanced toward the capital city of Monrovia. The dissident group called National Patriotic Front of Liberia (NPFL) recruited soldiers from many ethnic groups and proceeded to crush the U.S.-backed Armed Forces of Liberia (AFL) of President Sergeant Samuel K. Doe.

Crossroads", 18-19 January, 2001, pp.9-10; REISMAN, W. Michael. Unilateral Action and the Transformation of the World Constitutive Process: The Special Problem of Humanitarian Intervention, 11 Eur. J. Int'l. L. 3, 2000, p.16.

²⁹ OLONISAKIN, Funmi. Conflict Management in Africa: The Role of the OAU and Sub-Regional Organizations, in Inst. For Security Studies, ISS Monograph 46, Building Stability in Africa: Challenge for the New Millennium (Feb. 2000).

³⁰ OLONISAKIN, Funmi. Conflict Management in Africa: The Role of the OAU and Sub-Regional Organizations, in Inst. For Security Studies, ISS Monograph 46, Building Stability in Africa: Challenge for the New Millennium (Feb. 2000).

By May 1990 the NPFL controlled significantly more territory than Doe's collapsing regime, which had lost effective control of the state, holding only the capital city, Monrovia.³¹ Liberian Armed Forces suffered enormous losses on the battlefield, which led Doe to make an appeal on July 14th, 1990 to ECOWAS in order to introduce a peacekeeping force into Liberia to "forestall increasing terror and tension" (i.e., to restore his decrepit government to power).³²

Although the decrease of international and domestic legitimacy of Doe's government, on August 7th of that same year, under the scrutiny of the 13th summit of the Heads of States of ECOWAS countries, initiated by Nigeria, the member states decided to set up a five-member Standing Mediation Committee (SMC)³³ with the task of achieving a peace agreement in the Liberian civil war. The five members of the SMC took an unprecedented step in deciding to send a multinational peacekeeping force into Monrovia.³⁴ And ECOMOG was then established to "restor[e] law and order to create the necessary conditions for free and fair elections."³⁵

³¹ LEVITT, Jeremy. Humanitarian Intervention by Regional Actors in Internal Conflicts: The Cases of ECOWAS in Liberia and Sierra Leone, 12 TEMP. INT'L & COMP. L.J., 1998, p.342; LEVITT, Jeremy. The Evolution of Deadly Conflict in Liberia: From 'Paternalism' to State Collapse, Durham, NC: Carolina Academic Press, 2005, p.206-10.

³² Letter addressed by President Samuel K. Doe to the Chairman and Members of the Ministerial Meeting of the ECOWAS Standing Mediation Committee (July 14, 1990), in WELLER, Marc (ed.), Regional Peace-Keeping and International Enforcement: The Liberian Crisis, Cambridge: Cambridge University Press, 1994.

³³ The members of the Standing Mediation Committee were Gambia, Ghana, Mali, Nigeria and Togo. Decision A/DEC.9/5/90, Document 20, in WELLER, M. (ed.), Regional Peace-Keeping and International Enforcement: The Liberian Crisis, Cambridge: CUP, 1994, p.38

³⁴ It is important to highlight that this was an unprecedented step as ECOWAS' Constituting Treaty of 1975 and the Non-Aggression Protocol of 1978 did not foresee any regional security mechanism, which would permit any action to be taken within an internal conflict. The only treaty that had a slight approach to this matter was the Protocol Relating to Mutual Assistance on Defence of 1981 that prescribed on its Article 18 the possibility of threats to peace and security being assessed by the interested member-States. BOHLKE, M. A Proibição do Uso da Força no Direito Internacional Contemporâneo. RJ: Renovar, 2011, p.264.

³⁵ Economic Community of West African States, Standing Mediation Committee, Decision on the Cease-Fire and Establishment of ECOWAS Cease-Fire Monitoring Groups for Liberia, Decision A.DEC.1/8/90, Aug. 7, 1990; CHESTERMAN, Simon, JUST WAR OR JUST PEACE? Humanitarian Intervention and International Law, Oxford: OUP, 2001, p.135.

As early as October 1990, the neutrality and peacekeeping nature of ECOMOG was in question especially when it was seen assuming a combative role in alliance with conflicting actors (INPFL and AFL).³⁶

Moreover, individual member states harbored different reasons for wanting to intervene and assist the various warring parties to the conflict. Burkina Faso and Côte d'Ivoire (along with Libya), for instance, were said to have given Charles Taylor some support (arms supply and training).³⁷

Nigeria was also partly motivated to intervene because of the attacks on foreigners, especially Nigerians in Liberia.³⁸ Beyond such concerns, the Liberian conflict has provided Nigeria with the opportunity to establish itself as the most influential mediator in the sub-region. Its role in the conflict and the perception that it was using Liberia as a means of exacting its dominance in the sub-region has been a source of contention among the member states, in particular the francophone states.³⁹

The decision of intervention in Liberia was criticized⁴⁰ and some members of ECOWAS were opposed to the idea of sending in a peacekeeping force into Liberia. Strong opposition for the deployment of ECOMOG came from the francophone countries, in particular Burkina Faso and Côte d'Ivoire.

³⁶ ADISA, J. The Politics of Regional Military Cooperation: The Case of ECOMOG [ECOWAS Monitoring Group], in VOGT, Margaret M. ed., *The Liberian Crisis and ECOMOG: A Bold Attempt at Regional Peacekeeping*, Lagos: Gabumo Publishing, 1992, p.218.

³⁷ BBC Monitoring Report, 5 January 1990, Documents 8 & 9 in WELLER, M. (ed.), *Regional Peace-Keeping and International Enforcement: The Liberian Crisis*, Cambridge: CUP, 1994, p.33; NWOLISE, O. *The Internationalization of the Liberian Crisis and the Effects on West Africa*, in VOGT, Margaret M. ed., *The Liberian Crisis and ECOMOG: A Bold Attempt at Regional Peacekeeping*, Lagos: Gabumo Publishing, 1992, p.57; ALAO, A., *Peacekeeping in Sub-Saharan Africa: The Liberian Civil War in, the Centre of Defence Studies, King's College ed., Brassey's Defence Yearbook*, London: Brassey's, 1993, p.341.

³⁸ OFUATEY-KODJOE, W., *Regional Organisations and the Resolution of Internal Conflict, International Peacekeeping*, vol.1, No.3, London: Frank Cass Publishers, 1994, p. 272.

³⁹ ALAO, A., *Peacekeeping in Sub-Saharan Africa: The Liberian Civil War in, the Centre of Defence Studies, King's College ed., Brassey's Defence Yearbook*, London: Brassey's, 1993, p.341.

⁴⁰ BBC Monitoring Report, 23 August 1990, Document 61, in WELLER, Marc (ed.), *Regional Peace-Keeping and International Enforcement: The Liberian Crisis*, Cambridge: Cambridge University Press, 1994, p.86.

The Burkinabe Head of State and Government was reported by Radio Burkina to have sent a message to the ECOWAS Chairman of Gambia, declaring his country's 'total disagreement' with the operation and adding that ECOMOG had 'no competence to interfere in member states' internal conflicts, but only in conflicts breaking out between member countries.⁴¹ Côte d'Ivoire too was believed to be opposed to the initiative, which they saw as being largely advanced by Nigeria⁴² Both countries were suspicious of Nigeria's intention.

Togo, a member of the SMC, initially announced that it would 'refrain from intervening' and making troops available for ECOMOG 'until the three factions agreed to the mediatory mission.'⁴³ The opposition to the deployment of ECOMOG has raised fears that the age old rivalry between the anglo and francophone countries would be rekindled. Thus, in an attempt to reduce the tension, Nigeria initially conceded the leadership of the force to Lt. General A. Quainoo of Ghana in order to avoid giving any impression that they wanted to dominate ECOMOG's operation.⁴⁴

The UN Security Council did not manifest itself on the Liberian conflict until five months after the struggle had started within the territory, and even after ECOMOG's had taken action. On November 19th, 1992, the UN Security Council adopted Resolution 788 calling for the restoration of peace and a complete weapons embargo against Liberia, and authorizing ECOWAS to (re)enforce its terms, as it determined that all States should respect the measures adopted by this organization to settle the conflict.⁴⁵ Ten months later, on September 22, 1993, the Security Council adopted Resolution 866, which called for the creation of the UN Observer Mission in Liberia (UNOMIL), stating "that this would be the first peace-keeping mission undertaken by the United Nations in co-operation with a peace-keeping mission already set up by another organization, in this case the ECOWAS."⁴⁶

⁴¹ BBC Monitoring Report, 15 August 1990, Document 59, in WELLER, Marc (ed.), *Regional Peace-Keeping and International Enforcement: The Liberian Crisis*, Cambridge: Cambridge University Press, 1994, p.85.

⁴² ALAO, A., *Peacekeeping in Sub-Saharan Africa: The Liberian Civil War in*, the Centre of Defence Studies, King's College ed., *Brassey's Defence Yearbook*, London: Brassey's, 1993, p.342.

⁴³ BBC Monitoring Report, 25 August 1990, Document 63, in WELLER, Marc (ed.), *Regional Peace-Keeping and International Enforcement: The Liberian Crisis*, Cambridge: Cambridge University Press, 1994, p.87.

⁴⁴ ALAO, A., *Peacekeeping in Sub-Saharan Africa: The Liberian Civil War in*, the Centre of Defence Studies, King's College ed., *Brassey's Defence Yearbook*, London: Brassey's, 1993, p.342.

⁴⁵ S.C. Res. 788, paras. 8, 10, U.N. Doc. S/RES/788 (Nov. 19, 1992).

⁴⁶ S.C. Res. 866, U.N. Doc. S/RES/866 (Sept. 23, 1993).

ECOMOG's troops, comprised largely by Nigerians, remained active in Liberia.⁴⁷ After seven years of mixed results and alternating between peacekeeping and peace enforcement, elections were held in Liberia, in which the leader of the main warring faction (Charles Taylor) emerged victorious. The remaining troops from the ECOMOG force then left Liberia in October 1999.⁴⁸

Despite their advantages, regional hegemony may themselves become stumbling blocks in a conflict resolution process if they are seen as being partial, as per having too many vested interests in the conflict, or, indeed, if they are not all-encompassing in their approach.⁴⁹

In Sierra Leone interests played an important role once again. In 1997, the constitutional government of Sierra Leone was seized and overthrown by revolutionary forces that did not accept the results of the elections that had occurred in 1996, after years of uncertainties.⁵⁰ The rebel soldiers of the Revolutionary United Front (RUF) forced President Ahmed Tijan Kabbah into exile and established themselves as Sierra Leone's new government.⁵¹

Sierra Leone's struggles with democracy were watched closely by its West Africa neighbor, Nigeria.⁵² Since 1990, during Sierra Leone's civil war, Nigerian troops, operating through the ECOWAS, have been present in Sierra Leone.⁵³ Before leaving Sierra Leone to Guinea, President Kabbah requested the intervention of Nigeria and ECOWAS to prevent the conflict and restore constitutional order to the country.⁵⁴

⁴⁷ Statement by the President of the Security Council: The Situation in Liberia, U.N. SCOR, 3805th mtg. at 1, U.N. Doc. S/PRST/1997/41 (1997).

⁴⁸ OLONISAKIN, Funmi. Conflict Management in Africa: The Role of the OAU and Sub-Regional Organizations, in Inst. For Security Studies, ISS Monograph 46, Building Stability in Africa: Challenge for the New Millennium, 2000.

⁴⁹ OLONISAKIN, Funmi. Conflict Management in Africa: The Role of the OAU and Sub-Regional Organizations, in Inst. For Security Studies, ISS Monograph 46, Building Stability in Africa: Challenge for the New Millennium, 2000.

⁵⁰ ICISS. Responsibility to Protect: research, bibliography, background. Ottawa: IDRC, 2001, p.105-107.

⁵¹ MCELROY, Claudia. Soldiers Topple Government in Sierra Leone, GUARDIAN, May 26, 1997, p.13.

⁵² VANDERBERGHE, Gerard, West African Troops Join Attack on Liberian Faction, CHI. SUN TIMES, Sept. 17, 1990, p.19.

⁵³ MCELROY, Claudia. Soldiers Topple Government in Sierra Leone, GUARDIAN, May 26, 1997, p.13.

⁵⁴ ICISS, The Responsibility to Protect: Research, Bibliography, Background, Ottawa: IDRC, 2001, p.105; GOLDMAN, Anthony. Humiliated Nigerian Army Retires Hurt: Botched Intervention in Sierra Leone Has Left the Military Regime Morally Erposed, FIN. TIMES, June 4, 1997, p. 3.

In response to Kabbah's request, on May 26, 1997, Nigeria (not ECOMOG) sent forces to Sierra Leone.⁵⁵ Nigerian warships commenced heavy shelling of the capital city, Freetown, specifically targeting rebel-held locations. Ultimately, military efforts failed, and Nigerian troops were forced to withdraw,⁵⁶ however later they were able to push back the rebels and secure sections of the country.⁵⁷

In such unilateral intervention by Nigeria, there had been neither consultation with other ECOWAS leaders nor any vestige of evidence of an ECOWAS decision in favor of military intervention.⁵⁸ ECOWAS only acted on August 30th, 1997, when it decided to intensify the embargos to Sierra Leone and to authorize ECOMOGs action to restore peace and security in the territory.⁵⁹

Although the international community did not reject the intervention, the UN Security Council did not authorize the actions within Sierra Leone.⁶⁰ The first pronouncement of the Council only took place on October 8th of that year, when it adopted Resolution 1132, which deplored the *coup* and the junta's unwillingness to restore the "democratically elected Government" and constitutional order. The UNSC also supported ECOWAS efforts to restore Kabbah's government to power. At last, the only mandate the sub-regional force (ECOMOG) had from ECOWAS was to enforce an embargo on Sierra Leone.⁶¹

West Africans attempted to negotiate an end to the RUF's illegitimate regime. In October 1997 a peace agreement (The Conakry Agreement) for Sierra Leone was signed and a six-month timetable settled for its implementation.⁶²

⁵⁵ LEVITT, J. African Interventionist States and International Law, in FURLEY, Oliver & MAY, Roy eds., *AFRICAN INTERVENTIONIST STATES*, Aldershot: Asgate, 2001, p. 23.

⁵⁶ GOLDMAN, A. Humiliated Nigerian Army Retires Hurt: Botched Intervention in Sierra Leone Has Left the Military Regime Morally Erposed, *FIN.TIMES*, June 4, 1997, p. 3.

⁵⁷ LEVITT, J. Humanitarian Intervention by Regional Actors in Internal Conflicts: The Cases of ECOWAS in Liberia and Sierra Leone, 12 *TEMP. INT'L & COMP. L.J.*, 1998, p.366.

⁵⁸ BUNDU, A. *Democracy by Force?* US: Universal, 2001, 181; TSWAH, B; DUTT, S. *Africa at the millennium*. NYC: Palgrave, 2000, 74.

⁵⁹ ICISS. *Responsibility to Protect: research, bibliography, background*. Ottawa: IDRC, 2001, p.105-107.

⁶⁰ The UN Secretary General, Kofi Annan, had affirmed that Africa could not tolerate or comply with *coups d'état* against democratically elected governments on March 10th 1998. U.N Secretariat. Note to the Press. SG/SM/6481, AFR/44 (Mar. 10 1998).

⁶¹ S.C. Res. 1132, 8-10-1997, Doc.S/RES/1132.

⁶² Second Report of the Secretary-General on the Situation in Sierra Leone, U.N. SCOR, 52d Sess. paras. 2, 25, U.N. Doc. S/1997/958 (1997) (treating the signing of the Agreement as a significant step towards resolving the crisis in Sierra Leone).

Under the agreement, rebels were to begin demobilizing and disarming immediately, and Kabbah was to be restored as President of Sierra Leone no later than April 22, 1998.

By late 1997, however, it became clear that the peace process was not progressing according to schedule.⁶³ On February 13th, 1998, with two months remaining for the implementation of the Conakry Agreement, Nigerian troops, now acting nominally under ECOMOG's mandate, captured Freetown, and ousted the junta's government, marking the end of a nine-day full military offensive.⁶⁴ Sierra Leoneans welcomed Nigeria's intervention and reacted with joy to the overthrow of the junta's regime.⁶⁵

After the intervention, the Liberian Foreign Minister was critical about the action, claiming that "[they would] support UN Resolution [1132] and the decision taken by ECOWAS", that is, "(...)that no use of force is authorized in Sierra Leone whatsoever, and we [Liberia] support that decision".⁶⁶

Nonetheless, it is clear that the Nigerian military commandeered the mandate and turned it into its private agenda.⁶⁷ In fact, the evidence strongly suggests that Nigeria *qua* Nigeria had carried out the military operation unilaterally and precipitately since ECOWAS leaders, who should have met almost immediately following the coup, did not in fact meet until August 30th, three months after the first Nigerian bombardment.⁶⁸ Despite these facts, OAU welcomed Nigeria's actions almost immediately.⁶⁹ The UN Security Council issued a statement welcoming "the fact that the military junta has been brought to an end" and commended "the important role" that the ECOWAS played in the "peaceful resolution" of the crisis."⁷⁰

⁶³Second Report of the Secretary-General on the Situation in Sierra Leone, U.N. SCOR, 52d Sess. paras.14-16, U.N. Doc. S/1997/958 (1997).

⁶⁴ EJIME, P. Liberia: Ecomog Congratulates Ecomog On Arrest Of Military Junta, Pan African News Agency, 15 Feb 1998; BOHLKE, M. A Proibição do Uso da Força no Direito Internacional Contemporâneo. RJ: Renovar, 2011, p.273.

⁶⁵ RUPERT, J. Civilian Rule Overturned in Sierra Leone, WASH. POST, May 26, 1997.

⁶⁶ SANNAH, T. Liberia Opposes Continued Bombing of Freetown, Pan African News Agency, 21 October 1997.

⁶⁷ BUNDU, A. Democracy by Force? U Abuse of the Legal Personality of International Organizations S: Universal, 2001, p.181; TSWAH, B; DUTT, S. Africa at the millennium. NYC: Palgrave, 2000, p.185.

⁶⁸ BUNDU, A. Democracy by Force? US: Universal, 2001, p.181; TSWAH, B; DUTT, S. Africa at the millennium. NYC: Palgrave, 2000, p.75.

⁶⁹ THE ECONOMIST, Sierra Leone: Putting a Country Together, Feb. 21, 1998, p. 44.

⁷⁰Statement by the President of the Security Council, U.N. SCOR, 53d Sess. at 1, U.N. Doc. S/PRST/1998/5 (1998).

On March 16th, 1998, the Security Council adopted Resolution 1556, welcoming Kabbah's return to power and partly terminating the sanctions imposed by Resolution 1132.⁷¹

It is important to notice that regional forces tend to reflect existing political tensions, especially in the case of the African continent. Nonetheless, the proper definition of the mandate of the sub-regional force in Sierra Leone should be better addressed, especially because the concept underpinning the creation of ECOMOG remains valid, and though limited in objectives, its accomplishments such as in restoring Liberia to peace, have been widely acclaimed. However, as for the sub-regional forces in Sierra Leone, Nigeria's command over the intervention was well confirmed,⁷² and the operation's credibility had commonly been tied to Nigerian credibility.⁷³

4. Member States and Organizations' Conduct: Addressing Responsibilities at the Decision-Making Process

Since international organizations possess legal personality, they bear rights and duties under international law, and can be held responsible if found in breach of these obligations.⁷⁴ International organizations have the ability to commit wrongful acts given their mandates, scope and influence.⁷⁵

The Draft Articles on the Responsibility of International Organizations by the International Law Commission ('ILC Articles') are a valuable source for addressing matters concerning responsibilities of international organizations, demonstrating the reasoning of remarkable publicists of international law in the matter.

⁷¹S.C. Res. 1156, U.N. SCOR, 52 Sess., 3861st mtg. para. 2 U.N. Doc. S/RES 1556 (1998)

⁷² Press Briefing by Ambassador James O.C. Jonah, New York, Feb. 17, 1998, in Sierra Leone Web; UN Doc. S/1999/1003, 8th Rep. of the Secretary-General on UNOMSIL, 23 Sept. 1999.

⁷³ HOWE, Herbert. *Lessons of Liberia: ECOMOG and Regional Peace Keeping*, in 21:3 INT'L SECURITY 145, 154-60 (1996), p.161; BOLAJI, Akinyemi, *End the Military Meddling*, GUARDIAN, June 5, 1997, p.21

⁷⁴ D'ASPREMONT, J.. Abuse of the Legal Personality of International Organizations and the Responsibility of Member States, *International Organizations Law Review*, 2007, pp.91-119, p.93.

⁷⁵ STUMER, A. Liability of Member States for Acts of International Organizations: Reconsidering the Policy Objections, 2 *Harvard ILJ* 48, 2007, p.554.

Accordingly, “[t]he conduct of an organ of an international organization(...) shall be considered an act of that organization under international law, whatever position the organ or agent holds in respect of the organization.”⁷⁶

For an international organization to be held responsible for a wrongful act, it must have been perpetrated under real and exclusive operational control of the organization.⁷⁷ It is not “a question of who exercises operational command and control over the force; [...] the more important enquiry is who exercises overall authority and control over the forces”.⁷⁸ Thus, international responsibility is linked with operational command over activities.⁷⁹

Member States are secondary authorities of an international organization, acting as its organs or officials, and their conduct is attributable to the organization if committing internationally wrongful acts.⁸⁰ There are situations where Member States can be held responsible for an act formally committed by an international organization that would constitute a wrongful act of the States if committed by them.⁸¹

⁷⁶ILC. Draft Articles on the Responsibility of International Organizations.(2011), ILC Yearbook v.2, Part II, 1 and 6(1).

⁷⁷ AMRALLAH, B. The International Responsibility of the United Nations for Activities Carried Out by U.N. Peace-Keeping Forces, 1976 *Revue Egyptienne de Droit International* 57, p.66; SHRAGA, D. The United Nations as an Actor Bound by International Humanitarian Law, In: *The United Nations and International Humanitarian Law* (Condorelli ed.), Paris: Pedone, 1996, p.330; WET, E. *The Chapter VII Powers of the United Nations Security Council*, Oxford: Hart, 2004, p.265-268.

⁷⁸SAROOSHI, D. *The United Nations and the Development of Collective Security*. New York: OUP, 1999, p.34.

⁷⁹ EYERSTED, F. *United Nations Forces in the Law of Peace and War*, Leiden: Sijthoff Pub., 1966, p. 411.

⁸⁰ CRAWFORD, J. *The International Law Commission's Articles on State Responsibility*. NYC: CUP: 2002, p.310; STUMER, A. *Liability of Member States for Acts of International Organizations*, 48 *Harv. Int'l L. J.* 553 (2007), p.557-558; *Factory at Chorzow* (Ger. v. Pol.), Judgment, P.C.I.J. [s.A, n.17] (03-09-1928) and [s.A, n.9] (26-07-1927); *AginiBehrami/BekirBehrami v. France*, App. No. 71412/01 [E.C.H.R. decision 02-05-2007], *RuzhdiSaramati v. France/Germany/Norway*, App. No. 78166/01 [E.C.H.R. decision 02-05-2007]; *Beric v. Bosnia/Herzegovina*, App. No. 36357/04 [46 Eur. H.R. Rep SE6 (2008)]; *Gajic v. Germany*, App. No. 31446/02 [E.C.H.R. decision 28-08- 2008]; *Kasumaj v. Greece*, App. No. 6974/05 [E.C.H.R. decision 05-07-2007]; *Legality of Use of Force (Serb. Montenegro v. Fr.)*, Preliminary Objections - France (05-07-2000), I.C.J. Rep 575 (2004), para. 33.

⁸¹ The joint responsibility of an international organization with one or more States is envisaged in articles 14 to 18, and articles 58 to 62 deal with the responsibility of a State in connection with the internationally wrongful act of an international organization, ILC Articles (2011), Commentaries, ILC Yearbook v.2, Part II, 2011.

Nonetheless, such exceptions fail to address the cases where member states *abuse* the legal personality of international organizations through the exercise of overwhelming control over the decision-making process of the organization.⁸²

It has been approached that accountability structures applicable to international organizations⁸³ should take into account the extent of control by member states over the process leading to the wrongful act of those international organizations. Accordingly, "(...) member states can no longer hide behind the screen of the international legal personality of the organizations"⁸⁴ and joint or concurrent responsibility of the member states should be envisaged under international law. After all, there is a [...] risk that States will resort to the organizations they constitute as a comprehensive means to avoid responsibility for what, in truth, are their own initiatives.⁸⁵

In fact, States necessarily exercise some form of control on the decision-making process of an international organization, however, it may become problematic if it undermines the autonomy of the organization.⁸⁶

⁸² D'ASPREMONT, Jean. Abuse of the Legal Personality of International Organizations and the Responsibility of Member States, *International Organizations Law Review*, 2007, pp.91-119, p.96.

⁸³ On the question of accountability of International Organizations, see: REINISCH, A. Securing the Accountability of International Organizations, 7 *Global Governance* 131 (2001); REINISCH, A. Governance without Accountability?, *German Yearbook of International Law* 270, 2001; SCHERMERS, H. Liability of International Organizations, 1 *Leiden Journal of International Law* 3 (1998); HIGGINS, R. The Responsibility of States Members for the Defaults of International Organizations: Continuing the Dialogue, in Liber Amicorum I. F. I. Shihata, *International Finance and Development Law* (2001), pp. 441-448; SEIDL-HOHENVELDERN, I. Liability of Member States for Acts or Omissions of an International Organization, in Liber Amicorum I. F. I. Shihata, *International Finance and Development Law* (2001), pp.272-739; HOLDER, W. Can International Organizations be Controlled? Accountability and Responsibility, 97 *ASIL Proc.* 231 (2003); WELLENS, K., Accountability of International Organizations: Some Salient Features, 7 *ASIL Proc.* 241 (2003); YEE, S. The Responsibility of States Member of an International Organization for its Conduct as a Result of Membership or Their Normal Conduct Associated with Membership, in M. Ragazzi (ed.), *International Responsibility Today. Essays in Memory of Oscar Schachter* (2005), pp. 436-454.

⁸⁴ D'ASPREMONT, Jean. Abuse of the Legal Personality of International Organizations and the Responsibility of Member States, *International Organizations Law Review*, 2007, pp. 91-119, p.92.

⁸⁵ GRANT, T. International Responsibility and the Admission of States to the United Nations, 2009 *Mich. J.Int'l. L.* 30, p.1136.

⁸⁶ D'ASPREMONT, Jean. The Multifaceted Concept of the Autonomy of International Organizations and International Legal Discourse (March 25, 2011). *INTERNATIONAL ORGANIZATIONS AND THE IDEA OF AUTONOMY*, R. Collins & N. D. White, eds., Routledge, 2011; AMERASINGHE, C. *Principles of the Institutional Law of International Organizations*, Cambridge: CUP, 1996, p. 85; KLEIN, P. La responsabilité des Organisations Internationales dans les ordres juridiques internes et en

Moreover, the balance of power within an organization can be decisive as regards the possibility of an abuse of its legal personality.

If an international organization is composed of several powerful members states whose stands usually differ from one another, it is improbable that one of them will be able to sway the decision-making process, however within the framework of small regional organizations such as ECOWAS, that are dominated by one or two member states, an abusive control is more likely since the dominant state/s will find itself less restrained and will be prone to exercise overwhelming control.⁸⁷

Additionally, the “shield” offered by the exclusive responsibility of the international organization in most of the cases might encourage states to intervene in the decision-making process of the organization by making it pass the decisions that serve their interests.⁸⁸This “instrumentalization” of international organizations is appealing because it shields states from being held responsible for conducts, affecting, consequently, the core reason for the existence of an organization, that is: to be an appropriate framework to discuss and regulate substantive international issues.⁸⁹

Thus, the abuse of legal personality at such level should be better addressed by the ILC, which demands a reconstruction of the provisions of its Draft Articles on the Responsibility of International Organizations, or, at least, a better interpretation in order to avoid cases like the ones before mentioned in Africa.⁹⁰

5. Conclusion

This article has tried to argue about the role of ECOWAS (and Nigeria) within the internal disturbances that occurred in Liberia and Serra Leone in the 1990.

droit des gens, Brussels: Bruylant, 1998, p. 433; WHITE, N. Separate but Connected: Inter-Governmental Organizations and International Law, 5 *International Organizations Law Review* 175, 2008.

⁸⁷ D'ASPREMONT, J. Abuse of the Legal Personality of International Organizations and the Responsibility of Member States, *International Organizations Law Review*, 2007, pp.91-119, p.110.

⁸⁸ D'ASPREMONT, J. Abuse of the Legal Personality of International Organizations and the Responsibility of Member States, *International Organizations Law Review*, 2007, pp.91-119, p.107; D'ASPREMONT, J, “Contemporary International Rulemaking and the Public Character of International Law”, NYU Global Law Working Paper 08/06 & Institute for International Law and Justice Working Paper 2006/12.

⁸⁹ D'ASPREMONT, J. Abuse of the Legal Personality of International Organizations and the Responsibility of Member States, *International Organizations Law Review*, 2007, pp.91-119, p.108.

⁹⁰ D'ASPREMONT, J. Abuse of the Legal Personality of International Organizations and the Responsibility of Member States, *International Organizations Law Review*, 2007, pp.91-119, p.103.

Firstly, it tried to set out the limits of this regional international organization in terms of its purposes and its crescent role as one of Africa's main agency to maintain peace and security during times of emergency created by coup d'états. After all, the situations that such countries faced required a more incisive intervention in order to avoid a massive violation of human rights and humanitarian law.

Secondly, this article has detailed the operations carried out by ECOWAS within Liberia and Sierra Leone, establishing the difficult situation faced by such population, which demanded action. Besides, it pointed out that Nigeria played a very important role in both domestic conflicts as it was the country that has received the duty of carrying out the agenda for peace. However, it was explicit through the reading that Nigeria has done even more that it was asked to, vested by ECOMOGS and even supported by ECOWAS, due to its personal interest in the region – mainly trying to be seen as the principal force of Africa.

Although the international organisms, specially the UN Security Council, have completely validated its actions *a posteriori*, based in Chapter VIII of the UN Charter along with the powers granted by Chapter VII, it was important to mention the private agendas carried out along with the peace enforcing and peacekeeping operations in order to address the international responsibility matter.

More precisely, it has been presented that normally international organizations are held fully responsible for the actions carried out by its State-members in action during the conflict, even though such illegal acts were not committed as prescribed by the mandates.

Thus, what was tried to show is that, if following an abuse perpetrated by a member-State while acting with autonomy and independence, that is, in full control, this country should be the one held responsible, instead of the (regional) international organization, as it is a clear abuse of its legal personality. Unfortunately, based on the ILC Articles, this is not yet possible – being this the reason why a change or a new interpretation should be made: in order to prevent atrocities from happening during situations that were actually meant to overcome a time of difficulty, and, which unfortunately are flourishing within the framework of international institutions.

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