

POLITICAL TURMOIL IN ECOWAS: WHEN POLITICS PREVAILS OVER LAW

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Abstract. Several military regimes have recently come to power within the Economic Community of West African States (ECOWAS). This article on the political crisis in ECOWAS examines the main causes of these developments in the region and the approaches of regional organizations to address them in the African context, taking into account the practices of the OAU and the African Union. In the first phase, ECOWAS imposed a series of sanctions against these states for violating their international legal obligations in the areas of democracy, human rights, the rule of law, and good governance. In addition, the community decided to use military force in the Republic of Niger in order to free M. Bazoum, and, in response to this threat, Mali, Burkina Faso, and Niger decided, on September 16, 2023, to create the Alliance of Sahel States (ASS) for self-defense to repel the aggression of the ECOWAS troops.

Furthermore, on January 28, 2024, the ASS countries announced their withdrawal from ECOWAS, and, in order to prevent a split in ECOWAS, on February 24, 2024, the community decided to lift the sanctions previously imposed on Niger, Mali, and Guinea on humanitarian grounds. This article examines in detail both the political and legal sides of the decisions taken by ECOWAS. Based on their analysis, the authors conclude that democracy remains an important tool for promoting stability in African multinational societies. According to the authors, attempts by the AU and ECOWAS to address political instability through normative means can be encouraged. However, ECOWAS' sanction policies against offending countries should be based on existing community norms, humanity, and real facts in order to avoid dividing the community.

Keywords: ECOWAS, Guinea, Mali, Niger, Burkina Faso, Alliance of Sahel States, sanctions, international treaties, democracy, military coups

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INTRODUCTION

From 2000 to 2023, several military coups took place in many African countries, including six West African countries, namely Mali (2020 and 2021)¹; Guinea (2021)²; Burkina Faso (January and September 2022)³; Niger (2023)⁴. These military coups took place in a specific context of international relations, and it should particularly be noted that military coups are not a new phenomenon in Africa. According to various sources, there have been more than 486 military coups worldwide between 1950 and 2023, of which 221 took place in Africa. Of these, 106 were successful, and judging by that, we can say that Africa is the leader in the world in terms of successful military coups and coup attempts⁵. In addition, these military coups are characterized by the speed at which they spread and their regional particularity, since six of them occurred within the Economic Community of West African States (ECOWAS) from 2020 to 2023.

Since the 1990s, African countries have been determined to put an end to this negative phenomenon that threatens the security, stability, development, and economic prosperity of the continent through the development and adoption of binding legal documents⁶. Such an approach was supposed to strengthen democratic institutions and put an end to unconstitutional changes of political power in Africa. These include the African Charter on Democracy, Elections and Governance, the African Charter on Values and Principles of Public Service and Administration, and the African Charter on the Values and Principles of Decentralization, Local Governance and Local Development. These legal documents provide for certain coercive measures (sanctions) in the event of their violation. This is exactly what the ECOWAS did in relation to the military coups in Mali, Guinea, Burkina Faso, and Niger.

It is important to note that the sanctions imposed by ECOWAS led not only to unexpected results but also to political turmoil between the mentioned countries and the

¹ See: Lorgerie P., Rémy J.-Ph. Coup d'Etat au Mali: le président, Ibrahim Boubacar Keïta, démissionne. *Le Monde*. 18.08.2020. https://www.lemonde.fr/afrique/article/2020/08/18/coup-d-etat-au-mali-le-president-ibrahim-boubacar-keita-et-son-premier-ministre-aux-mains-des-putschistes_6049272_3212.html (accessed: 16.05.2024); Bensimon C., Le Cam M., Vincent E. Comment le Mali a vécu un deuxième coup d'Etat en moins d'un an. *Le Monde*. 31.05.2021. https://www.lemonde.fr/afrique/article/2021/05/31/au-mali-la-semaine-ou-le-colonel-goita-s-est-couronne-president_6082131_3212.html (accessed: 16.05.2024)

² Robert A.-C. Coup d'État en Guinée. *Le Monde diplomatique*. 06.09.2021. <https://www.monde-diplomatique.fr/carnet/2021-09-06-Coup-d-Etat-en-Guinee> (accessed: 16.05.2024)

³ Au Burkina Faso, le lieutenant-colonel Damiba renversé par un nouveau coup d'Etat. *Le Monde*. 01.10.2022. https://www.lemonde.fr/afrique/article/2022/10/01/au-burkina-faso-le-lieutenant-colonel-damiba-renverse-par-un-nouveau-coup-d-etat_6143960_3212.html (accessed: 16.05.2024)

⁴ Niger: un coup d'État plus politique que militaire. *Le Point*. 22.11.2023. https://www.lepoint.fr/afrique/niger-un-coup-d-etat-plus-politique-que-militaire-22-11-2023-2544159_3826.php (accessed: 21.05.2024)

⁵ See: Gaudiaut T. Recrudescence des coups d'État en Afrique. *Statista*. 30.08.2023. <https://fr.statista.com/infographie/30518/nombre-de-coups-etats-en-afrique-depuis-1950/> (accessed: 15.06.2024); Geoffroy R., Breteau P. Depuis 1950, près de cinq cents coups d'Etat tentés ou réussis, surtout en Amérique du Sud et en Afrique. *Le Monde*. 11.09.2023. https://www.lemonde.fr/les-decodeurs/article/2023/09/11/depuis-1950-pres-de-cinq-cents-coups-d-etat-tentes-ou-reussis-surtout-en-amerique-latine-et-en-afrique_6188906_4355770.html (accessed: 16.05.2024)

⁶ See: African Charter on Democracy, Elections and Governance. *AU*. 30.01.2007. <https://au.int/sites/default/files/treaties/36384-treaty-african-charter-on-democracy-and-governance.pdf> (accessed: 15.06.2024); African Charter on Values and Principles of Public Service and Administration. *AU*. 31.01.2011. https://au.int/sites/default/files/treaties/36386-treaty-charter_on_the_principles_of_public_service_and_administration.pdf (accessed: 15.06.2024); African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development. *AU*. 27.06.2014. <https://au.int/en/treaties/african-charter-values-and-principles-decentralisation-local-governance-and-local> (accessed: 16.05.2024)

regional organization. This resulted in the formation of a new military bloc between Mali, Niger, and Burkina Faso, namely the Alliance of Sahel States (hereinafter referred to as the ASS), in their declaration of intention to withdraw from ECOWAS, in their plans to create their own currency, and in the discreditation of the ECOWAS institutions in the eyes of the citizens. In order to avoid a split between these countries and the community, the Conference of Heads of State and Government of ECOWAS has been compelled to reconsider its decision and lift the sanctions imposed on Mali, Niger, and Burkina Faso.

The purpose of this paper is to analyze the reasons for the increasing number of cases of unconstitutional changes of political power in West African countries, to analyze the measures taken to counter political coups, to evaluate the effectiveness of these measures and the consequences of the decision of the Conference of Heads of State and Government to lift sanctions against these countries without restoring the status quo.

REASONS FOR THE INCREASING NUMBER OF CASES OF UNCONSTITUTIONAL CHANGE OF POWER

Military coups in African countries, particularly in West Africa, are one of the main causes of bloodshed on the continent, and many questions have been raised about the reasons for the high number of military coups on the continent. In this regard, a number of scientific studies have been conducted [Mills 1998; Garcia-Rivero 2022; Agbese, Ogbondah 1988; Ikome 2007].

On the one hand, O. Agbese and K. Ogbonda identified nepotism, tribalism, and corruption as the key reasons for military coups in Africa. They provided an analysis of military coups that occurred in the Federal Republic of Nigeria [Agbese, Ogbondah 1988]. On the other hand, T. Barron and C. Garcia-Rivero viewed the army as a tool for strengthening dictatorial regimes on the continent [Barron 2013; Garcia-Rivero 2022]. The authors examined the role of the Congolese army during the Mobutu Sese Seko regime and the role of the army in consolidating his power.

The list of internal causes of military coups and armed conflicts in general in Africa can be extended endlessly. In addition to this, one can also consider external factors such as the intervention of external forces in the internal political affairs of African states, in particular, the intervention of former colonial powers for geopolitical purposes [Profant 2010; Adu, Mezyaev 2023; Amara, Degterev, Egamov 2022; Ancel 2018; Lachica 2021; Filippov 2023]. In their works, these authors examine in detail the destabilizing role of France in Rwanda, Mali, and other African countries, and particularly in West Africa. France not only considers this region to be its sphere of influence [Tardy 2020; Hugon 2005] but also continues to establish political regimes that suit its policy in the region [Mills 1998].

Thus, the main causes for the increasing number of military coups in Africa – and particularly in West Africa – are nepotism, corruption, tribalism, separatism, poor governance, lack of professionalism of the army, lack of a national army (in the case when it is based on ethnic grounds), and external intervention. For instance, the military coups in Mali, Burkina Faso, Niger, Guinea could be caused by corruption, the threat of terrorism, separatism, and improper governance [Filippov 2023; Adu, Mezyaev 2023].

MEASURES TO COUNTER UNCONSTITUTIONAL CHANGE OF GOVERNMENT: OAU, AU, ECOWAS

The measures to counter the unconstitutional changes of power include institutional and legal mechanisms, as well as a legal regulation frame. Regional integration organiza-

tions and institutions such as the African Union (AU) and ECOWAS are chosen as case studies because they remain important tools for countering coups d'état and strengthening democracy in Africa. Currently, in Africa, it can be stated that the AU and ECOWAS are actively fighting against the unconstitutional changes or unlawful retention of political power. It should be noted that all mechanisms for influencing an unconstitutional change of power at the continental level have a direct effect at the subregional level. That is why all decisions made within the AU have direct effect at the subregional level: these same states are members of the African Union.

Organization of African Unity (OAU)/African Union: The struggle against unconstitutional change of the political power and strengthening of democratic institutions was envisaged from the very early date of the creation of the OAU in 1963, when the Charter proclaimed the following provision as one of the basic principles of its work: "...unreserved condemnation, in all its forms, of political assassination as well as of subversive activities on the part of neighbouring States or any other States."⁷ Similar provisions were also enshrined in the new Constitutive Act of the AU adopted in 2000, which states that the organization's principles include "condemnation and rejection of unconstitutional changes of governments"⁸ and "respect for democratic principles, human rights, the rule of law and the good governance"⁹. In addition, the Article 23 of the Constitutive Act provides for the possibility of imposing sanctions on a state that does not comply with the regulations of the organization and does not respect its goals.

Currently, the AU has a sufficient regulatory framework in the field of countering military coups in Africa, and this also applies to the ECOWAS states. These normative acts can be divided into two groups: legal norms *sensu stricto* and soft law. Soft law rules consist of decisions¹⁰, declarations¹¹ and resolutions of the AU. The AU legal norms include the OAU Charter of 1963, the AU Constitutive Act of 2000, the African Charter on Democracy, Elections and Governance of 2007¹²; the African Charter on Values and Principles of Public Service and Administration of 2011¹³, The African Charter on the Values and Principles of Decentralization, Local Governance and Local Development 2014¹⁴, etc.

The preamble of the African Charter on Democracy, Elections and Governance states that democratic governance is a factor of security and stability in Africa as it helps to "...entrench in the Continent a political culture of change of power based on the holding of regular, free, fair and transparent elections conducted by competent, independent and

⁷ Organization of African Unity Charter, 1963. Article III (5). *AU*. 25.05.1963. https://au.int/sites/default/files/treaties/7759-file-oau_charter_1963.pdf (accessed: 26.02.2024)

⁸ Constitutive Act of the African Union, 2000. Article 4 (p). *AU*. https://au.int/sites/default/files/treaties/7758-treaty-0021_-_CONSTITUTIVE_ACT_OF_THE_AFRICAN_UNION_E.pdf (accessed: 26.02.2024)

⁹ *Ibid*, Article 4 (m)

¹⁰ Decision on Unconstitutional Changes of Government in Africa. CM/2166 (LXXII). *AU Peace and Security Department*. <https://www.peaceau.org/uploads/ahg-dec-150-xxxvi-e.pdf> (accessed: 26.02.2024)

¹¹ Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government. *AU*. 15.07.2000. https://au.int/sites/default/files/decisions/9545-2000_ahg_dec_143-159_xxxvi_e.pdf (accessed: 26.02.2024)

¹² African Charter on Democracy, Elections and Governance. *AU*. 30.01.2007. <https://au.int/en/treaties/african-charter-democracy-elections-and-governance> (accessed: 26.02.2024)

¹³ African Charter on Values and Principles of Public Service and Administration. *AU*. 31.01.2011. <https://au.int/en/treaties/african-charter-values-and-principles-public-service-and-administration> (accessed: 26.02.2024)

¹⁴ African Charter on the Values and Principles of Decentralisation, Local Governance and Local Development. *AU*. 27.06.2014. <https://au.int/en/treaties/african-charter-values-and-principles-decentralisation-local-governance-and-local> (accessed: 26.02.2024)

impartial national electoral bodies”. It also affirms that coups d'état are a serious cause of instability on the continent and AU country members are “...concerned about the unconstitutional changes of governments that are one of the essential causes of insecurity, instability and violent conflict in Africa.”¹⁵

In 1997, at the 33rd OAU summit, the African leaders strongly condemned the coup d'état that happened in Sierra Leone a few days before the summit and resulted in overthrowing the newly elected President Ahmad Tejan Kabbah. In this regard, in 1999, at the summit of the heads of state of the OAU, which took place in Algiers, declarations and decisions were adopted (AHG/Dec. 142 (XXXV) Decision), condemning the unconstitutional changes of power in Africa. The African leaders also issued an ultimatum to governments that came to power through unconstitutional means to restore constitutional order before the next OAU Summit. The statement was about the cases that properly took place in countries such as Sierra Leone, Liberia, Niger, Guinea-Bissau, Comoros [Nyinevi, Fosu 2023], etc. In 2000, at the next OAU summit, which took place in Lomé, for the first time, the Assembly of Heads of State and Governments adopted a declaration called the Declaration on the Framework for an OAU Response to the Unconstitutional Changes of Government¹⁶ (hereinafter referred to as the DFRUCG). This declaration is a key document of the OAU, as it will later be reflected in the form of a convention called the African Charter on Democracy, Elections and Governance of 2007 (hereinafter referred to as the ACDEG).

The DFRUCG consists of four main parts as noted [Nguendi Ikome 2007]:

1. a set of common values and principles for democratic governance;
2. a definition of what constitutes an unconstitutional change; and
3. measures and actions that the OAU would progressively take to respond to an Unconstitutional Change of Government; and
4. an implementation Mechanism.

According to the first part of the declaration, the set of common values and principles for democratic governance includes nine main points:

1. adoption of a democratic constitution: its preparation, content and method of revision should be in conformity with generally acceptable principles of democracy;
2. respect for the constitution and adherence to the provisions of the law and other legislative enactments adopted by Parliament;
3. separation of powers and independence of the judiciary;
4. promotion of political pluralism or any other form of participatory democracy and the role of the African civil society, including enhancing and ensuring gender balance in the political process;
5. the principle of democratic change and recognition of a role for the opposition;
6. organization of free and regular elections, in conformity with existing texts;
7. guarantee of freedom of expression and freedom of the press, including guaranteed access to the media for all political stake-holders;
8. constitutional recognition of fundamental rights and freedoms in conformity with the Universal Declaration of Human Rights of 1948 and the African Charter on Human and Peoples' Rights of 1981;
9. guarantee and promotion of human rights.

¹⁵ African Charter on Democracy, Elections and Governance. *AU*. 30.01.2007. <https://au.int/en/treaties/african-charter-democracy-elections-and-governance> (accessed: 26.02.2024)

¹⁶ Declaration on the Framework for an OAU Response to Unconstitutional Changes of Government. *AU*. 12.07.2000. https://au.int/sites/default/files/decisions/9545-2000_ahg_dec_143-159_xxxvi_e.pdf (accessed: 26.02.2024)

The second part of the DFRUCG defines an unconstitutional change of power as follows:

1. military coup d'état against a democratically elected Government;
2. intervention by mercenaries to replace a democratically elected Government;
3. replacement of democratically elected Governments by armed dissident groups and rebel movements;
4. the refusal by an incumbent government to relinquish power to the winning party after free, fair and regular elections.

It is important to note the absence of the condemnation of manipulation of constitutional norms as an unconstitutional form of retaining political power in this section. The latter has negative consequences in the fight against undemocratic rule since it later began to spread in Africa: in Côte d'Ivoire, Guinea, etc. Moreover, the concept of an unconstitutional change of power is broader since it includes a military coup.

The third part of the DFRUCG provides for the immediate and urgent public condemnation by the leadership of the OAU of any unconstitutional change of power of any kind. In this case, the Acting President of the Assembly of Heads of States and Governments and the Chairman of the African Commission were instructed to call for the rapid restoration of constitutional order. It is important to note that this condemnation must occur immediately after the incident that resulted in the unconstitutional change of government. The Chairman of the Commission also informs the putschists that their unconstitutional actions are incompatible with the goals and principles of the OAU and are therefore unacceptable.

The AU Acting President and the Chairman of the Commission are to take all the necessary measures to hold bilateral negotiations with the perpetrators of the military coup, as well as with regional economic organizations and international organizations, to resolve the issue. If the measures taken are insufficient to resolve the situation, the perpetrators are given six months to restore constitutional order. During this period, the offending country is prohibited from participating in the decision-making procedure in the OAU, with the exception of financial matters. The country is also prohibited from attending meetings of heads of state and government, as well as in meetings of the Council of Ministers, which is the highest organ of the OAU. At this time, the OAU continues to negotiate with the perpetrators in order to find a way to deal with the situation. After the six-month period, if the issue is not resolved, then individual sanctions should be introduced against the perpetrators. This may include limiting contacts with other governments, refusing travel visa, etc. At the same time, the OAU must establish broad contacts with other governments, regional and international organizations to implement these sanctions against violating states and illegal regimes.

The fourth part of the Declaration provides mechanisms for the implementation of the provisions of the DFRUCG. The mechanism includes primarily the main central bodies of the OAU: the Assembly of Heads of State and Government, the Council of Ministers, and the OAU Commission. Moreover, the DFRUCG also provides for the creation, under the responsibility of the main central authorities, of a Special Sub-Committee on Sanctions, consisting of five members, taking into account the main five regional economic organizations in Africa. The subcommittee monitors unconstitutional changes of power and imposes measures against such governments. This OAU Framework Declaration on Responding to Unconstitutional Changes of Government is now the AU's founding document on countering unconstitutional changes of government in Africa, including the African Charter on Democracy, Elections and Governance.

African Charter on Democracy, Elections and Governance (ACDEG): As noted above, the African Charter on Democracy, Elections and Governance gives legal authority to the Framework Declaration for Responding to Unconstitutional Changes of Government in the form of a general binding norm as a treaty. The ACDEG consists of 11 chapters and 53 articles, therefore, it provides for a larger volume of norms than the DFRUCG since it contains maximum information for the country parties. For the purposes of the document, the AU expresses its determination to condemn, reject, and deny any unconstitutional changes of power in Africa (Article 2(4)) and its commitment to democratic norms, good governance, and the rule of law. In this regard, the denial and condemnation of undemocratic forms of change of power remains one of the main principles of the AU (Article 3 (10)).

Accordingly, states set about to prosecute and bring to justice all persons who overthrow a legitimate and democratically elected government (Article 14(2)). The AU states agree to cooperate in this area (Article 14 (3)) and also accept not to provide asylum to such persons (Article 25 (8)). An important point in the ACDEG is that the AU Peace and Security Council (hereinafter referred to as the PSC) is vested with the powers to monitor and supervise unconstitutional changes in power (Article 25). In this regard, the said article states that if the Peace and Security Council observes an unconstitutional change of power in any country party to the treaty, it will apply the sanctions provided for by the regulations of the AU after diplomatic efforts have failed.

It should also be noted that the PSC is becoming a key mechanism of the AU in the field of ensuring security on the continent, including countering the unconstitutional change of power in Africa. The PSC was established in 2002 by an Additional Protocol¹⁷ to the Constitutive Act of the AU¹⁸ of 2000, after the adoption of the DFRUCG, which provided for a different mechanism to counter undemocratic changes in power, as described above. In 2003, a change was also made to the Constitutive Act of the AU, equating the statute of the PSC to the main bodies of the organization by the additional Protocol¹⁹ (Article 5). Thus, the PSC is one of the main bodies of the AU, along with the Assembly of Heads of State and Government, the Council of Ministers, etc. The PSC is responsible for preventing and resolving conflicts related to unconstitutional change of power (Articles 3 (g), 5 (g), 7 (g) of the Protocol on the establishment of the PSC).

Economic Community of West African States: ECOWAS plays an important role among regional integration organizations of African states in the fight against unconstitutional changes of power [Adu *et al* 2020]. It should be noted that ECOWAS is one of the first regional organizations to create its own armed forces – ECOMOG (the ECOWAS Ceasefire Monitoring Group), which is now the Standby Force of the organization. It was formed to monitor a ceasefire during the height of the civil war in Liberia [Pitts 1999]. ECOWAS, like the AU, has acquired a sufficient base of normative legal acts²⁰ against unconstitutional changes of government in West Africa.

¹⁷ Protocol Relating to the Establishment of the Peace and Security Council of the African Union. *AU*. 09.07.2002. <https://au.int/en/treaties/protocol-relating-establishment-peace-and-security-council-african-union> (accessed: 26.02.2024)

¹⁸ Constitutive Act of the African Union. *AU*. 11.07.2000. <https://au.int/en/treaties/constitutive-act-african-union> (accessed: 26.02.2024)

¹⁹ Protocol on the Amendments to the Constitutive Act of the African Union. *AU*. 11.07.2003. https://au.int/sites/default/files/treaties/35423-treaty-0025_-_PROTOCOL_ON_THE_AMENDMENTS_TO_THE_CONSTITUTIVE_ACT_OF_THE_AFRICAN_UNION_E.pdf (accessed: 28.02.2024)

²⁰ See: Protocol A/SP1/12/01 on Democracy and Good Governance Supplementary to the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security. *ECOWAS*, 2001. <https://www.eisa.org/pdf/ecowas2001protocol.pdf> (accessed: 28.02.2024); Protocol Relating to the

Thus, like the AU, ECOWAS has various mechanisms, such as Commissions, the ECOWAS Standby Force, the Court, etc., which are playing a key role in countering military coups in West Africa. For instance, after the coup d'état in Mali in 2020, Guinea in 2021, Burkina Faso in 2022, and Niger in 2023, the ECOWAS Authority of Heads of State and Government imposed unprecedented sanctions [Adu, Mezyayev 2023] against these countries with the purpose of forcing them to return to the status quo, as provided for in the ECOWAS Treaty (Article 77)²¹ and other legal norms of the organization.

However, it can be stated that these coercive measures did not achieve the expected results. On the contrary, on January 28, 2024, Burkina Faso, Mali, and Niger announced their withdrawal from the organization²². In 2023, after the military coup in the Republic of Niger, the ECOWAS Court of Justice ruled to release the democratically elected president and restore constitutional order in the country. The fact is that on July 26, 2023, a coup d'état took place in the Republic of Niger, as a result of which the current President Mohamed Bazoum, his wife, and son were detained and placed under house arrest under the supervision of the presidential guard. On September 28, M. Bazoum and members of his family referred to the ECOWAS Court of Justice with a request to find that their detention violates a number of basic fundamental human rights, and that his overthrow was unconstitutional and contrary to the country's international obligations. The ECOWAS Court, in its decision of December 15, 2023, granted the petitioner's request and called on the military leadership to immediately restore constitutional order and release President M. Bazoum and members of his family²³. In addition, along with the judicial procedure, there was also a political process on the part of the Heads of State and Government (ECOWAS Authority), which led to a deadlock, as a result of which a decision was made to lift the sanctions against Mali, Niger, and Guinea.

POLITICAL AND LEGAL ANALYSIS OF THE DECISION

The decision to lift the sanctions against Niger, Mali and Guinea can be assessed from both political (A) and legal (B) perspectives.

A. Political miscalculations of the decision: The decision of the Authority of Heads of State and Government of ECOWAS member countries on February 24, 2024 to lift sanctions against the Republics of Niger, Mali, and Guinea can be considered a shock and a political failure of the organization's sanction policies. From a political point of view, this step can be viewed as indecisiveness, even weakness, and lack of political independence on the part of the leadership of the ECOWAS member states. The desire to punish the perpetrator states at all costs, without taking an individual approach to each situation, only weakens and discredits the organization.

It can be said that the decision to lift sanctions against Niger, Mali, and Guinea is a personal defeat for the current President of the Federal Republic of Nigeria and Chairman

Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security. *ECOWAS*, 1999. <https://amaniafrica-et.org/wp-content/uploads/2021/04/Protocol-Relating-to-the-Mechanism-for-Conflict-Prevention-Management-Resolution-Peace-Keeping-and-Security-1999.pdf> (accessed: 28.02.2024)

²¹ ECOWAS Revised Treaty – 1993. *ECOWAS*. <https://www.ecowas.int/wp-content/uploads/2022/08/Revised-treaty-1.pdf> (accessed: 28.02.2024)

²² Wuilbercq E. Retrait de la Cedeao: quand le Mali, le Burkina Faso et le Niger font «sécession». *Jeune Afrique*. 02.02.2024. <https://www.jeuneafrique.com/1532994/politique/retrait-de-la-cedeao-quand-le-mali-le-burkina-faso-et-le-niger-font-secession/> (accessed: 28.02.2024)

²³ Bazoum M., Bazoum H. ben M., Bazoum S. contre l'Etat de Niger. ECW/CCJ/APP/57/23. *ECOWAS CCJ*. 15.12.2023. <http://courtecowas.org/wp-content/uploads/2023/12/JUDGMENT-BAZOU-M-V-NIGER-FRN.pdf> (accessed: 28.02.2024)

of ECOWAS, Bola Ahmed Tinubu, who in his speech of July 9, 2023 in Bissau (Guinea-Bissau) declared zero tolerance to military coups in the ECOWAS region. B. Tinubu said the following: "... We will not allow coups d'etat in Africa to occur one after another".

²⁴This statement is clearly a response to the growing number of military coups in the region, namely in countries such as Mali, Guinea, and Burkina Faso. It should be noted that at the time of his assumption of the office as Chairman of ECOWAS on July 9, 2023, the military coup in the Niger Republic had not yet occurred. It happened a few days later, on July 26, 2023, and the President of the Federal Republic of Nigeria, Bola Ahmed Tinubu, took it as a challenge to his chairmanship, especially after such a harsh statement. In this regard, at a special session of the Authority of Heads of State and Government convened on July 30, 2023²⁵ under his leadership, it was decided not only to strongly condemn this latest military coup in Niger, but also to issue an ultimatum demanding the restoration of constitutional order in the country within a week and threatening ECOWAS military intervention in order to release the detained democratically elected President M. Bazoum and restore the status quo.

In addition, in its Communiqué, the Authority of Heads of State and Government announced a number of sanctions against the leadership of the military government of Niger with immediate effect:

- 1) closure of Niger's air and land borders;
- 2) ban on commercial flights from Niger;
- 3) ban on financial transactions between ECOWAS countries and Niger;
- 4) freezing all ECOWAS services, including those most necessary in Niger;
- 5) freezing of Niger's financial assets at the ECOWAS Central Bank;
- 6) freezing of Niger's assets, including the assets of state-owned and state-owned companies, as well as the assets of commercial banks;
- 7) freezing all financial assistance to ECOWAS and banning financial transactions with all financial institutions in the region;
- 8) travel ban for representative members of the transitional government, their families, and all persons who collaborated with them;
- 9) call on to all ECOWAS institutions to strictly comply with the specified measures²⁶.

To implement the ultimatum of the Authority of the Heads of State and Government, the heads of the Military Staff Committee of the ECOWAS member states met from August 2 to 4, 2023 in Abuja (Nigeria) to prepare action plans for the intervention in Niger²⁷. On August 10, 2023, during an emergency meeting organized in response to the situation in the Republic of Niger, the Heads of State and Government resolutely reaffirmed their decision of July 30, 2024. In addition, they directed the Military Staff Committee to activate the ECOWAS Standby Force mechanisms for military intervention

²⁴ Le Nigérien Bola Tinubu prend la tête de la Cedeao. *Jeune Afrique*. 10.07.2023 <https://jeuneafrique.com/1461732/politique/le-nigerian-bola-tinubu-prend-la-tete-de-la-cedeao/> (accessed: 28.02.2024)

²⁵ Extraordinary Summit of the ECOWAS Authority of Heads of State and Government on the political situation in Niger. Final communiqué. *ECOWAS*. 30.07.2023. https://ecowas.int/wp-content/uploads/2023/07/Final-Communique_Extra-Summit-on-Niger.pdf (accessed: 02.03.2024)

²⁶ Extraordinary Summit of the ECOWAS Authority of Heads of State and Government on the political situation in Niger. Final Communiqué. *ECOWAS*. 30.07.2023. Point 10 (k). https://ecowas.int/wp-content/uploads/2023/07/Final-Communique_Extra-Summit-on-Niger.pdf (accessed: 02.03.2024)

²⁷ ECOWAS Committee of Chiefs of Defence Staff to hold Extraordinary meeting on the Political Situation in the Republic of Niger. *ECOWAS*. 01.08.2023. <https://www.ecowas.int/ecowas-committee-of-chiefs-of-defence-staff-to-hold-extraordinary-meeting-on-the-political-situation-in-the-republic-of-niger/> (accessed: 02.03.2024)

and restoration of constitutional order in Niger²⁸. In essence, the ECOWAS Standby Force, after the end of the ultimatum period, received *carte blanche* to send troops to Niger to restore democratic order in the country. This decision to intervene militarily marks a turning point in the history of the organization, as practice shows that ECOWAS response forces are usually used in cases of civil war, and not in military coups. Although there were cases when military coups became consequences of civil wars and vice versa, as happened in Liberia (1989–1997) and Sierra Leone (1998) [Pitts 1999].

Almost seven months after the ultimatum was issued, the military intervention had not been carried out, President M. Bazoum and his entourage remained under arrest by the military government, and constitutional order was not restored, despite all the threats. However, the Authority of the Heads of State and Government decided not only to lift all the sanctions imposed against Niger but also to cancel those measures that were previously introduced against Mali [Adu, Mezyayev 2023] and Guinea. This means, without exaggeration, that the decision to lift sanctions against Niger, Mali and Guinea can be regarded as a personal defeat for President B. Tinubu and the ECOWAS sanctions policy as a whole.

The second thing that should be noted is the indecisiveness and weakness of the heads of state and government of ECOWAS, since the sanctions imposed against Mali [Adu, Mezyayev 2023], Niger, Burkina Faso, and Guinea did not achieve the expected results. Military regimes are still operating in these countries and receive widespread support from their populations. For instance, an article published by the news magazine *Jeune Afrique* summarizes that a survey conducted by the German Friedrich Ebert Foundation²⁹ shows that more than 82% of the Mali population supports the policies of the country's transitional government, especially its link with the Russian Federation in the fight against terrorism in the country³⁰. This situation raises questions about the “good” and “bad” military coups, according to N. Ikome [Ikome 2007: 14–15].

In addition, the decision to punish these countries was not made independently, but was dictated from the outside, namely by France, and guided by its geopolitical goals and interests in the region [Chafer, Cumming, Velde 2020]. Naturally, such decisions do not take into account the interests of the citizens of ECOWAS countries and are doomed to failure. This can only increase tensions in the region and lead to a split in ECOWAS. Today, more than ever, ECOWAS is weakened by this political situation.

B. Legal assessment of the decision: In addition to the military threat against the Republic of Niger, the sanctions imposed against it are similar to those that were previously imposed on the Republic of Mali [Adu, Mezyayev 2023]. An analysis of the sanctions imposed on Niger, Mali, Guinea, and Burkina Faso shows that, to a large extent, they are not legal since they go beyond the legal framework for regulation of crises under the legal regulations of ECOWAS and the AU (abuse of rights/*ultra vires*). They are also not legitimate [Adu, Mezyayev 2023], since the majority of the ECOWAS population is opposed to them.

As explained above, the regulations of the AU and ECOWAS describe in sufficient detail the legitimate procedure for action, which is the suspension of the participation of the

²⁸ Second Extraordinary Summit of the ECOWAS Authority of Heads of State and Government on the Political Situation in Niger, Abuja. Final Communiqué. *ECOWAS*. 10.08.2023. https://www.ecowas.int/wp-content/uploads/2023/08/ENG_Final-Communique-1_230810_225639-1.pdf (accessed: 26.02.2024)

²⁹ Recognized as foreign agency in Russian Federation.

³⁰ Au Mali, un sondage souligne la confiance populaire envers Assimi Goïta et la Russie. *Jeune Afrique*. 04.05.2023. <https://jeuneafrique.com/1442035/politique/au-mali-un-sondage-souligne-la-confiance-populaire-envers-assimi-goita-et-la-russie/> (accessed: 26.02.2024)

perpetrators of a military coup in decision-making regarding the activities of the organization, as well as individual decisions against the leaders of such regimes. The application of these measures as specified in the regulations would make it possible to avoid the worsening of the humanitarian situation in these countries while putting pressure on the military regimes. However, as we can see, the heads of state and government of ECOWAS decided to act contrary to all the legal norms of the organization. In addition, the decision to intervene militarily in Niger was made without consultation or approval of the UN Security Council, which makes it illegal as it contradicts the UN Charter. Such a development can only aggravate the situation in the region and might lead to a split in the organization.

Based on their decision of September 16, 2023, the transitional governments of Mali, Burkina Faso, and Niger announced their withdrawal from ECOWAS. The aforementioned communiqué refers to their “exit from the ECOWAS without preconditions.” Such an approach, of course, raises questions from the viewpoint of the international law, since it contradicts the provisions of the ECOWAS Treaty of 1993³¹, as well as the provisions on the denunciation of international treaties. For this purpose, Article 91 of the ECOWAS Treaty states: “*Any Member State wishing to withdraw from the Community shall give to the Executive Secretary one year's notice in writing who shall inform Member States thereof. At the expiration of this period, if such notice is not withdrawn, such a State shall cease to be a member of the Community.*”

In addition, Article 54 of the 1969 Vienna Convention on the Law of Treaties³² states that the termination of a treaty or the withdrawal of a party may take place:

- a) *in conformity with the provisions of the treaty; or*
- b) *at any time by consent of all the parties after consultation with the other contracting States.*

This means that Mali, Burkina Faso, and Niger must invoke the withdrawal clause from the said ECOWAS Treaty or negotiate with all the members of the organization, as provided for in the Vienna Convention.

Thus, a declaration of withdrawal from ECOWAS cannot be made without first complying with the provisions of the ECOWAS Treaty and the Vienna Convention on the Law of Treaties of 1969. In this regard, Mali, Burkina Faso, and Niger cannot “withdraw from ECOWAS without preconditions” as they declare. This would be contrary to current international law, so it can be assumed that such a statement is politically motivated. This appears to have had good results, as the ECOWAS leadership also reversed all decisions against the said countries without preconditions.

The decision of Mali, Burkina Faso, and Niger to leave ECOWAS on September 16, 2023, is a political upheaval in the life of the organization. This, in our opinion, prompted the heads of state and government to reconsider the sanctions imposed against these countries.

CREATION OF AN ALLIANCE OF SAHEL STATES AND WITHDRAWAL FROM ECOWAS

Facing the challenges of instability, insecurity, the threat of terrorism, and economic recession, the Republic of Mali, Burkina Faso, and Niger decided to unite – primarily

³¹ Communauté économique des États de l'Afrique de l'Ouest (CEDEAO). *Traité révisé*, 1993. *ECOWAS*. <https://ecowas.int/wp-content/uploads/2022/06/REVISED-Treaty-Updated-fr.pdf> (accessed: 26.02.2024)

³² Vienna Convention on the Law of Treaties. *UN*. 23.05.1969. https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf (accessed: 04.03.2024)

because of the military threat of ECOWAS intervention in Niger but also because it was necessary to confront common economic challenges. It is obvious that if the military intervention took place and was successful, then similar measures could be applied to Mali, Burkina Faso, and Guinea, although this is not provided for in the ECOWAS regulations.

It should be noted that the Sahel region is facing an unprecedented security challenge. Even the sending of a huge contingent of a UN peacekeeping mission³³ [Amara 2021, 2023; Boqueria 2022] to the region, in particular to Mali, and the creation of the *G5 Sahel*³⁴ [Amara 2019] did not lead to the expected results. The situation in the Sahel region has further deteriorated due to the political confrontation between these three countries and ECOWAS, which was caused by the unprecedented sanctions of the organization under the pretext of the military coups.

The desire of these states to create an Alliance of Sahel States was reinforced by the ECOWAS ultimatum to use force in Niger to restore constitutional order. The deployment of ECOWAS forces in Niger could only worsen the security situation in the region, which was already fragile. On this basis and in order to avoid a crisis in the region, on September 16, 2023, at the initiative of Mali, Burkina Faso, and Niger, during a videoconference meeting between the heads of these states, a charter was adopted on the creation of the Alliance of Sahel States³⁵. This Charter is also known as the Liptako-Gourma Charter³⁶.

It should be recalled that in 1970, a Memorandum was signed between Mali, Burkina Faso, and Niger on the creation of the Organization for the Integrated Economic Development of the Liptako-Gourma region³⁷ with the aim of common economic development³⁸, as well as ensuring security. This memorandum underwent a number of changes in 2001 and in 2017³⁹. In this regard, it can be noted that cooperation between these countries in the Liptako-Gourma region is not a new phenomenon but a continuation of the historical connection between these countries. It is, therefore, no coincidence that the Charter on the establishment of the ASS in its preamble mentions the Organization for the Integrated Economic Development of the Liptako-Gourma region.

The ASS is essentially a new military alliance in West Africa and the world. Article 2 of the Charter states that *“the Charter has the purpose of creating collective security and providing mutual assistance among the members of the ASS.”* In addition, Article 6 states that *“any violation of the sovereignty and territorial integrity of one of the state party will be considered as an aggression against all member states of the Alliance. In this case, the other countries of the Alliance undertake measures to provide both individual and collective assistance, including the use of military force, to restore and guarantee security in the ASS region.”*

³³ MINUSMA Fact Sheet. UN. <https://peacekeeping.un.org/en/mission/minusma> (accessed: 21.05.2024)

³⁴ Le G5 Sahel. Secrétariat exécutif. <https://www.g5sahel.org/le-g5-sahel-2/> (accessed: 04.03.2024)

³⁵ Charte du Liptako-Gourma instituant l'Alliance des États du Sahel entre le Burkina Faso, la République du Mali, la République du Niger. 16.09.2023. <https://mjp.univ-perp.fr/constit/sahel2023.htm> (accessed: 04.03.2024)

³⁶ Liptako-Gourma is the common historic appellation of the region that includes the territory of all three states.

³⁷ Liptako-Gourma Authority (LGA). ECFR. <https://ecfr.eu/special/african-cooperation/liptako-gourma-authority/> (accessed: 04.03.2024)

³⁸ Gregoire E. Coup d'Etat au Niger. *Geopolitique*. 24.02.2010. <https://www.geopolitique.net/coup-detat-au-niger-par-emmanuel-gregoire-directeur-de-recherche-lird-2/> (accessed: 04.03.2024)

³⁹ Liptako-Gourma Authority (LGA). ECFR. <https://ecfr.eu/special/african-cooperation/liptako-gourma-authority/> (accessed: 04.03.2024)

Thus, Article 6 of the ASS can be equated with Article 5 of the North Atlantic Treaty⁴⁰ and Article 4 of the Collective Security Treaty Organization (CSTO) agreement⁴¹. It should be noted that, in addition to NATO, the CSTO, etc., another new military bloc has now appeared in the world. It is true that the ASS has not yet formed the entire structure necessary to coordinate its actions (Article 3 provides for its creation in the near future). But at the same time, the ASS countries are ready to provide any military assistance to each other. Thus, the decision to conduct an ECOWAS military intervention in Niger could lead to a large-scale war in the region as a whole. Accordingly, the ECOWAS leaders could only reconsider their decision on military intervention.

The main reasons for reconsidering this decision – and for lifting of the sanctions – were two: the creation of the ASS and the decision of its member countries to withdraw from ECOWAS. The humanitarian situation in the Liptako-Gourma region can also be added to these reasons, as noted in the Communiqué of the Authority of the Heads of State and Government of ECOWAS and in the personal address of the former President of the Federal Republic of Nigeria, Yakubu Gowon, dated February 3, 2024. Yakubu Gowon, the last one of the founding fathers of ECOWAS who is still alive, in his address to the Heads of State and Government, called for finding a political solution to the current situation in the ECOWAS member countries in connection with the increasing military coups and for the lifting of sanctions against these countries⁴².

CONCLUSION

Democracy remains an important form of governance for the multinational, multiethnic, multireligious, and politically pluralistic societies of West Africa and the continent as a whole. At least, it is the only system of government in which every individual, ethnic group, nationality can have their own voice and feel safe. Building such a society requires the commitment of everyone, particularly African leaders. Political problems must be resolved by political methods and political decisions, and legal issues by legal mechanisms, taking into account the individual circumstances in each case.

Thus, a number of ECOWAS decisions on the situations in Mali, Burkina Faso, Niger, and Guinea were an erroneous, unconstructive abuse of power – and also biased. For instance, in 2020, the President of Guinea amended the constitution to run for a new mandate and be elected for a third term with the acquiescence of the AU and ECOWAS. As a result, he was overthrown by the military junta in the name of restoring democracy in the country. A similar situation occurred in the neighbouring Republic of Côte d'Ivoire in 2020, when incumbent President Alassane Ouattara unexpectedly announced his candidacy for a third term. In the two situations described, no action was taken against them by the AU and ECOWAS, despite the clear violation of the constitutions of these countries and the legal acts of these organizations. Moreover, ECOWAS efforts to combat armed jihadists in the Liptako-Gourma region have been insufficient. It should be noted that the war against terrorism and separatism served as one of the main reasons for the military coups in the region, as the military authorities say, due to the fact that the

⁴⁰ Le Traité de l'Atlantique Nord (1949). *NATO*. 04.04.1949. https://www.nato.int/nato_static/assets/pdf/stock_publications/20120822_nato_treaty_fr_light_2009.pdf (accessed: 04.03.2024)

⁴¹ Collective Security Treaty of May 15, 1992. *CSTO*. 23.04.2012. (In Russ.). https://en.odkb-csto.org/documents/documents/dogovor_o_kollektivnoy_bezopasnosti/#loaded (accessed: 04.03.2024)

⁴² Open Letter to all Heads of State and Government of ECOWAS Member States. *Thisday*. 23.02.2024. <https://www.thisdaylive.com/index.php/2024/02/23/open-letter-to-all-heads-of-state-and-government-of-ecowas-member-states> (accessed: 04.03.2024)

previous authorities were unable to do anything to counter these disasters. And the additional ECOWAS forces – the Standby Force meant to be used to restore constitutional order – should be directed instead to the fight against terrorism and separatism in the region.

As we can see, in some cases, ECOWAS and the AU themselves create situations that raise a number of questions, so it is no coincidence that many observers believe that ECOWAS serves the interests of the former metropolises – the Western colonial powers. At present, unfortunately, we can state that ECOWAS, as never before, is greatly weakened, and the process of consolidating the organization is not an easy task and will not take place in the near future.

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ПОЛИТИЧЕСКИЕ ПОТЯСЕНИЯ В ЭКОВАС: ПРЕОБЛАДАНИЕ ПОЛИТИКИ НАД ПРАВОМ

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Аннотация. В последние годы в целом ряде стран Экономического сообщества государств Западной Африки (ЭКОВАС) к власти пришли военные режимы. Статья, посвященная политическому кризису ЭКОВАС, рассматривает основные причины этих событий в регионе и подходы данной региональной организации к их решению в африканском контексте с учетом практики ОАЕ и Афросоюза. На первом этапе ЭКОВАС ввел ряд санкций против этих государств за нарушение своих международно-правовых обязательств в области демократии, прав человека, верховенства закона и надлежащего управления. Кроме того, Сообщество решило применить военную силу в Республике Нигер для того, чтобы освободить М. Базума. В ответ на эту угрозу Мали, Буркина-Фасо и Нигер 16 сентября 2023 года решили создать Альянс государств Сахеля (АГС) для самообороны для отражения агрессии войск ЭКОВАС. Кроме того, 28 января 2024 года страны АГС объявили о выходе из ЭКОВАС. Чтобы предотвратить раскол в ЭКОВАС, 24 февраля 2024 года руководством Сообщества было принято решение снять с Нигера, Мали и Гвинеи ряд ранее наложенных на них санкций по гуманитарным соображениям.

В статье подробно рассматриваются как политическая, так и правовая сторона принятых ЭКОВАС решений. На основе проведенного анализа авторы приходят к выводу, что демократия остается важным инструментом укрепления стабильности в многонациональных обществах африканских стран. По мнению авторов, можно поощрять попытки АС и ЭКОВАС решить проблемы политической нестабильности нормативными средствами. Однако санкционная политика ЭКОВАС в отношении стран-нарушителей должна основываться на существующих нормах сообщества, гуманности и реальных фактах, чтобы избежать раскола в Сообществе.

Ключевые слова: ЭКОВАС, Гвинея, Мали, Нигер, Буркина-Фасо, Альянс государств Сахеля, санкция, международные договоры, демократия, военные перевороты

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