

The Conflict Between Ecowas and Mali: International Legal and Political Aspects¹

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Abstract

In recent decades, Mali has faced an unprecedented political and economic crisis due to coups, terrorist and separatist threats, and international sanctions. The role of the Economic Community of West African States (ECOWAS) as a subregional organization involved in the management of the Malian conflict is paramount. However, the influence of France in decision-making in the context of sanctions imposed on Mali by ECOWAS affected the authority of the West African organization. The role of France, as a former colonial power in this crisis, is indisputable in the context of its geopolitical engagement with its former colonies in Africa and particularly in West Africa.

This article analyzes the course of the crisis, the role of the actors involved (ECOWAS, Mali, and France), and the political and legal scopes of the crisis. On the basis of structural, qualitative, and quantitative methods of assessment and comparative analyses of the ECOWAS Authority’s decisions, their legal and political meanings, the political situation on the ground, the history of conflict management in neighbouring countries such as Côte d’Ivoire and other West African states by ECOWAS, the African Union (AU), and the United Nations (UN), and the role of France in the crisis, the authors conclude that the ECOWAS Authority has played an important role in restoring political order in Mali. However, the authors note the failure of the Authority to reach a political agreement. Moreover, the authors agree that the ECOWAS Authority has reacted ultra vires to the Malian crisis vis-a-vis the power that is conferred by the ECOWAS instruments. And, the Authority’s blunder was not without French interference.

Keywords: ECOWAS; Mali; sanctions; crisis management, military coup; transitional governments, ultra vires

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Introduction

Mali is affected by unprecedented separatist and terrorist attacks that have threatened its territorial integrity and national sovereignty. The events during the legislative general elections in April 2020 led to the general contestation and popular subversion of the results. The crisis

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caused the death of dozens of people and hundreds of people were injured. The contestation has opened the way to political crisis in the country. The situation provoked subversion within the national army and led to a military coup against President Ibrahima Boubakar Keita (IBK) on 18 August 2020. The coup was spearheaded by Colonel Assimi Goita. Consequently, President IBK, along with many other officials, was arrested. This development provoked the anger of the Authority of Heads of States of the Economic Community of West African States (ECOWAS) (Authority), which is the supreme body of the West African organization. A day later, on 19 August, during a virtual video conference for this purpose, the ECOWAS Authority imposed sanctions on the military junta as stipulated in the ECOWAS treaties. The Authority required the immediate release of President IBK and other officials, as well as a civilian transition and the instauration of the constitutional order within a schedule of 18 months that should lead to general elections.

On 9 January 2022, during the summit held in Accra, the Authority decided to impose sanctions against Mali due to the unwillingness of the military junta to conform with ECOWAS' schedule for general elections.

France, the former colonial power of Mali, has played an important role in the imposition of sanctions on Mali. As a result, the diplomatic relationship between them has seriously deteriorated and have declared each other's ambassadors to be *persona non grata*.

This article examines the chronological course of interaction between the ECOWAS Authority and the military junta that led to unprecedented sanctions, which seriously affected Mali, as well the role of France in this crisis. The authors also analyze the situation from political and legal points of view. The article uses legal, historical, deductive, and descriptive methods to analyze the special decisions of the Authority on the Malian crisis during the period 2020 to 2022 as well as the Malian government's attitude toward the Authority, including the analysis of declarations of different actors. The legal method involves the study of the decisions of the Authority that seem to be *ultra vires*. The historical aspect of the methodology is based on the examination of the evolution of the crisis in comparison to other identical situations in the region (the cases of Guinea and Côte d'Ivoire).

Historical Background of the Conflict in Mali

The Republic of Mali has been affected by several secessionist movements in the northern part of the country perpetrated by different ethnic groups, such as Touareg [Filippov, 2012] and other tribes, with the aim of creating Azawad state. As a result, different armed groups are operating in the northern part of the country. Meanwhile, terrorist groups such as Al-Qaeda in Maghreb (AQIM), Ansar Eddine, and the Movement for Unity and Jihadism in West Africa (MUJAO) are creating havoc for civilian and state infrastructures and threatening the existence of the Malian republic [Filippov, 2021]. However, the situation in the northern part of Mali became exacerbated after the fall of Muammar Gaddafi's administration in 2011 following the intervention by the North Atlantic Treaty Organization (NATO). The killing of Gaddafi triggered the proliferation of arms and munitions in the region by terrorist groups. Moreover, many Touareg who defected from the Libyan army have found refuge in North Mali, including terrorist groups. The Malian government, in an attempt to salvage the situation, called on France to join hands in eliminating the terrorist groups and the offensive of Touareg rebels against the capital territory, Bamako.

To this end, France, on 11 January 2013, launched Operation Serval, which stopped the movement of terrorist groups and separatists to Bamako. On 25 April, United Nations Security Council Resolution 2100 [UN, 2013] created the United Nations Multidimensional Integrated

Mission in Mali (MISMA). MISMA was composed of French and ECOWAS troops, including other African countries named after the African-led International Support Mission in Mali (AFISMA). Accordingly, on 1 July, MISMA was transformed into the United Nations Multi-dimensional Integrated Stabilization Mission in Mali (MINUSMA) with the aim of stabilizing the situation in the country.

From the moment of their deployment to Mali until 2020, French troops and MINUSMA were not able to defeat the terrorist groups or enforce the national reconciliation agreement between the separatists and the central government, despite several efforts and strategies employed by both parties. The situation became more complicated between the new transitional military government and France after the latter unilaterally decided to withdraw its military forces from northern Mali, where terrorist groups are active.

Massive contestations after the legislative general elections in April 2020 led to riots in the country. The crisis caused the death of dozens of people and hundreds of people were injured. Notably, these protests opened the way to a political crisis in the country. The situation provoked subversion within the national army and led to a military coup against President Ibrahim Boubacar Keita (IBK) on 18 August. The military coup was spearheaded by Colonel Assimi Goita. President IBK and many other officials were arrested and detained by the military junta. This development provoked the anger of the Authority, which is the supreme body of the West African organization to which Mali and other West African countries are parties. A day later, on 19 August, during a virtual video conference held in Niamey for this purpose, the ECOWAS Authority imposed sanctions on the military junta as stipulated in the ECOWAS treaties [ECOWAS, 2001]. The Authority required the immediate release of President IBK and other officials, as well as a civilian transition and the instauration of the constitutional order in the country within a schedule of eighteen months (from September 2020 to February 2022). On 9 January 2022, during the summit held in Accra (Ghana), the ECOWAS Authority decided to impose unprecedented sanctions on the Republic of Mali due to the unwillingness of the local authorities to conform with the electoral schedule of the ECOWAS Authority. The sanctions include the following:

- a) Recall for consultations by ECOWAS Member States of their Ambassadors accredited to Mali;
- b) Closure of land and air borders between ECOWAS countries and Mali;
- c) Suspension of all commercial and financial transactions between ECOWAS Member States and Mali, with the exception of food products, pharmaceutical products, medical supplies and equipment, including materials for the control of COVID-19, petroleum products and electricity;
- d) Freeze of assets of the Republic of Mali in ECOWAS Central Banks;
- e) Freeze of assets of the Malian State and the State Enterprises and Parastatals in Commercial Banks;
- f) Suspension of Mali from all financial assistance and transactions with all financial institutions, particularly, EBID and BOAD. [ECOWAS, 2022d].

It is important to highlight the capital role of France in the imposition of these sanctions. Before the ECOWAS Authority summit, French officials, including President Emmanuel Macron [Bendhaou, 2022], Minister of Foreign Affairs Jean-Yves Le Drian [Le Point, 2022], and Minister of Defence Florence Parly [Perelman, Alexandre, 2021] declared that France would use all measures together with the ECOWAS to counter the military junta in the crisis. The military junta ordered France to leave the country after the unilateral decision of President Macron to withdraw from northern Mali. One of the main causes of the crisis between Mali and France was the suspicion of the transitional power that French armed forces might collaborate with terrorist groups in Mali. It is important to note that French troops in Mali, on several oc-

casions, obstructed successes made by Malian forces against rebels and terrorists and even, in some cases, prevented Malian military aircraft from taking off [Bamako, 2022]. The Malian authority also accused French troops of training and empowering terrorist groups [IRIS, 2021]. The situation became exacerbated when Malian authorities decided to cooperate with other foreign military powers, particularly with the Russian Federation, to handle the security situation in the country. France, the former colonial power of Mali, considered the decision made by the Malian government to employ Russian military services inappropriate and unacceptable. Therefore, France used its influence on the ECOWAS Authority to counter the military government of Mali. As such, France became one of the main actors of the crisis that opposed ECOWAS and Mali.

International Legal and Political Meaning of the Crisis

To understand the legal and political meaning of the crisis between ECOWAS and Mali, it is important to analyze the chronological aspects of the interactions between both sides that have led to such a critical situation.

On 5 June 2020, a sociopolitical crisis resulted from the controversial constitutional court rulings on 30 contested seats in favour of the ruling party. Meanwhile, on 5 June, the Rally of Patriotic Forces Movement (M5-RFP), composed of different opposition forces, religious organizations, and civil society [Government of the Republic of Mali, 2021b], was established. On 20 June, due to the persistence and nature of the protests in Mali, UN Secretary-General Antonio Guterres, while expressing his concerns over the situation, called on the parties involved to calm down and embrace peace [UN, 2020]. On 10–12 July, a massive protest in Bamako against the results of the legislative elections led to the death of dozens of protesters and hundreds of injured. On 15–19 July, the ECOWAS Authority mandated its mediators, the former president of the Federal Republic of Nigeria, Goodluck Johnathan, and the president of the ECOWAS Commission, Jean Claude Kassi Brou, to restore dialogue in Mali among the political actors. During their mission, the mediators met with the Malian president IBK, his cabinet members, and other political actors involved in the crisis. The mediators called on the parties to dialog and expressed the willingness of ECOWAS to assist Mali [ECOWAS, 2020c].

During their meeting, the opposition expressed their views on the sociopolitical situation and made further propositions as follows:

1. Retirement of President IBK;
2. Dissolution of the Constitutional Court
3. Instauration of a transitional regime in Mali;
4. Instauration of an independent investigational commission to clarify causes of death of protesters during the protests on July 10, 11, and 12, 2020; and
5. Liberation of the oppositional leader Soumaila Cisse who was kidnapped during the legislative elections [ECOWAS, 2020c].

On 23 July, the High Panel of ECOWAS Heads of States and Government, which comprises the president of Niger, President Mahamadou Issoufou, as ECOWAS Authority chair, President Nana Addo Akufo of Ghana, President Alassane Outtara of Côte d'Ivoire, President Muhammadu Buhari of Nigeria, and President Macky Sall of Senegal, visited Bamako. During the visit, the panel had several meetings with the Malian president, IBK, and his cabinet members as well as the opposition and civil society actors. Due to the urgency required in resolving the situation, the panel decided to reach a resolution on attending to the most vital issues in their next meeting [ECOWAS, 2020b]. In relation to the objection raised by the opposition, the Authority reached the following propositions:

1. The Authority recommends the exclusion of the elected parliamentarians whose mandates are contested by political actors;
2. Concerning the Constitutional Court dissolution, the Authority recommends its amendment (recomposition);
3. Regarding the retirement of President IBK, the Authority pledged for a new opened Government for all actors: 50% of seats for the ruling party, 30% for opposition parties and 20% for civil society.
4. Concerning the independent investigational commission on clarifying the causes of death of protesters during contestations made on July 10, 11 and 12, 2020, the Authority asked for an immediate investigation to determine the causes and point out the responsibilities of parties and called on President IBK to take all necessary measures to assist the victims, including financial compensation and support [ECOWAS, 2020c].

The Authority urged the government of Mali to take all necessary measures to free the opposition leader, Soumaila Cisse. Moreover, the Authority requested that all parties implement all recommendations within 10 days or face sanctions from the ECOWAS Commission [ECOWAS, 2020b].

On 18 August, because of the deterioration of the sociopolitical situation, a military coup occurred in Mali, in which President IBK and other officials were arrested and detained. The ECOWAS Authority immediately, by its communiqué on this date, condemned the coup and requested the military junta to return to barracks. The ECOWAS Authority called on the political actors to maintain the terms stated in the dialogue to find an optimal solution to the problem. The Authority reiterated its opposition to the military coup and the unconstitutional change of power [ECOWAS, 2020d]. On 20 August, referring to its communiqué of 18 August, the Authority convened an extraordinary video conference to address the situation in Mali. During the conference, the Authority adopted several measures, including general and special sanctions on Mali and the members of the military government. The sanctions are detailed as follows:

- 1) suspension of Mali from all decision-making processes in ECOWAS;
- 2) closing of land and air borders of ECOWAS member states with Mali;
- 3) stop all financial and economic flows and transitions among ECOWAS Member states and Mali, except on basic essential products and calling for targeted sanctions against the military junta [ECOWAS, 2020e].

On 28 August, following on the 20 August meeting, the Authority reconvened for another extraordinary session to view the situation in Mali. In the earlier meeting, the Authority had agreed to dispatch a fact-finding mission to Mali led by an ECOWAS mediator from 22–24 of the same month. In the report to the Authority, the mediator noted that the decision made by the Malian president, IBK, to resign was uncalled for; however, welcomed his release by the military junta, called for a civilian transition with a president and prime minister, and for the quick establishment of a transitional government that should organize presidential and general legislative elections within 12 months. The Authority noted that after the execution of these requirements, the above sanctions could be gradually lifted [ECOWAS, 2020f].

On 7 September, during the 57th Extraordinary Session of ECOWAS in Niamey (Niger), the Authority expressed its concern over the unpleasant situation in Mali. However, it congratulated the transitional authority for its quest to find a lasting solution to the issue. The Authority urged the National Council for Public Salvation (CNSP) to implement the 28 August general decision on civilian transition [ECOWAS, 2021c].

On 8 September, an extraordinary session of the Authority was held regarding the situation in the Republic of Guinea, where a military coup had taken place against the president

of Guinea, Alpha Conde, on 5 September. In response, the Authority adopted the following measures against Guinea:

- a) to suspend Guinea from all ECOWAS governing bodies with immediate effect;
- b) to immediately dispatch a high-level ECOWAS mission to Guinea to assess the situation;
- c) The Authority was assigned to review the situation in light of the development in the Republic of Guinea and the Assessment mission report [ECOWAS, 2021c].

Nevertheless, it is ascertained that the sanctions adopted by the Authority are fair compared to the sanctions imposed on Mali. During the conference on Guinea, the sanctions imposed on Mali were reexamined. The Authority expressed its satisfaction with the lifting of restrictions imposed on the former President IBK and the former prime minister by the military junta [ECOWAS, 2020a].

On 21 September, Bah N'Daw was appointed as the president of the transitional power and Moctar Ouane as the prime minister. They were sworn into office on 25 September. From 23–25 September the special mediators on conflict resolution in Mali met with different authorities of the transition to assess the progress and the decisions reached on 20 and 28 August. During the mission, the mediator reiterated his concerns about the situation in the country and took note of evolution made on the ground. According to the mediator, sanctions should be lifted after the swearing-in of the civilian transitional president [ECOWAS, 2020g]. At the same time, the mediator welcomed the adoption of the transitional charter on 1 October [Government of the Republic of Mali, 2020].

On 11 October, pursuant to the mediation of the ECOWAS to deal with the unconstitutional order in Mali, the Authority chair, President of the Republic of Ghana Nana Addo D. Akufo-Addo and ECOWAS officials paid a visit to the transitional authority in Mali to express the support of ECOWAS to the political process in the country. During the visit, the mediators met with the president of the transition, Bah N'Daw, Vice President Assimi Goita and Prime Minister Moctar Ouane. During their meeting, the chair noted that the progress realized by the transitional authority by freeing the political prisoners, establishing the civilian transitional authority, and adopting the transitional charter was positive. The chair also noted the creation of the National Transitional Council, and he encouraged the process.

On 23 January, the Authority, during its extraordinary session, expressed concerns about the situation in Mali and further noted the establishment of the transitional bodies. However, the Authority condemned the arrest of people suspected of breaching national security. The Authority also called for a peaceful transition in Mali and urged the military junta to comply with the electoral calendar. The Authority further expressed its concern over the failure to dissolve the National Committee for the Salvation of the People (NCSP) [ECOWAS, 2021e]. On 25 May 2021, the arrest of the transitional authorities, President Bah N'Daw and Prime Minister Moctar Ouane, by the military junta for suspicion of withdrawing military staff from the new transitional government led to the resignation of the transitional government on the same day [Government of the Republic of Mali, 2021b]. On 30 May, an extraordinary summit of the Authority took place in Accra (Ghana) to evaluate the situation in Mali after the arrest of the civil transitional president, the prime minister, and other officials on 26 May by the military junta. The Authority urged the immediate release of the detainees, while condemning the action as contrary to the transitional charter of Mali and international engagements of Mali. Again, the Authority urged all parties to maintain the status quo and respect the electoral system [Abashidze et al., 2023] as had been suggested before Mali was suspended from ECOWAS [2021b].

On 7 June, the military coup leader, Colonel Assimi Goita, was officially appointed as the transitional president by the constitutional court, while Choguel Kokalla Maïga was nominated

as prime minister [Government of the Republic of Mali, 2021a]. From 8–9 June, as recommended by the ECOWAS Authority during the summit on 30 May, the mediator visited the country to examine the strategy used by the newly local government and how they had implemented the agreements reached in their previous summits. During the visit, the mediator met with different stakeholders and encouraged them to work together in restoring democracy in accordance with ECOWAS principles [ECOWAS, 2021d]. On 19 June, the mediator submitted a report to the Authority during the fifty-ninth extraordinary session held in Accra. The Authority took note of the appointment of the civilian prime minister, Choguel Kokalla Maïga, the formation of a new government, and the engagement to respect the electoral calendar in February 2022. Finally, the Authority advised the commission to create an electoral mechanism that would be free from electoral malpractice [ECOWAS, 2021d]. The Authority recommended that all parties respect the Algiers Agreement [Algiers Treaty, 2015].

From 5–7 September, the mediators visited Mali to ascertain the progress made in the preparation of the political transition and to affirm ECOWAS' engagement to support local authorities. The mediators also visited the president of the transition as well as the prime minister. The mediators expressed satisfaction over the release of former transitional president, Bah N'Daw, and his prime minister, Mr. Moctar Ouane. Furthermore, they expressed their concerns over the delay in providing concrete measures or a schedule for the purported election. Notwithstanding this, the mediators expressed their satisfaction with the transitional authority for accepting the decision made by the ECOWAS Authority [ECOWAS, 2021a]. On 8 September, after receiving the report of the mediators over their findings in Mali from 5–7 September, the Authority expressed satisfaction with the relative calm and stability prevailing in the country and particularly about the release of some detained political actors. Nevertheless, the Authority expressed its concerns over the lack of planning and preparation for the implementation of the presidential election schedule on 22 February 2022. In this light, the Authority urged the transitional authority to put every machinery in place to deliver a peaceful, free, and fair presidential election [ECOWAS, 2021e]. On 16 September, during the extraordinary session of the ECOWAS Authority held in Accra, the ECOWAS leaders considered two important cases concerning the sociopolitical situation in Guinea and Mali. In relation to Mali, the Authority expressed its concern over the slow pace of the electoral process and urged the transitional authority to submit a schedule for the forthcoming presidential elections. The ECOWAS Authority decided to impose targeted sanctions on individuals who tempered or obstructed the timetable set for the elections. The Authority also condemned the continued arrest and detention of political actors by the transitional power and called on the parties involved to respect international law and human rights. At the same time, the Authority expressed its concerns about the decision of Mali to hire a private security company (the Wagner Group) in the country, as that could deteriorate the security apparatus in the region [ECOWAS, 2022]. On 20 October, the National Commission for Refoundation in Mali (ANR) was officially created to tackle the problems of Mali during the transitional period [Government of the Republic of Mali, 2021b]. On 30 December, the ANR recommended a transitional period from six months to five years [Government of the Republic of Mali, 2021b].

On 9 January 2022, the Authority held an extraordinary session on Mali in response to the proposition of the transitional power to schedule a presidential election in December 2025, as presented in the report of the ANR during its meetings held on 30 December 2021. The Authority considered the new electoral schedule to be unacceptable. The Authority thus maintained the sanctions imposed on the transitional power members. Additionally, the Authority decided to impose other economic and financial sanctions with immediate effects on Mali, which included the following:

- a) Recall for consultations by ECOWAS Member States of their Ambassadors accredited to Mali;
- b) Closure of land and air borders between ECOWAS countries and Mali;
- c) Suspension of all commercial and financial transactions between ECOWAS Member States and Mali, with the exception of food products, pharmaceutical products, medical supplies and equipment, including materials for the control of COVID-19, petroleum products and electricity;
- d) Freeze of assets of the Republic of Mali in ECOWAS Central Banks;
- e) Freeze of assets of the Malian State and the State Enterprises and Parastatals in Commercial Banks;
- f) Suspension of Mali from all financial assistance and transactions with all financial institutions, particularly, EBID and BOAD [2022d].

International Legal Aspects of the Crisis Between ECOWAS and Mali

The legal issue of the crisis consists in the nature of various sanctions imposed on Mali by the ECOWAS Authority in light of the conflict that opposed both sides after the military coup in 2020, as demonstrated above. On 9 January 2022, after the imposition of unprecedented sanctions on Mali by the ECOWAS Authority, we note the indignation of many African people all over the world in support of the military regime. This was expressed in different meetings held in different African and European capitals. In this light, some logical questions are raised as follows:

1. Was the ECOWAS Authority invested with the power to impose sanctions?
2. What kind of sanctions could be imposed on country members for violation according to ECOWAS treaties?
3. Did the Authority act *ultra vires* by imposing such sanctions against Mali?

The Power Invested in the Authority to Impose Sanctions on Mali

The Authority is the highest organ of ECOWAS according to the treaty [ECOWAS, 1993] establishing the subregional organization. As such: “The Authority shall be responsible for the general direction and control of the Community and shall take all measures to ensure its progressive development and the realization of its objectives.”

In Article 7 (2), the ECOWAS treaty grants a superior power to the Authority to act as a supreme organ if the majority of the members decides so: “Unless otherwise provided in this Treaty or in a Protocol, decisions of the Authority shall be adopted, depending on the subject matter under consideration by unanimity consensus or by a two-thirds majority of the Member States.”

Article 77 of the treaty also declares: “Where a Member State fails to fulfil its obligations to the Community, the Authority may decide to impose sanctions on that Member State.”

Pursuant to Article 45 (2) of the Protocol on Democracy and Good Governance: “The sanctions shall be decided by the Authority...” if a state does not comply with the provisions of the protocol. In other words, as an answer to the first question, the Authority as the supreme body of the ECOWAS has invested power to impose sanctions on Mali if it ascertains that the country did not conform to its international obligations as stipulated by the ECOWAS instruments.

Nature of Sanctions Imposed by ECOWAS

Mali ratified the ECOWAS Revised Treaty of 1993 [ECOWAS, 1993]. The Revised Treaty, by its provision of Article 77, specifies that in the case of nonfulfilment of the treaty, the Authority may impose sanctions. These sanctions may include the following:

- a) suspension of new Community loans or assistance;
- b) suspension of disbursement on on-going Community projects or assistance programmes;
- c) exclusion from presenting candidates for statutory and professional posts;
- d) suspension of voting rights; and
- e) suspension from participating in the activities of the Community [ECOWAS, 1993].

Mali is also party to the ECOWAS Protocol on Democracy and Good Governance of December 2001 [ECOWAS, 2001], as mentioned before. The protocol provides guarantees for human rights, rule of law, and democracy that are obligatory to member countries. The protocol condemns any unconstitutional change of power and imposes sanctions on the country violators of such norms. In this context, Article 45 of Chapter II of the protocol stipulates that:

- 1). In the event that democracy is abruptly brought to an end by any means or where there is a massive violation of human rights in a member state, ECOWAS may impose sanctions on the state concerned.
- 2). The sanctions that shall be decided by the Authority may take the following forms, in increasing order of severity:
 - a) Refusal to support the candidates presented by the member state concerned for elective posts in international organizations;
 - b) Refusal to organize ECOWAS meetings in the Member State concerned;
 - c) Suspension of the member state concerned from all ECOWAS decision-making bodies [ECOWAS, 2001].

The above-listed protocol justified the ECOWAS Authority decision for imposing sanctions on Mali.

Indeed, the above treaty and protocol specified the main sanctions that could be imposed by the Authority in accordance with the ECOWAS treaties. The imposition of any other restrictions that are not provided by the ECOWAS instrument could be considered an over-power and could be challenged by Mali in the ECOWAS tribunal.

ECOWAS Authority Acted Ultra Vires

In light of the previewed paragraph, the ECOWAS treaties do not contain the following sanctions as decided by the Authority:

- a) Recall for consultations by ECOWAS Member States of their Ambassadors accredited to Mali [2022d]. No provision of ECOWAS instruments provides such a kind of sanction. However, “recall for consultations of ambassadors of the ECOWAS member states” is the prerogative of each state as practiced in international relations. In other words, that constituted a political decision.
- b) Closure of land and air borders between ECOWAS countries and Mali. No provision of the ECOWAS instrument confers to the Authority the right to adopt such sanctions. However, we can remark that such sanctions are used regularly by the UN and the AU, which usually act as global and regional organizations with competences [Asaala, Tladi, 2022]. For instance, during the civil wars [Lazutin, Likhachev, 2020] in Côte d’Ivoire, Gambia, Guinea-Bissau, Liberia, and Sierra-Leone, these countries ex-

perienced sanctions imposed by the UN and AU together with the ECOWAS. Moreover, in the case of Mali, the Authority substitutes itself for the UN or AU, which have invested such power [Tolstykh, 2021].

c) Suspension of all commercial and financial transactions between ECOWAS Member States and Mali, with the exception of food products, pharmaceutical products, medical supplies and equipment, including materials for the control of COVID-19, petroleum products and electricity [2022d].

The treaty in its provisions refers to loans and financial assistance but not the prohibition of commercial transactions. Notwithstanding, this sanction contradicted the ECOWAS treaty provisions.

d) Freeze of assets of the Republic of Mali in ECOWAS Central Banks [2022d].

The assets of Mali in ECOWAS central banks are not constituted loans and assistance. However, they are Malian properties. In this case, they cannot be frozen, as the ECOWAS instruments do not provide so.

e) Freeze of assets of the Malian State and the State Enterprises and Parastatals in Commercial Banks [2022d]. See paragraph (e) above.

f) Suspension of Mali from all financial assistance and transactions with all financial institutions, particularly EBID and BOAD [2022d].

The ECOWAS treaties stipulate suspension of the country violator from all assistance and loans within ECOWAS financial institutions but not all financial institutions. Worldwide, there are many financial institutions independent from ECOWAS. In this case, this sanction does not conform to the ECOWAS treaties.

Thus, there are many sanctions imposed on Mali that do not conform to the ECOWAS treaties. It was ascertained that the Authority acted *ultra vires* [Abashidze et al., 2022]. Moreover, these sanctions did not get confirmation (adoption) by the UN Security Council [Adu, 2016] as provided by Article 53 of the UN Charter: "...No enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council...".

In these cases of litigation between Mali and the Authority, some propositions could be made.

1. Mali should refer to the ECOWAS Court of Justice or any other international arbitrator to contest the irregularity of the sanctions imposed on it and ask for reparation. This is always possible for damages caused to Mali, even after the Authority lifted the sanctions [ECOWAS, 2022];
2. Mali has the right to withdraw from the ECOWAS treaties. However, that solution should be avoided taking into account the interdependence of the ECOWAS mechanisms and states in the economic sphere. Thus, this option could be more destructive for the Malian economy.

Political Aspects of the Relations Between ECOWAS and Mali

Analysis of the political aspect of the crisis allows us to understand how the Authority could deal with the case without any excess in the conflict that opposes it to Mali. The imposition of sanctions should be applied after politics (diplomacy) has failed. To understand the source of the conflict, it is important to analyze the grievances between the Authority and Mali and the response of Mali to accusations made against it. The Authority requires the Malian transitional power to put an end to the unconstitutional order in the country by organizing presidential elec-

tions and the transfer of power to civilians. That absolutely conforms to the ECOWAS treaties and other international obligations of Mali.

Thus, the Authority imposed a strict schedule of 12 months to Malian transitional power to organize the presidential elections.

Meanwhile, the local authorities estimated that due to the crisis in the country, it would be impossible to organize a free and fair presidential election within a short time as stipulated. For emphasis, they estimated that more than 80% of Malian territory is out of the control of the Malian government because of terrorism and separatist attacks. Apparently, it would be completely impossible to organize a fair presidential election that could cover the whole country and satisfy all parties and bring peace to the country. As such, the Malian transitional power recommended creating a conducive atmosphere for peaceful elections with a delay from six months to five years [Bamako, 2022].

From this point of view, the approach of Malian authorities is more pertinent as the previous presidential election in Mali, which was organized in 2013 under the same conditions of terroristic attacks and separatist hostilities, did not bring peace to the country. Moreover, the presidential elections of 2018 also did not bring peace due to the lack of security in the country.

Moreover, the same ECOWAS decision caused considerable damage and catastrophe after the presidential elections in the Republic of Côte d'Ivoire because of the Ouagadougou Agreement [Ougadougou Agreement, 2007] under the auspices of the AU and UN. The agreement called for the organization of presidential elections while the country was divided into two parties between belligerents: the North under the control of pro-President Alassane Ouattara rebel groups and the South under the regular national forces of President Laurent Gbagbo. President Laurent Gbagbo contested this situation, arguing that it is completely impossible to organize presidential elections in these conditions and urged the ECOWAS Authority to disarm the rebels and reunify the country before any election. However, under the injunction and pressure of international organizations and particularly the ECOWAS, President Laurent Gbagbo abdicated. After the second round of the presidential elections that had opposed him to Alassane Ouattara, President Laurent Gbagbo contested the result of the North, under the control of pro-Alassane Ouattara rebels. He claimed that the number of voters in the northern part was more than the number of people registered on the electoral list. Unfortunately, he could not prove it, as the North was still controlled by the rebels. Moreover, the international community, and particularly the UN, were opposed to such an approach, despite the fact that there have been such international practices. For this reason, President Laurent Gbagbo refused to recognize the results of the election and insisted that the electoral commission recount the votes. This situation led to what is known as the post electoral crisis [Bukuru, 2021] in Côte d'Ivoire, which led to the death of thousands of people: officially, more than 3,000 Ivoirians were killed in the crisis.

Taking into account all these cases, could Mali truly organize presidential elections when more than 80% of the country was not controlled by the government and national forces? The answer to this question is clearly not. In this case, it is imperative and in the interest of ECOWAS to solve the Malian problem by taking into account the domestic factors (Malian opinion) in order to achieve a sustainable solution and peace.

The Role of France in the Political Crisis Between ECOWAS and Mali

France has played an important role in the crisis that opposed ECOWAS and Mali. France has been invited by the Malian government as mentioned before to tackle the problem of terrorism and separatism that has jeopardized the national security of the country, and France always

protects its geopolitical interest in the region [Lachica, 2021; Magadeev, 2022]. However, several years later, more than 80% of Malian territory remains out of control of national authorities. This situation calls for urgent interrogation of France's counterterrorist approaches not only in Mali but in other West African countries as well.

Today, it is clear that Malian authorities do not want the French army in their territory. At least this is the opinion of the majority of Malian and African peoples because of France's geopolitical approach to Africa as a whole. However, the transitional power, for several reasons, does not want to worsen the situation on the ground. As noted at the beginning of this article, the grievances between Mali and France related to the ambivalent role of France [Magadeev, 2022] in the management of the conflict (that is, the suspicion that France was collaborating with terrorist groups in Mali and training them, obstructing Malian forces from fighting against rebels and terrorist groups, and sometimes impeding Malian military aircraft from taking off). This reminds us of the ambivalent role of France in the Rwandan [Mezyaev, 2005] crisis [Ancel, 2018; Lachica, 2021] and the crisis in Côte d'Ivoire. The situation became exacerbated when Malian authorities decided to cooperate with other military powers and particularly with Russia to handle the situation. France considered the Malian option for employing the military services of the Russian private military company, Wagner Group, unacceptable [Magadeev, 2022]. France is trying to contend with the situation by involving the UN, the EU, the AU and particularly ECOWAS in the conflict that opposed it against Mali. Under the pressure of France, the EU adopted a series of sanctions against Mali and the Wagner Group [EU, 2021]. Sanctions against Mali by the ECOWAS Authority were also dictated and adopted under the pressure of France, as the French minister of defence, Florence Parly, announced them even before the meeting of the ECOWAS Authority decided to do so [Perelman, Alexandre, 2021]. France also uses its status, including its position as a penholder on the draft resolution on Mali in the UN Security Council, to conduct its geopolitical agenda in Mali [Bokeriya, 2022; Strakes, 2016]. As confirmed by the current Malian prime minister, Choguel Kokalla Maiga, Mali did not participate in the elaboration of the Security Council resolutions on Mali. France has substituted itself with the Malian government using its position as a UN Security Council member [Bamako, 2022]. Today, the relationship between Mali and France is degraded as it has never been. The ambassadors from each country have been declared *persona non grata*, and France definitively retired its military forces from Mali to neighbouring Niger.

It seems that this is only the beginning of what will be a long conflict, because France mainly depends on the resources of its colonial possessions. France is not ready to abdicate, as the example of Mali can serve as a bad signal for other former colonies. This situation reminds us of the case between France and Guinea in 1958 after Sekou Toure denied General de Gaulle's proposition of *la Communauté française d'Afrique* [Migani, 2012].

Conclusion

The ECOWAS Authority has invested all power conferred by the ECOWAS treaties to restore the constitutional order in Mali and West Africa as a whole [Abashidze et al., 2017]. More instruments of the AU also embody such guarantees.

However, the decision to impose sanctions on Mali for violating its international obligations must be made only in conformity with the existing ECOWAS treaties and in the interest of the Malian people [Abashidze et al., 2021] without any external influence. Therefore, the decision of the Authority to lift sanctions imposed on Mali seven months later is a salvation for the interest of the Malian people.

The causes of the current crisis in Mali are not only terrorism and separatism, but also the neocolonial policy of France in Africa [Glaser, 2016]. France is using all means, including international organizations and particularly ECOWAS, as an instrument to consolidate its position in the region [Filippov, 2013].

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