

# Assessment of Nigeria's Role in the Development of Economic Laws in ECOWAS

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## Abstract

The Economic Community of West African States (ECOWAS) was established in 1975 to promote economic co-operation and integration in the West African sub-region. It is believed that law is one veritable instrument that can help sustain economic development in any human society. Without law, the society would be in the state of anarchy, and sustainable development cannot thrive in a chaotic situation. Legal culture must therefore be evolved and applied for sustainable development. It was against this background that this paper critically assessed Nigeria's efforts at evolving an international legal system for sustainable development in the ECOWAS. The paper interrogated the *Treaty, Protocols, Decisions* and other sources of ECOWAS law promoting sustainable development. It highlights the economic benefits, which the legal culture has brought to both Nigeria and other members of the ECOWAS. The paper revealed, among other things, that: (i) before 1975, there was no umbrella organization with a uniform source of law for the West African sub-region; (ii) Nigeria evolved a legal culture by spearheading the formation of the ECOWAS, drafting and revising of the *ECOWAS Treaty*, which has provided the legal frame-work for sustainable development in the sub-region. The study is a legal history of the ECOWAS as an international organization.

**Keywords:** Legal History, ECOWAS ,Treaty, Protocols, Decisions, Legal Culture, Sustainable Development, Market Integration Scheme, Trade Liberalization Scheme.

## Introduction

According to the *Revised ECOWAS Treaty*, the aims of the ECOWAS are to promote co-operation and integration, leading to the establishment of an economic union in West Africa in order to raise the living standards of its peoples, and contribute to the progress and development of the African Continent. In order to achieve these aims a number of objectives have been set out in the Treaty. One of such objectives is that the ECOWAS shall ensure “ the harmonization and co-operation of national policies and the promotion of integration programmes, project and activities, particularly in food, agriculture and natural resources, industry, transport and communications, energy, trade, money and finance, taxation, economic reform policies, human resources, education, information, culture, science, technology, services, health, tourism, legal matters...”<sup>1</sup> As could be seen in the ECOWAS Treaty and Protocols, the founders of the ECOWAS placed emphasis on economic integration and development of the West African sub-region. This paper seeks to assess the efforts Nigeria as a leading member of the ECOWAS has made develop economic laws that would to the achievement of the aims. Divided into seven sections, this paper is premised on certain concept of international law, which is defined in section one. Section two traces the beginning of Nigeria's sustainability interest in Africa. Section three analyses the economic conditions that needed sustainable development in West Africa. Section four discusses the legal - frame-work Nigeria had helped the ECOWAS to put in place to reverse adverse economic situation. Section five evaluates efforts at promoting sustainable development through Market Integration Scheme. Section six highlights the benefits of the economic laws while section seven, being the last section, conveys the Summary and conclusions.

### 1: The Concept of Law:

Law may also be defined as a body of rules designed or formulated to guide human conducts or actions, which are enforced among the members of a given state. Law is that element which binds the members of the community together in their adherence to recognize values and standards. Law consist of a series of rules regulating behavior, and reflecting the ideas and preoccupations of the society within which it functions. Law is both permissive and coercive. It is permissive where it allows individuals to establish their own legal relation with rights and duties. It is coercive where it punishes those who infringe its regulations. International law may therefore be defined as rules and principles that govern states in their relations inter se. International law is primarily formulated by international agreements, which create rules binding upon the signatories, and customary rules which are basically the practices recognized by the community at large as laying down patterns of conduct that have to be complied with<sup>2</sup>. It is the aggregate of the rules governing relations between states in the process of their conflict and cooperation, designed to safeguard their peaceful coexistence, expressing the will of the ruling classes of these and defended in case of need by coercion applied by state individually or collectively<sup>3</sup>. Lord Denning defined international law as the “sum of rules or usages which civilized states have

agreed shall be binding upon them in their dealings with one another”.

Comparatively, while international politics stresses competition, conflict and supremacy and adopts as its core aims the struggle for survival and influence, international law aims at harmony and the regulation of behavior, and settlement of disputes. International law set out a series of principles declaring how states should behave<sup>4</sup>. The sources<sup>5</sup> of international law include international conventions (treaties), international custom, the general principle of law recognized by civilized nations, judicial decisions, teaching of the most qualified publicists of the various nations. Other sources of law include *Jus cogens*<sup>6</sup>, international comity<sup>7</sup>. This paper demonstrates how Nigeria has helped to develop international legal culture by sponsoring enactment of international law and policies to initiate sustainable development in the ECOWAS. The sources of international law to be interrogated for this purpose are the ECOWAS Treaty, Protocols and Decisions, among other relevant sources.

## **2: The Beginning of Nigeria’s Sustainability Interest in Africa:**

Although the Brundtland Report on Sustainable was released in 1987<sup>8</sup>, Nigerian leaders had before this time made concerted efforts aimed at sustainable development not only for the benefit of Nigeria but also for Africa. On October 1<sup>st</sup>, 1960, the Nigerian Prime Minister, Alhaji Abubakar Tafawa Balewa while delivering a maiden independence speech to mark Nigeria’s arrival as an independent sovereign nation after decades of British colonial rule said among other things that he felt “sure that history will show that the building of our nation proceeded at the wisest pace... upon firm foundations”<sup>9</sup>. Apart from addressing urgent national issues, Sir Balewa went international by declaring that Nigeria and Nigerians would,

...not be allowed the selfish luxury of focusing our interest on our homes... In these days of rapid communications we cannot live in isolation apart from the rest of the world even if we wish to do so... This great country... finds that she must at once be ready to deal with grave international issues... we must at once play an active part in maintaining the peace of the world and in preserving civilization ...<sup>10</sup>.

With these pronouncements, Prime Minister Balewa did not only open a new chapter in the history of Nigeria and indeed of the world but also set a road map that would guide successive Nigerian governments. The pronouncements were developed into Nigerian foreign policy towards Africa. Nigeria regards Africa as the centre-piece of its foreign policy, West Africa being the crucial sector of the piece. Viewing historiographically, what seems to have run through Balewa’s political and economic consciousness was a picture of Nigerian-state emerging as a regional and sub-regional leader and one of the major players in world politics. It was Balewa’s desire to see Nigeria being her brothers’ keeper by extending assistance to other African countries through viable economic cooperation and integration programmes. Balewa believed that Nigeria’s effort at nation building must be made side by side with the effort at sustainable safe neighbourhood because a neighbourhood in which poverty and insecurity are endemic would always be prone to social unrests and armed conflicts with grave consequences on the country.

On 22 June 1966, after Balewa’s government had been toppled, the Nigeria’s first military leader, Major General Aguiyi in his maiden broadcast to the nation said:

... because of our population and potentials, the majority of opinion in the civilized world looks up to us to provide responsible leadership in Africa... we are convinced that whether in the political, economic or cultural sphere, our destiny lies in our role in the continent of Africa<sup>11</sup>.

In order to play the expected leadership role at the world stage, Nigeria did not only join numerous international organisations (such as the United Nations, Commonwealth, Non- Aligned Movement, Pan Africanism, World Bank, International Monetary Fund to mention but a few) but also sponsored or co-sponsored the formation of new ones such as the OAU (now African Union) and ECOWAS.

The point to stress is that economic integration through ECOWAS was not designed to benefit Nigeria alone. Rather, both immediate and long-term effects of the sub-regional organization, as will be shown presently, were designed to spread across the 16 member states. The immediate advantage of the ECOWAS would lie in the augmented markets for the products of member countries. This, in time should help to reduce their overhead cost production, permitting the introduction of lower prices, which in turn should stimulate demand and general economic activity within the region. The enlarged markets would also permit or encourage the establishment, where possible, of sophisticated industries. The availability of complementary natural resources would enable member countries to overcome their deficiencies in certain resources for their export and industrial processes, thus providing a solid basis for sustainable development.

## **3: Economic Conditions that Needed Sustainable Development:**

With a total area of 923,768 square kilometers Nigeria is said to be nearly four times the size of Ghana, thirteen times the size of Sierra Leone and eighty-nine times the size of Gambia. As at 1975 when the ECOWAS was

established, Nigeria had a population of 70 million, while the ECOWAS total population stood at 125 million. Nigeria's natural endowments included petroleum, iron ore, tin, gold, manganese, coal, limestone, zinc, lead, columbite, natural gas and hydropower. Since in the 1970s, Nigeria's industries have expanded to include car and truck plant assemblies, oil refineries, iron, steel and aluminum industries as well as chemical and pharmaceutical industries, among others. As has been asserted by some scholars Nigeria's interest in championing the establishment of a pan West African body (ECOWAS) "was to be sustained through a functional economic co-operation that would not only strengthen national economies but that would also see Nigeria secure a ready market for her manufactures"<sup>12</sup>. Her main agricultural exports included cocoa, rubber, palm oil and kernel, groundnuts and cashew nuts. From late 1960s, oil emerged as the dominant revenue earner for the country<sup>13</sup>. As in other West African countries, agriculture played a major role in the Nigerian economy during this period. The economy of the West African sub-region was competitive because the countries produced basically the same range of agricultural products. Trade within the sub-region was export oriented in favour of their former colonial masters. Consequently, the volume of inter-country trade in the area was low. Trade was relatively higher in value between neighbouring francophone countries of West Africa. For example, almost 55 per cent of Burkina Faso's imports from West Africa came from Ivory Coast (now Cote D'Ivoire), while about 69 per cent of Senegal's West Africa import originated from Cote D' Ivoire<sup>14</sup>. The sub-region's economy was external oriented, as the level of industrialization was low. Except Nigeria, the market for manufactured goods in the region was small due to relatively low population and the accompanied low per capita. The region's economy was also characterized by numerous currencies, which were linked to either the currencies of Britain or France or the United States of America.

The economic characteristics of the West African region prior to the formation of the ECOWAS can be summarized thus:(i) competitive primary export production; (ii) very little trade flows between countries;(iii) very dependent on foreign trade; (iv) low population; (v) small market and low per capita; (vi) very low level of industrial development; (vii) numerous national currencies, which were linked with foreign currencies. The problem of multiplicity of currencies appeared to be one of the major challenges for economic integration of the sub-region. Edozien and Osagie concluded that the adverse effect of the multiplicity of currencies on the flow of payments, the growth of intra-regional trade and the strengthening of the sub-regional economy constituted an additional problem in the quest for West African economic cooperation.<sup>15</sup>

The sub-region therefore needed not just policies but more importantly legal frame work for sustainable development. Now, one may ask: what role had Nigeria played or has been playing to reverse the adverse economic characteristics of the West African and thereby put the sub-region on the path of sustainable development? An answer to this question would be limited to the assessment of the legal and economic roles Nigeria has so far played in promoting sustainable development in the ECOWAS.

#### **4. Providing the Legal - Frame-work:**

Apart from sponsoring the formation of the ECOWAS, Nigeria did a number of things to promote the West African economic cooperation and sustainability. Nigeria used the instrument of law to reverse adverse economic situation. One of the first things Nigeria did was to call for and sponsor a review of the 1975 ECOWAS Treaty. The 1975 ECOWAS Treaty (hereinafter referred to as Old Treaty) was the legal instrument that established the ECOWAS. The review of the Old Treaty was one sure strategic means that Nigeria could use to "elicit support measures" from other Member States. Nigeria sponsored ECOWAS meeting of the Authority of Heads of State and Government in Abuja on 6 July 1991 wherein a Committee of Eminent Persons was set up to submit proposals for the review of the Treaty.<sup>16</sup> Accordingly, the *Revised ECOWAS Treaty* signed on 24<sup>th</sup> July, 1993 now makes provisions for more economic policies and programmes, which reflect the Nigerian economic diplomacy objectives. Article 3(1) (c)- (i) of the *Revised Treaty* provides as follows:

- 1 (c) the promotion of the establishment of joint production enterprises;
- (d) The establishment of a common market through:
  - (i) the liberalization of trade by abolition, among Member States, of customs duties levied on imports and exports and the abolition, among Member States of non-tariff barriers in order to establish a free trade area at the Community level;
  - (ii) The adoption of a common external tariff and a common trade policy vis-à-vis third countries;
  - (iii) The removal, between Member States, of obstacles to the free movement of persons, goods, services and capital, and to the right of residence and establishment;
- (e) The establishment of an economic union through the adoption of common policies in the economic, financial, social and cultural sectors, and the creation of a monetary union.
- (f) The promotion of joint ventures by private sector enterprises and other economic operators, in particular through the adoption of a regional agreement on cross-border investments;
- (g) the adoption of measures for the integration of the private sectors, particularly the creation of an enabling environment to promote small and medium scale enterprises;

- (h) The establishment of an enabling legal environment;
- (i) The harmonization of national investment codes leading to the adoption of a single Community investment code<sup>17</sup>.

A critical look at the above provisions would reveal that unlike the Old Treaty, the Revised Treaty places more emphasis on sustainable development. Sustainable development has been embedded in policies such as establishment of joint production enterprises, establishment of a common market through trade liberalization, adoption of a common external tariff, promotion of joint ventures by private sector enterprises, creation of a monetary union, promote small and medium scale enterprises, the free movement of persons, goods, services and capital, and establishment of an enabling legal environment to guide implementation of the policies.

Under Article 62 of the Revised ECOWAS Treaty, Member- States undertake to:

Encourage the promotion, by every means possible, of all forms of cultural exchange; Promote, develop and where necessary, improve structures and mechanisms for the production, propagation and utilization of cultural industries; and Promote the learning and dissemination of a West African language as a factor in Community Integration<sup>18</sup>.

There are other provisions for sustainable development under Arts 67 and 68 of the ECOWAS Treaty. Article 67 states that:

Subject to the provisions of this Treaty, Member States undertake to consult with one another, through appropriate Community institutions, for the purpose of harmonizing and co-ordinating their respective policies in all other fields not specifically covered by this Treaty for the efficient functioning and development of the Community and for the implementation of the provisions of this Treaty.

Article 68 provides that:

Member States, taking into consideration the economic and social difficulties that may arise in certain Member States, particularly island and land-locked States, agree to grant them where appropriate, special treatment in respect of the application of certain provisions of this Treaty and to accord them any other assistance that they may need.

The Nigerian cultural policy has categorized culture into material and no material forms. The material culture refers to physical items such as beads, bracelets and cloths that are associated with a group of persons. The non-material culture refers to the ideals, norms and values of a given people<sup>19</sup>. Essien and Iyorza of the University of Calabar, have asserted that the Afro-European contacts through imperialism, colonialism and now through Western global media, have altered virtually every aspect of the African cultures including clothing, music/songs.<sup>20</sup> As part of its sustainable development programmes, the ECOWAS is taking food security very seriously. The sub-regional organization is working in close cooperation with the Food and Agricultural Organisation of the United Nations (FAO) in the fields of food and agriculture to implement policies and programmes aimed at improving food security especially in food deficit countries.<sup>21</sup> The ECOWAS is “convinced that the integration of cultural factors in development strategies of the Community will ensure a well balanced development of all the peoples of the ECOWAS region”. To this end Protocol A/PI/7/87 on the Cultural Framework Agreement for ECOWAS was adopted in Abuja on 9<sup>th</sup> July 1987.<sup>22</sup>

## **5. Promoting Sustainable Development through Market Integration Scheme:**

The ECOWAS legal frame work also provides for the establishment and promotion of ECOWAS Market Integration Scheme (EMIS). As noted earlier, Nigeria’s interest in championing the establishment of a pan West African body (ECOWAS) was to be sustained through a functional economic co-operation that would not only strengthen national economies but that would also see Nigeria secure a ready market for her manufactures and that of the entire West African sub-region. The EMIS therefore presents itself as such function economic co-operation mechanism that could strengthen the Nigerian economic development and sustain nation building and at the same time enhance the overall socio – economic transformation of the sub - region. The EMIS is discussed here under the following sub-headings, namely: ECOWAS Trade liberalization scheme (ETLS); Free movement of goods; Free movement of persons; Right of establishment; Right of residence; and Monetary co-operation programme.

### **5.1: ECOWAS Trade Liberalisation Scheme(ETLS)**

The establishment of a common market is one of the steps taken by Nigeria and other Member States to achieve the aims of the ECOWAS Treaty<sup>23</sup> for establishment of market integration or common market in the ECOWAS. The ECOWAS Trade Liberalization Scheme (ETLS) involves abolition among Member States, of

customs duties levied on imports and exports, and the abolition of non-tariff barriers in order to establish a free trade area at the sub-regional (Community) level. The second strategy is adoption of external tariff and a common trade policy vis-a-vis third countries. The third strategy involves the removal of all obstacles to the free movement of persons, goods, services and capital, and to the right of residence and establishment. The ETLs dates back to June 1989 when, in Ouagadougou, the West African Heads of State and Government, under the Nigerian initiative, agreed to accord foremost priority to the promotion and development of intra-Community trade. The ETLs entered into force with effect from 1<sup>st</sup> January, 1990 and aims at establishing a customs union that union would involve total elimination of customs duties and taxes having equivalent effect, removal of non-tariff barriers and establishment of a common external tariff (CET)<sup>24</sup>.

A total of one hundred and fifty-two industrial products were approved to benefit from the ETLs in 1989. However, with the coming into effect of ETLs in 1990 the ECOWAS Monitoring Missions found out that raw materials and traditional handicrafts were moving freely between Member States<sup>25</sup> that since May 28, 1979 and all customs duties and taxes of equivalent effect, as well as all non-tariff barriers on goods originating from the Community have been consolidated and frozen by each Member State<sup>26</sup>.

As part of the implementation of the ETLs the sixteen Member States have been grouped into three based on the level of industrialization. In order to eliminate tariff barriers, goods have been classified into three broad groups viz: handicraft, products, unprocessed goods, and industrial products<sup>27</sup>.

The number of industrial goods approved to benefit from the ETLs was increased from a mere twenty-five (25) in 1990 to one hundred and forty-two (142) in 1994. By December 2000, the ECOWAS Council of Ministers<sup>28</sup> approved about two hundred (200) additional enterprises and products to benefit from the ETLs. Some of the Nigerian products approved included: fatty acids, soaps, hair dressing products, skin care products, perfumes, electrical materials, plastic materials, tiles materials, crude palm oil, table and kitchen wares. Others were foot wear, aluminum-zinc alloys, cement, beer and beverages, PVC for water supply, orange and pineapple juice, ply wood, medicaments, disinfectants, air conditioning machines, synthetic fibers, folding cartons and boxes, palm kernel, crude oil, sheet of asbestos cement, reservoir tanks, corrugated paper and sacks, etc<sup>29</sup>. The Community abolished the classification of industrial products as priority and non-priority, thus maintaining a single list of originating industrial products<sup>30</sup>.

Official Reports<sup>31</sup> from the ECOWAS Commission indicate that as from 1998 to July 2004, about 2536 industrial products from 807 companies in 12 Member States were approved under the preferential regime of the ETLs. It is also reported that Nigeria ranked first with 42% of the total, followed by Ghana with 28% and Cote D'Ivoire. However, although 12 Member States had companies and industrial goods approved for the ETLs, only eight (8) countries were actually implementing the Scheme as at 2006, namely: Nigeria, Ghana, Benin, Burkina Faso, Cote D'Ivoire, Guinea, Senegal and Togo. Some of the Nigerian industrial goods and enterprises that have been benefiting from the ETLs since 1990 are billets, laminated steel, tiles, biscuits, beer, stout, wheel-barrow, spades, shovels, jute bags, carpets, blankets, fishing nets, textured polyester thread, etc<sup>32</sup>.

Member-States are compensated through the ECOWAS Funds for loss of customs revenue because of the ETLs of intra-Community trade in industrial products. In 1995, the Council of Ministers approved the sum of sixteen million, eight hundred and eighty-seven thousand, five hundred Units of Account (UA 16, 887,500) as that year's compensation budget for the projected loss of revenue from the ETLs<sup>33</sup>. Nigeria made the highest monetary contribution to the budget for compensation to member states that lost revenue because of the ETLs. Out of a total of \$45,568,223 that accrued to Member States as compensation from 1990 to 1995, Nigeria contributed \$38,328,715<sup>34</sup>. In terms of compensation for loss of revenue due to trade liberalisation, Nigeria received the highest amount of money.<sup>35</sup> The implication of this is that Nigeria derives huge revenue accruing from export duties.

Freedom of movement is one the inalienable fundamental rights that could enhance sustainable development. Free movement of persons, right of residence and establishment are part of the initiatives evolved by the founding fathers of the ECOWAS to enhance integration of West Africa and strengthen national economies. The *Revised Treaty* emphasized the importance of this factor when it stipulated, "citizens of Member States shall be regarded as Community Citizens and accordingly Member States undertake to abolish all obstacles to their freedom of movement, residence and establishment."<sup>36</sup> Article 59 of the Revised Treaty dealing with immigration is even more explicit and more committed as it provides "citizens of the Community shall have the right of entry, residence and establishment and Member States undertake to recognize these rights of Community citizen in their territories in accordance with the provisions of the protocols relating thereto"<sup>37</sup>.

Before the formation of the ECOWAS in 1975, the freedom of movement, residence and establishment had no legal backing. The Heads of State and Government of the ECOWAS signed the Protocol<sup>38</sup> for these freedoms in Dakar (Senegal) on May 29, 1979. The Protocol provides that the right of entry, residence and establishment shall be established in the course of a transitional period and shall be accomplished in three phases, namely, Phase I :Right of Entry and Abolition of Visa; Phase II :Right of Residence; and Phase III : Right of Establishment. Reciprocal abolition of visa and entry permit by Member -State was introduced in 1980

during the first phase of implementation of the ETLS. Citizens can now go on short-term visit to Member States and stay there up to ninety (90) days without visa or entry permit. However, any “Citizen of the Community” who wishes to enter the territory of any Member States are required to possess a “valid travel document”<sup>39</sup> and an international health certificate should such a citizen desires to extend his stay for more than 90 days, he should obtain permission for extension of stay from the appropriate authorities of that Member State. However, Member States reserve the right to refuse admission into their territory and Community citizen who comes within the category of inadmissible immigrant under the ECOWAS laws<sup>40</sup>.

The Right of Residence being the second phase came into force in 1989. The Protocol enjoins each Member State to grant to citizens of the Community who are nationals of other Member States, the right of residence in its territory for the purpose of seeking and carrying out income earning employment. With the exception of restrictions that are justified by reasons of public order, public security and public health, the right of residence includes the:

- (i) Right to apply for jobs effectively offered;
- (ii) Right to travel for this purpose, freely in the territory of Member States;
- (iii) Right to reside in one of the Member States in order to take up employment in accordance with the legislative and administrative provision governing employment of national workers;
- (iv) Right to live in the territory of a Member State according to the conditions defined by the legislative and administrative provisions of the host Member State, after having held employment there<sup>41</sup>.

The Protocol makes provision for protection against collective and arbitrary expulsion. Migrant workers and members of their families may not be affected by collective or en masse expulsion orders issued by host Member States. Each case of expulsion must be considered and judged on individual basis. They may be expelled from host Member State for reasons of national security, public order or morality or if they refuse to comply with the orders given to them by the relevant authorities or if their residence or work- permits are invalid.

However, contrary to the spirit of integration, Nigeria expelled about three million “illegal aliens” who were mostly Community citizens, 1983-1985. Nigeria seemed to have justified her act on Article 14 of the Supplementary Protocol A/SP.1/7/ 86, which provides to the effect that “any form of expulsion may only be based on a well-founded legal or administrative decision taken in accordance with the law”<sup>42</sup>. Nigeria’s argument was that she expelled “aliens” for economic and security reasons. The expulsion took place when Nigeria was facing the problem of oil glut in the world market to the extent that she was contemplating leaving OPEC. It was also argued that the aliens were involved in criminal activities such as armed robbery, religious riots, and prostitution. The 1980 Kano riot in which over 4,177 civilians, 100 policemen, and some 35 army personnel were killed, was said to have been led by a Cameroonian name Mallam Muhammed Marwa (alias Maitasine). Similarly, neighbouring States of Niger, Chad, Cameroon, Mali and Burkina Faso (former Upper Volta) were cited as countries which provided 20% of the fanatics that participated in various riots in Nigeria<sup>43</sup>.

The Right of Establishment or Access to Enterprises is the third phase. Nigeria viewed the right of establishment of enterprises as a fundamental basis of not only the West African Integration but also of Nigerian economic development and nation building. She believed that access to enterprises by all Member States was a pre-requisite for the harmonious development of economic, social and cultural activities of the individual state in particular and the entire sub-region in general. The Protocol<sup>44</sup> defines the “right of establishment” as the right granted to a citizen who is a national of the Member State to settle or establish in another Member State other than his State of origin. Community citizens are also granted the rights to have access to both salaried and non-salaried economic activities, to carry out these activities as well as to set up and manage enterprises, and in particular companies. These rights are enjoyed under the same conditions as stipulated by the legislation of the host Member State for her own nationals. As part of the implementation of the right of establishment, the Protocol stipulates that companies which are formed in accordance with the laws and regulations of a Member State with headquarters, central seat of administration or principal establishment within the Community should be considered in the same category as individual nationals of Member States. Member States undertake to accord non-discriminatory treatment to nationals and companies of other Member States. Recognizing the importance of capital (both private and public) in the promotion of development cooperation, Member States accordingly undertake, jointly and severally to accord fair and equitable treatment to such capital to encourage and create conditions which favours investment of such capital in the Community<sup>45</sup>. The Protocol on right of establishment was therefore of utmost importance to Nigeria because its implementation was expected to break the economic and cultural barriers created amongst the West African Countries by instrumentalities of colonialism.

Monetary co-operation programme ( EMCP) has been another vital area of economic cooperation and sustainable development, which Nigeria is seriously tackling. Monetary co-operation involves harmonization of national monetary policies of the ECOWAS Member States. Nigeria is still seeing this as a necessary strategy to realize one of the main aims of the ECOWAS which include *inter alia* the integration of individual national markets for goods, capital and labour. The EMCP objectives were adopted in Abuja, Nigeria in 1987 by the

Authority of Heads of State and Government. The objectives are: to harmonize monetary system and common management institutions; to facilitate regional trade transaction by improving and strengthening the multilateral regional payments and clearing system of the West Africa Clearing House (WACH); to achieve regional currency convertibility; and to establish a single monetary zone in place of the ten (10) currency zone<sup>46</sup>. The use of common currency would create a single regional market over a wider geographical area of sixteen countries with over 210 million people and a combined GDP of \$105 million.

In spite of the apparent benefits of the Monetary Union, the Francophone countries seem not to be willing to participate in the scheme. For example, in 1997, the Central Banks of French ECOWAS (BCEAO) withdrew from the launch of the ECOWAS travellers cheques scheme which was one of the major steps toward introduction of single currency in the Community. In spite of the seeming drawbacks by the French speaking ECOWAS, Nigeria is determined in her pursuit for an integration of ECOWAS Monetary Union. In 1997 Nigeria proposed "Specific Investment Protection Agreements" for any ECOWAS Member States in order to boost cross border investments. By these agreements, the Nigerian currency, the Naira, would be formerly exchangeable for purpose of trans-border trade in goods and services within the ECOWAS sub-region. Nigeria injected a sum of \$7 million into the scheme. Although, Nigeria's strong membership in the West African Bankers Association (WABA) and West Africa Monetary Agency (WAMA) could enable her carry out trans-border transfers, she still needed to have healthy external reserves and establish cordial relationship with the French group's Central Bank, the BCEAO.

In 1999, Nigeria under President Olusegun Obasanjo made another proposal tagged "Fast Track" approach to accelerate the monetary cooperation process. Under the Fast Track arrangement, any group of Member States could jointly take concrete and pragmatic steps to accelerate the overall process of integration. The idea was bought by other Heads of State and Government and consequently a second monetary zone was established comprising Nigeria, Ghana, The Gambia, Guinea, Liberia and Sierra Leone<sup>47</sup>. These countries have constituted themselves into the West African Monetary Zone (WAMZ), a basic step towards the creation of a common market and fiscal policies. The eight Francophone ECOWAS, namely Cote D'Ivoire, Benin Republic, Senegal, Togo, Mali, Niger, Burkina Faso and Guinea Bissau have moved faster in the path of integration by the forming a monetary union known as *Union Economique et Monetaire Ouest African* (UEMOA) (West African Economic Monetary Union) since 2000. They have developed CFA Franc as their common currency.

Hopefully, the two main monetary blocs would be merged into ECOWAS Monetary Union in 2020 after the establishment of the West African Central Bank and the adoption of a common currency for the region. The establishment of the common central bank was scheduled for January 2010 but was shifted to June 2014. Also shifted was the December 2009 deadline for the launch of the ECOWAS common currency, the *ECO*, which is now billed for year 2015. Critics<sup>48</sup> doubted the possibility of the WAMZ members meeting the 2015 deadline as Nigeria was embarking on the expensive venture of changing her paper currency to polymer to make them more durable. This doubt was dismissed by ECOWAS authorities. The former ECOWAS Executive Secretary, Mohammed Ibn Chambers was quoted as saying

... Within the context of the fast-track initiatives, ECOWAS is implementing a macroeconomic policy convergence programme aimed at establishing a second West African Monetary Zone (WAMZ), which will issue *ECO* as a currency that will eventually merged with the CFA of the UEMOA zone to form a single monetary zone in West Africa...<sup>49</sup>

## 6: Benefits of the Economic Laws:

It has been asserted that the Protocol on the right of establishment is very much in line with Nigeria's aim of sponsoring and membership of the ECOWAS and that Nigeria has begun to realize the economic expectations of right of establishment.<sup>50</sup> Nigeria has invested directly in the production of raw materials, food and in secondary industries in other Member States of the Community. For instance, Nigeria has invested in the production of iron-ore in Liberia, Sierra Leone and Guinea to supplement her local need of iron-ore for her iron and steel industries<sup>36</sup>. It has been opined that one of the reasons Nigeria played a leading role in the sponsoring and formation of the ECOMOG to intervene in the Liberian crises in the 1990s was the need to protect Nigeria's strategic assets of iron-ore in Liberia, though this has been officially denied by Nigeria<sup>37</sup>.

Nigeria had since 1978 commenced supply of petroleum products to some Member States including Senegal, Cote D'Ivoire, Guinea, Benin, Togo and Ghana to help them meet their domestic energy requirements and to further expand Nigeria's oil market. Nigeria also exports Peugeot, Volkswagen, Leyland and Mercedes cars and trucks assembled in the country to Member States of the Community so as to alleviate their transportation problems and to stimulate the Nigerian enterprise. Besides, Nigeria has been exporting gas to Benin, Togo and Ghana through the West African Gas Pipeline Project (WAGPP)<sup>51</sup>, which came into fruition in 2000. The economic benefits derived by Nigeria from the ETLS were underscored by the former Nigeria Minister of Finance Chief Olu Falae who served in the Babangida's military regime, when he said:

we (Nigerians) in the sub-region now realize that our economic survival rests squarely in our own hands and is to be found in the (market) integration that the ECOWAS offers... trade liberalization scheme was launched in January (1990) and already Nigeria has a number of products listed as being qualified for export to other countries in the sub-region. We intend to hold meetings with the Manufacturers Association of Nigeria to get more of their members to take part in the scheme. The scheme provides for import duty which is lost by the importing country through the (ECOWAS) Secretariat. This will enable our products to move more freely within the sub-region at highly reduced duties, and it also ensures that importing country does not lose revenue as a result of intra-regional trade. So ,I see (this) as... creating a wider market for Nigerian goods<sup>52</sup>.

Indeed, the ETLs has created a wider market for Nigerian goods in the West African sub-region as envisaged by the Nigerian government. This fact can be brought to the fore by looking back at Nigeria's direction and volume of trade before the establishment of the ECOWAS in 1975 and prior to the introduction of the ETLs in 1990. For instance, in 1970, Nigeria obtained a total of 85.2% import supplies from developed countries and only 8.3% from developing countries and just 0.1% from Africa. In the same year, she exported a total of 89.6% of her goods to developed countries, 7.3%, 0.7% to developing countries, and 0.7% to other African countries<sup>53</sup>. Intra-African trade was extremely low before introduction of ETLs. Eight countries were sending less than 10% of their exports to other West African countries, the lowest of figure 0.4% recorded by Sierra Leone, 0.8% by Gambia, 0.7% by Nigeria and 1.2% by Ghana and Liberia. The total import value for intra-West African trade hardly exceeded \$10 million. Trade was essentially between neighbouring countries and consisted of re-exports. With exception of Nigeria, Senegal and Cote D'Ivoire, very few West African countries traded with more than five other West African countries: they tended to trade chiefly with their neighbours.

However, with the establishment of the ECOWAS in 1975 and the subsequent introduction of ETLs in 1990, pioneered by Nigeria, the hitherto negligible value of intra-West African trade is now history. There are increases in both the volume and value of imports and exports into and from the ECOWAS member states.<sup>54</sup> Nigeria's imports from other ECOWAS Member States increased from \$14 million in 1989 to \$44 million in 1993 and \$98 and \$120 million in 1996 and 1997, respectively. Within the corresponding period, Nigeria's exports increased from \$456 to \$592 million, \$618 million, and \$699 million respectively. Other ECOWAS member states have in the like manner witnessed remarkable increases in the volume of trade within the sub-region: Cote D'Ivoire's import from other West African countries increased from \$44 million in 1989 to \$550 million in 1993, and to \$597 in 1996, while her exports also increased from \$444 million to \$720 million and to \$817 million within the corresponding years<sup>55</sup>.

Also worthy of note is the fact that the principal items of trade have not only increased in quantity but also diversified in structure and content. As manufacturing plants were hard to come by prior to establishment of the ETLs, manufacturing activities were those involving chiefly vegetable and animal oils and fats, miscellaneous food processing, meat preparations, darning products and fish canning, etc. But with the coming into force of ETLs, trade goods now include principally manufactured products and mineral resources. The former Finance Minister, Olu Falae, in one of the policy statements considered the benefits thus:

First of all, we have the free movement of citizens around the sub-region. We in Nigeria have more than 50% of the population of ECOWAS, as you know Nigerians are very enterprising. Once we have free movement of people in the sub-region I imagine that many Nigerians will move into other countries to create opportunities for employment. They will establish businesses, go into farming, they will be operating in a wider terrain and I think that would be a very good thing. Not only will they create wealth for themselves in other countries but one would expect that in time they would start to repatriate their earning to the home country...(For)trade liberalization scheme,...Nigeria has a number of products listed as being qualified for export to other countries in the sub - region<sup>56</sup>.

However, the ECOWAS Market Integration Scheme is facing some challenges such as harassment and extortion of citizens by border officials, charging illegal customs duties on goods, bribery, flouting of citizens' socio-economic rights, and lack of common currency. In spite of these challenges, Nigeria's efforts at the ECOWAS Market Integration Scheme have since started to yield enviable economic dividends to Nigeria and Nigerians, and more are expected to come in the near future, if the anti- market integration barriers are removed.

## 7. Summary and Conclusions:

Two of Nigeria's economic oriented foreign policies towards West Africa were its desire to sponsor the establishment of the ECOWAS and introduction of ECOWAS Market Integration Scheme. The paper has shown that through Nigeria's efforts at economic integration of the West African sub-region some laudable legal frame



- work has been put in place. The law guarantees certain fundamental socio-economic rights of the ECOWAS citizens including Nigerians. Empowered by such economic rights, citizens of one Member-State can move to another Member-State to settle, take employment or establish any legitimate enterprise therein. Similarly, through trade liberalization scheme, manufacturers have been able to export their goods profitably to Member-States other than their countries of origin. The ECOWAS market integration scheme has created wider market for goods produced in Member-States. Intra- West African trade, which was extremely low, has now increased tremendously due to the introduction of the ECOWAS Trade Liberalization Scheme. The market integration scheme has created employment opportunities for ECOWAS citizens. Businessmen and women engaged in the export and import trade as well as other businesses in the Community happily repatriate their earnings to their home countries. All these are positive indices of legal and economic developments in the ECOWAS emanating from Nigeria's efforts.

<sup>1</sup> See Article 3 of *ECOWAS Revised Treaty* (Abuja: ECOWAS Executive Secretariat, 1991)

<sup>2</sup> Malcolm N. Shaw, *International Law*, p.1.

<sup>3</sup> The Soviet Academy of Sciences: Kozhevnikov (ed.), *International Law*, 1961, p. 7.

<sup>4</sup> *Ibid.*, p.11.

<sup>5</sup> See Article 38 of the statute International Court of Justice,

<sup>6</sup> *Jus cogens* means judicial reason. see J.L. Brierly, *The Law of Nations* (1963), p.66.

<sup>7</sup> International comity, i.e. rules of politeness, convenience and good manners. See L. Oppenheim, *International Law: A Treatise* (1979), pp.34-35.

<sup>8</sup> See World Commission on Environment and Development, *Our common future*. Oxford: Oxford University Press, 1987.

<sup>9</sup> Speech by Alhaji Sir Abubakar Tafawa Balewa, Prime Minister of Nigeria, October 1, 1960.

<sup>10</sup> *Ibid.*

<sup>11</sup> An Address by major-General Thomas U. Aguiyi-Irosi, Head of the Military Government to the Regional Conference of Heads of Diplomatic Missions in Africa (Lagos, June 9, 1966).

<sup>12</sup> Ini A. Udoka, "A Critical Appraisal of Nigeria's Role in the ECOWAS", *Ibom Journal of History and International Studies*, No.10, 2002, p.66.

<sup>13</sup> E. Edozien and E. Osagie (eds), *Economic Integration of West Africa* (Ibadan: Ibadan University Press, 1982), p.44.

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*, p.48.

<sup>16</sup> Ministry of Foreign Affairs, *The Performance and Achievements of the Ministry of External Affairs Under the Babangida Administration August 1985- December 1990* (Lagos: M.E.A. 1991), pp.84-85.

<sup>17</sup> ECOWAS: "Decision A/DEC.10/5/90: On the Setting up of a Committee for the Review of the ECOWAS Treaty" *Official Journal of the ECOWAS* (Vol. 17, June 1990), p.25.

<sup>18</sup> Article 62 (1)-(2)(a)-(c), Revised Treaty

<sup>19</sup> "Cultural Policy for Nigeria" cited in S. Bello and Y. Nasidi (eds.) *Culture, Economy and National Development* (Lagos: National Council for Arts and Culture, 1991) p.33.

<sup>20</sup> Edet Essien and Stanis Iyorza, "Global media and Cultural Domination: Strategies for a New World Information and Communication order (NWICO) for Africa" in *Journal of Globalisation and International Studies* (Vol. 4, No. 1&2 2009), p. 28.

<sup>21</sup> ECOWAS: Resolution A/7/95 "on Food Security" Done at Accra 29 July, 1995 *Official Journal of ECOWAS* (Vol. 29 July 1995), p.11.

<sup>22</sup> ECOWAS: Regulation C/REG.4/11/96 "Adopting the ECOWAS Cultural Development programme" *Official Journal of the ECOWAS* (Vol. 32, November 1996), p.12

<sup>23</sup> ECOWAS: *Revised Treaty*, p.5.

<sup>24</sup> ECOWAS: *ECOWAS Achievements, Challenges, and Future Prospects* (Abiya: ECOWAS Executive Secretariat, 1994), pp.50-1.

<sup>25</sup> *Ibid.*; p.51

<sup>26</sup> ECOWAS: *Contact* (vol.2 No.2 (September, 1990), p.6.

<sup>27</sup> *Ibid.* ECOWAS:

<sup>28</sup> ECOWAS: *Official Journal* Vol.38, December 2000: "Regulation C/Reg. 11/12/00 Establishing an Additional List of Enterprises and Products Approved to Benefit From the ECOWAS Trade Liberalisation Scheme".

<sup>29</sup> See ETLs Approved Products in the *Official Journal of the ECOWAS* Vol.38 (December 2000), pp.28-41.

<sup>30</sup> ECOWAS: Decision A/DEC. 6/6/92: Adoption and Implementation of a Single Trade Liberalisation Scheme For Products Originating From Member States of the Community.

- <sup>31</sup> ECOWAS: *ECOMICI NEWS*, No.3 March 2006 p.66.
- <sup>32</sup> For list of Some of the Nigerian Industrial Products and Enterprises Benefitting from the ECOWAS Trade Liberalisation Scheme, see J. R. Bassey, "Nigeria's Economic Diplomacy in West Africa: The Case of ECOWAS Trade Liberalisation Scheme, 1985 – 1999" in *African Journal of Economy and Society* Vol. 11 No. 1, 2010.
- <sup>33</sup> ECOWAS Decision C/D EC8/12/94: "Approving the 1995 Compensation Budget Estimates For Projected Loss of Customs Revenue By Member State As A Result of Liberalisation of Intra-Community Trade in Industrial Products" Lamo, 17<sup>th</sup> December, 1994. See also ECOWAS: Official Journal of ECOWAS (Vol.28 December 1994 )
- <sup>34</sup> ECOWAS: Official Journal of ECOWAS Vol.28 December 1994 C/DEC. 8/12.94: "Approving the 1995 Compensation Budget Estimates For Projected Loss of Customs Revenue By Member State As A Result of Liberalisation of Intra-Community Trade in Industrial Products"( Lome, 17<sup>th</sup> December, 1994), p.15.
- <sup>35</sup> *Official Journal of the ECOWAS* vol. 38 December 2000, p.54; vol.40 December 2001, p.62.
- <sup>36</sup> See Article 27 of the *ECOWAS Treaty*, 1975.
- <sup>37</sup> See Article 59 of the *Revised Treaty* 1993.
- <sup>38</sup> ECOWAS: *An ECOWAS Compendium on Free Movement, Right of Residence and Establishment (Abuja: ECOWAS Executive Secretariat, 1999)*, p.2.
- <sup>39</sup> A "valid travel document" means a passport or any other valid travel document establishing identity of the holder with his photograph issued by the Member State.
- <sup>40</sup> *An ECOWAS Compendium on Free Movement... Articles 3-4; Contact* (Vol. 2 No. 2 November 1990), pp.4-5.
- <sup>41</sup> Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment 1<sup>st</sup> July, 1986. See also *An ECOWAS Compendium...Article 3*, p.31.
- <sup>42</sup> See Article 14 of the Supplementary Protocol A/SP.1/7/ 86.
- <sup>43</sup> Oljide Aluko, "The Expulsion of Illegal Aliens From Nigeria: A Study in Nigeria's Decision-Making" Gabriel O. Olusanya and R. A. Akindele, *The Structure and Processes of Foreign Policy Making and Implementation in Nigeria 1960-1990* (Lagos: NIIA, 1990), pp.421-445.
- <sup>44</sup> Supplementary Protocol A/Sp.2/5/90 on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, Right of Residence and Establishment. Article 1. Banjul 30/5/1990.
- <sup>45</sup> *Ibid.* Articles 2-5.
- <sup>46</sup> ECOWAS: *ECOWAS Brief: The ECOWAS Monetary Cooperation Programme* (Lagos: ECOWAS Executive Secretariat, n.d.), p.2.
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- <sup>48</sup> Helen Eni, "Dismantling the ECOWAS Borders" *Tell Magazine* No.44 November 2, 2009), p. 26.
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- <sup>53</sup> E. C. Edozien and E. Osagie, "Intra-West African Trade in the Last Decade: Problems and Prospects", in Edozien and Osagie (e.ds) *Economic Integration of West Africa* (Ibadan: Ibadan University Press,1982) pp.99-103.
- <sup>54</sup> ECOWAS: *Handbook Of International Trade*, 1995, 1996, 1998.
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