Restoring Peace by Regional Action:

International Legal Aspects of the Liberian Conflict

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I. Introduction

Secretary-General Boutros-Ghali has frequently suggested that the United Nations cooperate more closely with regional organisations[2]. For the U.N. to delegate tasks to such organisations would have two advan-

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Abbreviations: AdG = Archiv der Gegenwart; AFDI = Annuaire Français de Droit International; AJIL = American Journal of International Law; BYIL = British Year Book of International Law; CSM = Christian Science Monitor; DFASP = Defence & Foreign Affairs Strategic Policy; EA = Europa-Archiv; ECOWAS = Economic Community of West African States; EEC = European Economic Community; EPIL Inst. = R. Bernhardt (ed.), Encyclopedia of Public International Law, Instalment; ICLQ = International and Comparative Law Quarterly; ILM = International Legal Materials; JA = Jeune Afrique; L.A. Times = Los Angeles Times; NATO = North Atlantic Treaty Organisation; NILR = Netherlands International Law Review; NJIA = Nigerian Journal of International Affairs; NYT = New York Times; OAU = Organisation for African Unity; RGDIP = Revue Générale de Droit International Public; RTAF = Recueil des Traités et Accords de la France; SG = Secretary-General; SG/SM = United Nations Press Releases, Secretary-General – Statements and Messages; UN doc. = United Nations Document; USN & WR = US News and World Report; UNTS = United Nations Treaty Series; WA = West Africa; WP = Washington Post; WT = Washington Times.

[2] An Agenda for Peace, UN doc. A/47/277-S/24111 of 17 June 1992, 18; Press Releases SG/SM/1411 of 17 Feb. 1993, 1-5, and SG/SM/4920 of 2 Feb. 1993, 4.

tages: It would ease the overwhelming work-load of the world organisation, and it would help to "democratize" global collective security[3]. If the Secretary-General is correct, either in his assessment of the limited capacity of the United Nations or in his concern for its legitimacy, one particular regional effort at restoring peace may acquire importance as a precedent: the armed intervention in Liberia by troops from member states of the Economic Community of West African States (ECOWAS). So far, this case has been all but neglected. It merits attention, however, as one of the first instances in which an armed intervention by a regional organisation has been undertaken without the participation of a permanent member of the Security Council[4].

After giving a factual account of the Liberian conflict (II.), I first analyse the ECOWAS rules governing the establishment of the intervention force (III.). Since the Security Council did not authorize the action, I then discuss whether a right for ECOWAS states to enter and fight in Liberia existed under general international law (IV.). Sub-issues of this problem are the appointment of an interim government for Liberia (V.), the continued presence of ECOWAS forces in Liberia after more than two years (VI.) and the decision taken by the ECOWAS states in October 1992 to impose sanctions against a party to the conflict (VII.). Finally, I trace and evaluate the reaction of the United Nations to the Liberian crisis, in particular the legal effect of certain statements by the President of the Security Council by which the members of the Council have "commended" the ECOWAS efforts (VIII.). I conclude that the Liberian experience, although it is not satisfactory in every respect, nevertheless provides a useful precedent for future regional action (IX.).

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[3] An Agenda for Peace, UN doc. A/47/277-S/24111 of 17 June 1992, 18; Press Releases SG/SM/4723 of 27 March 1992, 2, and SG/SM/4703 of 25 Feb. 1992; see also Press Release SG/SM/1398 of 14 Jan. 1993, 6.

[4] It seems that there are only two other precedents: the OAU Force in Chad 1981–1982, see J.-P. Cot, The Role of the Inter-African Peace-Keeping Force in Chad, 1981–1982, in: A. Cassese (ed.), The Current Legal Regulation on the Use of Force (Dordrecht 1986), 167–178, and the Arab League Force in Lebanon 1976–1983, see J.P. Isselé, The Arab Deterrent Force in Lebanon, 1976–1983, ibid., 179–221, and I. Pogany, The Arab League and Peacekeeping in Lebanon (Aldershot 1987).

II. Factual Background

The conflict in Liberia has never captured the public interest outside of West Africa. Therefore, documentation on the conflict is scarce and incomplete. The following account relies to a large extent on reports published in the weekly "West Africa".

1. The Civil War until July 1990

Samuel Doe destroyed the age-old political fabric of the Liberian state when he staged a successful *coup d'état* in 1980[5]. Doe deposed the nominally democratic oligarchy of descendants of freed American slaves, a group which had ruled – some say "colonized"[6] – the country since its foundation in 1847[7]. Although he was initially popular, Doe increasingly lost public support when he failed to honour his promise to hold free and fair elections and when accusations of brutal suppression and personal enrichment reached a critical level. By the end of 1989 public discontent with Doe's regime was strong enough to induce Charles Taylor, one of his former ministers[8], to invade the country from neighbouring Côte d'Ivoire[9]. Taylor's rebels, who called themselves the "National Patriotic Front of Liberia" (NPFL), at first numbered no more than about one hundred men. During the first months of 1990 the civil war spread and by July President Doe's power was reduced to controlling a small piece of territory around the presidential palace in Monrovia, Liberia's capital[10].

By this time the situation on the battlefield had become more complicated. In early 1990 one of Taylors commanders, Prince Johnson, had founded his own "Independent National Patriotic Front of Liberia"

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[5] Economist, 21 Nov. 1992, 49.

[6] W. O'Neill, Liberia – An Avoidable Tragedy, Current History (May 1993), 213; USN & WR, 23 Nov. 1992 (vol. 113, no. 20), 54–56; WA 3809 (27 Aug.–2 Sept. 1990), 2356; see also Report SG UN doc. S/25402 of 12 March 1993, 3.

[7] As to Liberia generally see C.H. Huberich, The Political and Legislative History of Liberia, 2 vols. (New York 1947); J.S. Guannu, A Short History of the First Liberian Republic (Pompanu Beach 1985); Liberia – A Country Study (Area Handbook Series) (Washington 1985).

[8] See WA 3801 (2–8 July 1990), 2020; WA 3806 (6–12 Aug. 1990), 2230.

[9] Keesings 36 (1990), 37174; Economist, 1 Sept. 1990, 39; USN & WR, 23 Nov. 1992 (vol. 113, no. 20), 54–56.

[10] Keesings 36 (1990), 37644; WA 3805 (30 July–5 Aug. 1990), 2200; WA 3802 (9–15 July 1990), 2066; Time, 24 Sept. 1990, 61.

(INPFL)[11]. Until July both rebel groups fought mainly against their common enemy, but when the collapse of Doe's regime seemed imminent, Prince Johnson, who had captured some parts of Monrovia including its port, changed emphasis and concentrated on preventing a victory by Taylor. To bolster their positions, both Doe and Johnson sought help from outside powers. Hoping to provoke American intervention Johnson threatened to kill United States citizens still living in Monrovia[12]. US troops indeed landed in Monrovia shortly thereafter, but they came only to evacuate US citizens[13]. Doe turned to the states of the Economic Community of West African States (ECOWAS)[14], an organisation comprised of sixteen states of which Liberia is a member.

2. ECOWAS States Send ECOMOG

Even before Doe's initiative the ECOWAS states had undertaken diplomatic efforts to resolve the Liberian conflict. At a meeting in May 1990 the organization's Heads of State and Government decided to set up a "Standing Mediation Committee" "for the purpose of peaceful resolution of misunderstandings between States in the subregion"[15]. Although the Committee's task was officially to "do something about any conflict in the ECOWAS region"[16] the Liberian conflict was obviously the catalyst for its establishment[17]. After diplomatic efforts to reach a cease-fire failed[18], the Committee held a Summit Meeting on 6 and 7 August 1990, and issued the following resolution:

> "Conscious of its responsibility for the maintenance of peace and security in the subregion, the Committee, on behalf of the Authority of ECOWAS Heads of State and Government, decided as follows:
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> 1. There shall be an immediate cease-fire. All parties to the conflict shall cease all activities of a military or paramilitary nature, as well as all acts of violence.

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[11] See Keesings 36 (1990), 37601; WA 3827 (7–13 Jan. 1991), 3149; WA 3806 (6–12 August 1990), 2230; WA 3911 (31 Aug.–6 Sept. 1992), 1471.

[12] O'Neill (note 6), 216; CSM, 9 Aug. 1990, 4; CSM, 7 Aug. 1990, 3; AdG 1990, 34864.

[13] Keesings 36 (1990), 37644; L.A. Times, 8 Aug. 1990, 4; AdG 1990, 34864.

[14] Time, 10 Sept. 1991, 51.

[15] UN doc. S/21485 of 10 Aug. 1990 (Annex), 2.

[16] Interview with the Secretary-General of ECOWAS, WA 3822 (26 Nov. 1990), 2894.

[17] WA 3911 (31 Aug.–6 Sept. 1992), 1471.

[18] WA 3806 (6–12 Aug. 1990), 2236; WA 3804 (23–29 July 1990), 2170; WA 3805 (30 July–5 Aug. 1990), 2200.

2. Under the authority of the Chairman of ECOWAS, a cease-fire Monitoring Group (ECOMOG), was set up; it comprises military contingents from member States of the ECOWAS Standing Mediation Committee, as well as from Guinea and Sierra Leone, Liberia's neighbours.

3. ECOMOG shall assist the Committee in supervising the implementation and ensuring strict compliance of the cease-fire by all the parties to the conflict.

4. That a broad-based interim government shall be set up in the Republic of Liberia to administer that country and organize free and fair elections, leading to a democratically elected government ..."[19].

By the time of this decision Liberia had in the words of ECOWAS Secretary-General Jawara become a "slaughterhouse"[20]. The roots of this particularly atrocious civil war seem to lie in the exploitation of tribal rivalries by the respective leaders[21]. During his rule, Doe relied mainly on fellow Krahn-tribesmen. As members of the Armed Forces of Liberia they brutally suppressed other groups, in particular people of the Gio and the Mano tribes who lived on the eastern border with Côte d'Ivoire[22]. When Taylor, himself an Americo-Liberian, started the rebellion he immediately received support from their members. Thirst for revenge was further exacerbated when, in the first months of the conflict, Doe's troops committed more massacres[23]. In return, massacres of Krahn people by Taylor's forces followed and would have continued in all likelihood if Taylor had prevailed. To complicate matters further, Prince Johnson's troops were in a precarious position because many of them belonged to a tribe which adhered to Islam. They also had to fear reprisals in the event of a Taylor victory[24]. Most observers estimated that by July 1990 the Liberian civil war had left more than 20,000 dead and more than

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[19] UN doc. S/21485 of 10 Aug. 1990 (Annex); see also O. Akinrinade, From Hostility to Accomodation: Nigeria's West African Policy, 1984–1990, NJIA 18 (1992), 47; AdG 1990, 34864.

[20] WA 3852 (8–14 July 1991), 1123; see also the accounts in WA 3808 (20–26 Aug. 1990), 2314; WA 3810 (3–9 Sept. 1990), 2391; WA 3818 (29 Oct.–4 Nov. 1990), 2741; See WA 3827 (7–13 Jan. 1991), 3149.

[21] Keesings 36 (1990), 37174; WA 3805 (30 July–5 Aug. 1990), 2200; WA 3808 (20–26 Aug. 1990), 2314; WA 3827 (7–13 Jan. 1991), 3149; WA 3854 (22–28 July 1991), 1204; WA 3911 (31 Aug.–6 Sept. 1992), 1470–1.

[22] O'Neill (note 6), 215.

[23] Keesings 36 (1990), 37367.

[24] CSM, 27 Oct. 1992, 1; Time, 10 Sept. 1990, 51; USN & WR, 23 Nov. 1992 (vol. 113, no. 20), 54.

half of the population displaced[25]. In March 1993 estimates speak of up to 150,000 casualties[26].

Under these circumstances the ECOWAS decision to intervene received widespread support. Newspaper reports suggest that UN Secretary-General Pérez de Cuéllar advised ECOWAS that no authorization by the Security Council was needed for its action[27], and both the Organisation of African Unity (OAU)[28] and the United States of America[29] supported the decision. On 25 August 1990 a plurinational force of 3,000–4,000 men landed in the port of Monrovia[30]. There it was welcomed by Johnson's forces[31] but lost a few men from shelling by NPFL forces[32]. Anticipating ECOMOG's arrival Doe and Johnson had concluded a cease-fire agreement[33]. Taylor, however, who by now controlled by far the largest part of the country[34], opposed ECOMOG's landing and questioned its impartiality[35]. Initially ECOMOG was mostly composed of soldiers from Nigeria and Ghana with token units from Sierra Leone, the Gambia and Guinea[36]. Following further negotiations with Taylor to conclude a lasting cease-fire failed in late September, and after Taylor had "declared war" on ECOMOG[37], the plurinational forces

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[25] WA 3827 (7–13 Jan. 1991), 3149; USN & WR, 23 Nov. 1992 (vol. 113, no. 20), 54; DFASP, Dec. 1990, 32; Economist, 6 April 1991, 43; WP, 23.3.1991, A20; Keesings 36 (1990), 37644.

[26] Report SG UN doc. S/25402 of 12 March 1993, 4.

[27] WA 3851 (1–7 July 1991), 1076.

[28] WA 3817 (22–28 Oct. 1990), 2700; WA 3851 (1–7 July 1991), 1076–1077.

[29] WA 3822 (26 Nov. 1990), 2915; see also WA 3803 (16–22 July 1990), 2126; CSM, 12 June 1991, 4; WT, 14 March 1992, A2; WA 3890 (6–12 April 1992), 600; WA 3931 (25–31 Jan. 1993), 117.

[30] Keesings 36 (1990), 37644; WA 3810 (3–9 Sept. 1990), 2409.

[31] Keesings 36 (1990), 37644; WA 3810 (3–9 Sept. 1990), 2390; WA 3824 (10–16 Dec. 1990), 2988.

[32] WA 3851 (1–7 July 1991), 1076; WA 3911 (31 Aug.–6 Sept. 1992), 1470.

[33] WA 3809 (27 Aug.–2 Sept. 1990), 2356; JA 1551 (19–25 Sept. 1990), 34; Interview with the Secretary-General of ECOWAS, WA 3822 (26 Nov. 1990), 2894.

[34] WA 3805 (30 July–5 Aug. 1990), 2200.

[35] Keesings 36 (1990), 37644; WA 3807 (13–19 Aug. 1990), 2289; WA 3807 (13–19 Aug. 1990), 2289; Time, 10 Sept. 1990, 51; in his report the Special Representative of the Secretary-General of the United Nations creates the impression as if Taylor had agreed to a cease-fire and to the landing of ECOMOG, Report SG UN doc. S/25402 of 12 March 1993, 5, but see, ibid., 8.

[36] Time, 10 Sept. 1990, 51; DFASP, Dec. 1990, 32; Time, 24 Sept. 1990, 61; since the intervention the composition of ECOMOG has changed repeatedly: Senegal, Guinea-Bissau, Mali and Togo also contributed troops at various times, WA 3907 (3–9 Aug. 1992), 1309.

[37] Keesings 36 (1990), 37644.

were given orders to oust Taylor's forces from Monrovia[38]. After several weeks of battle they succeeded in gaining control over the city and its immediate environs; they then stopped their advance[39].

3. The Interim Government

Diplomatic efforts to set up an interim government began immediately after ECOMOG's landing. Doe had announced that he would not run for president in the elections provided for in ECOWAS's peace plan[40]. A conference bringing together a wide variety of Liberian groups convened in Banjul on 27 August under the auspices of ECOWAS[41] to discuss the establishment of a future interim government[42]. Although Taylor was invited, he did not attend this conference[43].

At first, participants of the conference acted under the assumption that it was necessary "to ensure a constitutional transfer of power" from Doe to an interim administration[44]. While the Conference was still in session, however, an unexpected event occurred: On 10 September President Doe was abducted and then killed by Johnson's INPFL forces when he paid a visit to the ECOMOG headquarters[45]. But this incident did not change the basic constellation of forces. Doe's "Armed Forces of Liberia" (AFL) continued to play an independent role under a new commander[46]. Shortly before Doe's death the Banjul Conference had chosen Dr. Amos Sawyer as head of an interim government. This decision was not immediately announced in order to leave room to negotiate the representation to be accorded to Taylor's and Doe's forces[47]. At this point the interim government consisted of a group of nine exiled intellectuals who, by their ancestral background, represented the major Liberian tribes[48]. After

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[38] Keesings 36 (1990), 37766; WA 3810 (3–9 Sept. 1990), 2390; WA 3851 (1–7 July 1991), 1077.

[39] WA 3817 (22–28 Oct. 1990), 2714.

[40] WA 3809 (27 Aug.–2 Sept. 1990), 2356.

[41] WA 3809 (27 Aug.–2 Sept. 1990), 2355.

[42] WP, 29 Nov. 1990, A49.

[43] WA 3811 (10–16 Sept. 1990), 2452.

[44] WA 3810 (3–9 Sept. 1990), 2390; AdG 1990, 34865.

[45] Keesings 36 (1990), 37699; WA 3812 (17–23 Sept. 1990), 2478; WA 3820 (12–18 Nov. 1990), 2825.

[46] Keesings 36 (1990), 37699; CSM, 27 Oct. 1992, 1; DFASP, Dec. 1990, 32; Time, 24 Sept. 1990, 61; WA 3916 (5–11 Oct. 1992), 1671.

[47] WA 3811 (10–16 Sept. 1990), 2438; WA 3818 (29 Oct.– 4 Nov. 1990), 2742.

[48] DFASP, Dec. 1990, 32.

some posturing[49] both the commander of the AFL and Johnson recognized the interim government[50]. On 22 November 1990 Sawyer was officially sworn in as President in Monrovia[51].

In spite of the fighting between ECOMOG and Taylor's NPFL, diplomatic efforts to reach an understanding between all parties never subsided. Naturally these efforts were focussed on trying to conclude a cease-fire agreement and to secure the participation of the NPFL in the interim government, as provided for in the ECOWAS peace plan. In November 1990, at a summit meeting of ECOWAS Heads of State in Bamako, the Gambia, Taylor finally agreed both to a cease-fire and to the ECOWAS peace plan for Liberia[52]. He later alleged that he did not, by this agreement, recognize the Sawyer government as being the interim government provided for in the ECOWAS peace plan[53]. Taylor could feel confirmed in December 1990 when all warring factions signed a document according to which "a future interim government" would be installed after further negotiations[54].

4. Events until April 1993

The cease-fire between Taylor's NPFL forces and ECOMOG held for the following two years[55] and continuing negotiations sometimes resulted in agreements between all parties, including Taylor, to take certain steps towards national reconciliation[56]. In July 1991 another ECOWAS committee, the "Committee of Five", was established. It included, *inter alia*, the governments of Burkina Faso and Côte d'Ivoire. Since these governments could exercise more leverage over Taylor, the Committee of Five now took the lead in the negotiations[57]. The most important of the agreements it attained was concluded in Yamoussoukro, Côte d'Ivoire, on 31

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[49] See Keesings 36 (1990), 37700.

[50] WA 3817 (22–28 Oct.1990), 2700; WA 3818 (29 Oct.– 4 Nov. 1990), 2742.

[51] WA 3825 (17–23 Dec. 1990), 3050.

[52] UN doc. A/45/894-S/22025 of 20 Dec. 1990 (Annex), 4; WA 3823 (3–9 Dec. 1990), 2954.

[53] See WA 3827 (7–13 Jan. 1991), 3151; WA 3823 (3–9 Dec. 1990), 2954.

[54] See WA 3827 (7–13 Jan. 1991), 3152.

[55] WA 3911 (31 Aug.–6 Sept. 1992), 1471.

[56] See e.g. Keesings 37 (1991), 37994, 38278; WA 3834 (25 Feb.–3 March 1991), 262; WA 3827 (18–24 March 1991), 400.

[57] WA 3852 (8–14 July 1991), 1123.

October 1991 ("Yamoussoukro IV")[58]. This agreement provided not only for a cease-fire but also for the disarmament and the encampment of the various contending forces under the supervision of ECOMOG. But each of these agreements ultimately remained unimplemented. Tensions began to mount again when a new group, the "United Liberation Movement of Democracy for Liberia" (ULIMO), started to attack the NPFL from Sierra Leone and increasingly gained ground[59]. The core of ULIMO consisted of former Doe loyalists[60] who claimed that they were "only fighting to ensure that the NPFL would abide by the Yamoussoukro agreement"[61].

By the end of July 1992 the ECOWAS Authority of Heads of State and Government added pressure on Taylor to honour the commitments he had undertaken in the Yamoussoukro IV agreement by threatening to impose economic sanctions if he did not comply within a month[62]. However, the deadline passed unheeded and before the sanctions were applied it was Taylor who, according to most accounts, mounted a full-scale attack on Monrovia on 15 October 1992. ECOMOG repelled this attack after heavy fighting[63]. At the same time the ECOWAS states imposed an arms embargo and economic sanctions against the Liberian territory under NPFL control[64] and also persuaded the United Nations Security Council to impose sanctions at the global level[65]. A massive counter-offensive by ECOMOG, which by now was more than 10,000 men strong[66], and the effect of the sanctions stabilized the situation somewhat

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58 UN doc. S/24815 of 17 Nov. 1992 (Annex); see also UN doc. A/45/894-S/22025 of 20 Dec. 1990 (Annex).

59 Keesings 37 (1991), 38424; Keesings 38 (1992), 39041; WA 3850 (24–30 June 1991), 1035.

60 Keesings 37 (1991), 38424; WA 3869 (11–17 Nov. 1990), 1886.

61 Keesings 38 (1992), 39041.

62 WA 3907 (3–9 Aug. 1992), 1321; WA 3908 (10–16 Aug. 1992), 1338–1339; in his report the Special Representative of the Secretary-General of the United Nations affirms that the sanctions were already imposed in July 1992, Report SG UN doc. S/25402 of 12 March 1993, 7.

63 Report SG UN doc. S/25402 of 12 March 1993, 8; Keesings 38 (1992), 39131; WA 3919 (26 Oct.–1 Nov. 1992), 1822; WA 3923 (23–29 Nov. 1992), 2008; CSM, 27 Oct. 1992, 1.

64 UN doc. S/24811 of 16 Nov. 1992 (Annex I).

65 SC Res. 788 of 19 Nov. 1992.

66 The Reuter Library Report, 5 April 1993 (NEXIS: Library = Allmde; Search: ECOMOG and date after 1 July 1992).

but there was no immediate solution to the problem[67]. By now Taylor's forces had been put on the defensive and were gradually being pushed back by AFL and ULIMO forces, with ECOMOG troops following suit[68]. By April 1993 the cooperation between ULIMO and the interim government on the one hand and ECOMOG and the interim government on the other hand had become quite visible[69].

III. ECOWAS Rules Governing the Establishment of ECOMOG

Before addressing the question whether the ECOWAS states were entitled under general international law to enter and fight in Liberia (see below IV.) it is important to review the ECOWAS rules which governed the establishment of ECOMOG and determined the potential range of its activities. ECOMOG is officially called "the intervention force of ECOWAS"[70]. The question is whether this is a valid legal qualification or simply a political description. Although public documentation of the decision-making process within ECOWAS is scarce it nevertheless seems possible to reach several conclusions[71].

1. The Official Position

According to its founding treaty ECOWAS is an organisation dedicated to promoting economic integration between its member states[72]. In many ways the ECOWAS treaty resembles the original treaty of the European Economic Community[73]. It contains no provisions which could possibly serve as a legal basis for the establishment of a common

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[67] CSM, 1 Dec. 1992, 5; Houston Chronicle, 15 Nov. 1992, 27; WP, 12 Nov. 1992, A34.

[68] Report SG UN doc. S/25402 of 12 March 1993, 10; The Reuter Library Report, 5 April 1993 (NEXIS: Library = Allmde; Search: ECOMOG and date after 1 July 1992); The Independent, 30 March 1993, 12; according to this source in March 1993 Taylor controlled 60% of the Liberian territory.

[69] WA 3941 (5–11 April 1993), 565; Neue Zürcher Zeitung, 23–24 May 1993, 4.

[70] Letter Benin, UN doc. S/24735 of 29 Oct. 1992, 1.

[71] R. Akinjide, ECOWAS Intervention in the Liberian Imbroglio – Legal Issues, WA 3826 (24 Dec. 1990–6 Jan. 1991), 3090–3091, is probably too cautious.

[72] Treaty establishing the Economic Community of West African States, 28 May 1975, UNTS 1010, 17; ILM 1975, 1200; in 1990 intra-ECOWAS trade amounted to 4% of all transactions within the subregion, WA 3851 (1–7 July 1991), 1075.

[73] See S.K.B. Asante, ECOWAS, the EEC and the Lomé Convention, in: D. Matteo (ed), African Regional Organisations (Cambridge 1984), 171.

multinational force. Accordingly, it was not even invoked in support of the Liberian operation[74]. In addition to the founding treaty, the ECOWAS member states signed a Protocol on Non-Aggression on 22 April 1978 which is based, *inter alia*, on the consideration that the organisation could not attain its objectives without the establishment of a peaceful atmosphere and harmonious understanding between the member states[75]. Apart from reaffirming some basic rules of international law, this protocol contains a clause on the peaceful settlement of disputes according to which every dispute between member states, in the last resort, can be submitted to "The Authority" (the assembled Heads of State and Government) for final decision (which must be unanimous[76]).

The security dimension of ECOWAS was extended by an additional "Protocol Relating to the Mutual Assistance on Defence" signed on 29 May 1981[77]. This treaty provides for the establishment of a multinational ECOWAS defence force including an elaborate command structure. This force is designed both to defend member states in the event of an attack from outside the Community and to come to the help of the government in the event of an armed conflict within a member state. In both cases military assistance may only be given on the basis of a written request by the Head of State of the member state concerned (Arts. 16 and 18). Should an armed conflict between member states occur, the common force would only be interposed between the parties to the conflict (Art. 17). In sum, the Defence treaty contains all the rules necessary to make ECOWAS both a defensive alliance and a regional system of collective security under Chapter VIII of the United Nations Charter[78]. As a member of ECOWAS Liberia may become the subject of actions taken in accordance with these ground-rules.

The Protocols on Non-Aggression and on Defence were both officially invoked as the legal basis for the establishment of ECOMOG within the ECOWAS framework. In December 1990, the ECOWAS Heads of State

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[74] Interview with the Secretary-General of ECOWAS, WA 3822 (26 Nov. 1990), 2894–2895.

[75] Protocol on Non-Aggression of ECOWAS, 22 April 1978, reprinted in: P.F. Gonidec, Les organisations internationales africaines (Paris 1987), 275–276.

[76] I.A. Gambari, Political and Comparative Dimensions of Regional Integration: The Case of ECOWAS (London 1991), 46.

[77] Nigeria's Treaties in Force, vol. 4 (1970–1990), 898; reprinted also in: M. Glélé-Ahanhanzo, Introduction à l'organisation de l'unité africaine et aux organisations régionales africaines (Paris 1986), 267.

[78] See R. Wolfrum, Der Beitrag regionaler Abmachungen zur Friedenssicherung: Möglichkeiten und Grenzen, ZaöRV 53 (1993), 579 (in this issue).

and Government drew upon the Protocol on Non-Aggression to affirm ECOWAS' competence and responsibility in security matters[79]. As the Secretary-General of ECOWAS stated in November 1990:

> "[R]eference was made to the ECOWAS mutual defence protocol which was an agreement for member states to come to each others' aid and assistance in case of a threat to the sovereign integrity of member states. By extension this decision was considered applicable to the situation that existed in Liberia. The situation had deteriorated so much that it was considered necessary for the member states to prevent Liberia sinking into anarchy and destruction"[80].

In his March 1993 report on the Liberian crisis, the Special Representative of the UN Secretary-General repeats the contention that ECOMOG has operated under the ECOWAS Defence and Non-Aggression Treaties[81]. A closer look at both treaties, however, shows that it is unclear whether they provide a sufficient basis for the creation of ECOMOG[82].

2. The Non-Aggression Treaty

The Non-Aggression treaty contains only vague references to the security of member states and to a dispute settlement procedure. It is true that similarly vague references in the NATO treaty to the "security" of member states and to the UN Charter are beginning to form the basis for NATO's activities in regard to the former Yugoslavia. But the NATO treaty undoubtedly provides a legal basis for setting up a joint command to coordinate the defence efforts of its member states. In addition, the possibility of using this structure to support operations sanctioned by the UN Security Council was envisaged by the drafters of the NATO treaty[83].

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[79] UN doc. A/45/894-S/22025 of 20 Dec. 1990 (Annex at p. 5).

[80] See WA 3822 (26 Nov. 1990), 2894.

[81] Report SG UN doc. S/25402 of 12 March 1993, 6.

[82] According to its Art. 24 para. 1, the Defence treaty definitively enters into force after seven ratifications. The same is true for the Non-Aggression treaty (Art. 6 para. 1). Until 1990 the Non-Agression treaty had received eleven ratifications, the Defence treaty ten ratifications. Liberia is a party to the Defence treaty, but not to the Non-Agression treaty, see: Table of Ratification of ECOWAS Protocols and Conventions (on file with the author who, here again, is grateful to Prof. George K.A. Ofosu-Amaah for providing him with this material).

[83] "The [NATO-]treaty need not be departmentalized. Its purpose is to assist in achieving the great purposes of the Charter, primarily the maintenance of peace. It can be utilized as a regional arrangement under Chapter VIII or in any other way, subject to the principles and all pertinent provisions of the Charter, which may be useful to accomplish

Since the ECOWAS member states thought a separate defence treaty to be necessary it is difficult to read into a simple non-aggression treaty authorizations which are specifically contained in the Defence treaty.

3. The Defence Treaty

The Defence treaty remained unimplemented until the Liberian crisis erupted. In particular no troops had yet been assigned by the member states to serve under a common command structure[84]. Not surprisingly, therefore, ECOMOG did not operate within the institutional framework of the Defence treaty but under the Chairmanship of ECOWAS and under the authority of a specially appointed Field Commander. This may explain why the ECOWAS member states did not make any official reference to the Defence treaty when they originally set up ECOMOG in August 1990[85]. However, the fact that ECOMOG does not neatly fit into the framework of the Defence treaty is not conclusive on the question of whether it was established on the basis of this treaty. Existing precedents show that the institutional aspects of collective security arrangements are normally not meant to be exclusive. The most prominent example of such a Charter-supplementing arrangement are, of course, the UN peacekeeping forces. The International Court of Justice has confirmed that these forces have their legal basis in the UN Charter since they were designed "for the fulfillment of one of the stated purposes of the United Nations" and that this function created "the presumption that such action is not ultra vires the Organization"[86]. An even closer analogy can be found in the Arab Deterrent Force which played a very similar role in Lebanon from 1976 to 1983. In this case the Member States of the League of Arab States had concluded a "Treaty of Joint Defence and Economic Cooperation"[87] which also provided for an institutional struc-

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those purposes", Report of the Senate Committee on Foreign Relations, in: American Foreign Policy 1950–1955, Basic Documents, vol. 1, Department of State (1957), 845.

[84] In January 1991, five months after ECOMOG's landing in Liberia, three ECOWAS member countries called for the speedy implementation of both the Defence and the Non-Aggression treaty, see WA 3834 (25 Feb.–3 March 1991), 262.

[85] UN doc. S/21485 of 10 Sept. 1990 (Annex). It seems that the institutional setup of ECOMOG has not changed since its inception.

[86] Certain Expenses of the United Nations (Art. 17 para. 2 of the Charter), Advisory Opinion of 20 July 1962, ICJ Reports 1962, 151, at 167–168.

[87] Full title: Treaty of Joint Defence and Economic Cooperation among the States of the Arab League, reprinted in: M. Khalil, Arab States and the Arab League, vol. 2 (Beirut 1962), 101–105.

ture which was never fully implemented. Nevertheless, the Heads of State established a multinational intervention force by a simple resolution[88]. This was generally considered to be a force of the Arab League and not just a combined effort of the troop-contributing member states[89].

4. The Requirement of Unanimity

A last legal problem with the establishment of ECOMOG arises from the fact that it was created by a "Mediation Committee" consisting of merely five member States of ECOWAS[90]. Since under its general rules of procedure ECOWAS requires unanimous decisions, this Committee needs to be empowered by the Authority of Heads of State. It is quite unlikely, however, that the Authority at its meeting in May 1990 had consciously given a mandate to five countries to set up and employ an intervention force in their name. At that time it had merely decided to establish a "Mediation Committee" which was supposed to "do something about any conflict in the ECOWAS region"[91]. Nor could a mandate to intervene have come into existence by acquiescence of remaining member states: Burkina Faso immediately and explicitly disputed that an appropriate authorization had in fact been given[92].

5. The Disadvantages of Informal Arrangements

Even if there had not been a sufficient treaty basis for the establishment of ECOMOG, this would not have automatically made the plurinational force illegal. States are free to enter into *ad hoc* agreements, be they formal or informal, and to merge their troops for a particular purpose or to transfer operational command over those troops to a foreign national. For

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[88] Resolution adopted at the first extraordinary session of the Arab summit conference of 26 Oct. 1976, reprinted in: Pogany (note 4), at 196–197.

[89] Report of the Secretary-General, Co-operation between the UN and the League of Arab States, UN doc. A/37/536 of 25 Oct. 1982 (Annex), 20.

[90] See supra note 5.

[91] Interview with the Secretary-General of ECOWAS, WA 3822 (26 Nov. 1990), 2894.

[92] Keesings 36 (1990), 37644; WA 3808 (20–26 Aug. 1990), 2309; WA 3810 (3–9 Sept. 1990), 2391; WA 3811 (10–16 Sept. 1990), 2438; WA 3812 (17–23 Sept. 1990), 2478; WA 3813 (24–30 Sept. 1990), 2510 and in particular p. 2532 with respect to the treaty of Non-Aggression; it seems that other member states also had reservations but did not bring them into the open, WA 3810 (3–9 Sept. 1990), 2390; WA 3812 (17–23 Sept. 1990), 2478; WA 3817 (22–28 Oct.1990), 2699; see also Akinrinade (note 19), 64; the NPFL took the same position: WA 3810 (3–9- Sept. 1990), 2390.

this, the arrangements which formed the *ad hoc* coalition to liberate Kuwait are evidence[93]. But whether ECOMOG comes within an existing ECOWAS treaty or whether it is merely an *ad hoc* arrangement is important for at least two reasons: First, if there is no treaty basis a member state like Burkina Faso may dispute the right of the other member states to act under their common name. And second, the constitutions of many democratic countries require parliamentary assent at least for those military arrangements which serve more than a limited and immediate purpose[94]. By placing ECOMOG under the aegis of ECOWAS the member states indicated that this force should be more than a mere *ad hoc* arrangement. It was designed to show that ECOWAS has a functioning military arm with which it is capable and willing to enforce the restoration of order in the sub-region if certain conditions so require.

We may conclude that ECOMOG had, at best, only a tenuous legal basis in a written treaty between the member states of ECOWAS. However, as Burkina Faso has ceased disputing the legality of ECOMOG since 1991 the multinational force has at least acquired an informal legal basis within the ECOWAS system. All member states agree that the force is associated with their community as a whole and is not simply an *ad hoc* enterprise of a few of them. Moreover, it seems that the Liberian crisis has alerted ECOWAS to the rather limited nature of its treaty structure[95]. As a result, a reform of the treaty system is now being contemplated[96].

IV. The Right of the ECOWAS States to Intervene

The central question is whether the ECOWAS states were entitled to send their forces into Liberia and have them perform as described above (II.2.–4.). Moving now to the level of general international law, this enterprise must be reconciled with the general prohibition of the use of force (Art. 2 (4) of the UN Charter) and, more generally, with the princi-

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[93] See also the Declaration of the French Prime Minister with respect to military aid to Chad which went beyond what was provided for in a treaty between the two countries, AFDI 1984, 1024.

[94] See e.g. for Germany Art. 59 para. 2 of the Basic Law.

[95] WA 3908 (10–16 Aug. 1992), 1337.

[96] WA 3851 (1–7 July 1991), 1075; WA 3906 (27 July–2 Aug. 1992), 1253–1257; CSM, 27 July 1992, 3; WA 3908 (10–16 Aug. 1992), 1340–1341.

ple of non-intervention[97]. The latter goes further than the former insofar as it rules every interference in the internal affairs of another state[98]. Since, *prima facie*, both rules come into play the question arises whether the action can nevertheless be justified. Art. 53 (1) (2) of the UN Charter, in any event, cannot provide a legal basis. Even if the ECOWAS intervention had been a regional "enforcement action", this provision did not apply since the Security Council had not authorized the invasion beforehand[99]. It follows that the legal basis for the action must be derived from other rules of international law which limit both the scope of Art. 2 (4) and the principle of non-intervention.

1. The Official Justifications for the Intervention

The ECOWAS states were clearly aware that their action required justification on legal grounds. Accordingly, they put forward a variety of reasons for the intervention. In his Statement of 9 August 1990 the Chairman of the ECOWAS "Standing Committee" stated:

> "I must emphasize that the ECOWAS Monitoring Group (ECOMOG) is going to Liberia first and foremost to stop the senseless killing of innocent civilian nationals and foreigners, and to help the Liberian people to restore their democratic institutions. ECOWAS intervention is in no way designed to save one part or punish another"[100].

This statement suggests that the invasion was justified as a humanitarian intervention or perhaps even as an effort to restore democracy. The Secretary-General of ECOWAS has argued that ECOMOG intervened in a situation in which there was a complete breakdown of effective government[101]. According to another official communiqué, ECOMOG was constituted "for the purpose of keeping the peace, restoring law and or-

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[97] M. Schröder, Non-Intervention, in: EPIL Inst. 7 (Amsterdam 1984), 358–360; as to African practice in particular see Ph. Kunig, Das völkerrechtliche Nichteinmischungsprinzip – Zur Praxis der OAU und des afrikanischen Staatenverkehrs (Baden-Baden 1981).

[98] See U. Beyerlin, Interventionsverbot, in: R. Wolfrum (ed.), Handbuch der Vereinten Nationen (München 1991), 378–381.

[99] J.A. Frowein, Legal Consequences for International Law Enforcement in Case of Security Council Inaction, in: J. Delbrück (ed.), The Future of International Law Enforcement: New Scenarios – New Land? (Berlin 1992), 119: "Inaction by the Council can never amount to authorization".

[100] UN doc. S/21485 of 10 Aug. 1990 (Annex), 3.

[101] WA 3911 (31 Aug.–6 Sept. 1992), 1471; similar OAU Secretary-General Salim: WA 3807 (13–19 Aug. 1990), 2280.

der and ensuring the cease-fire is respected"[102]. Some official statements frankly stress the sub-regional[103] and even the pan-african security interests[104] which would be safeguarded by the intervention. It has also been proposed that ECOMOG intervened in order to rescue citizens from different ECOWAS countries[105]. And finally, although the argument has not gained much official support, ECOMOG was said to have prevented a further flow of refugees into neighbouring countries[106].

Most of these claims can be dismissed summarily. The goal of restoring democracy[107] is obviously political window-dressing coming, as it does, from a group of states whose most important members, Nigeria and Ghana, were governed by the military[108]. The general security interests which have been invoked may be quite plausible from a political point of view but they are far too general and imprecise to be able to provide a justification under international law. Even if the OAU Charter was changed to permit intervention for such purposes[109] the grave problems of the Charter's compatibility with the UN Charter would still remain. It is true that recent Security Council practice suggests that cross-border flows of refugees may constitute a situation which gives rise to a threat to international peace and security thus triggering the Council's enforcement powers under Chapter VII[110]. But this in itself cannot justify recourse to unilateral use of force. In addition, if the member states of ECOWAS had indeed been concerned with rescuing their own nationals it would have sufficed to follow the American example of employing their troops only for the purpose of evacuation[111].

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[102] WA 3807 (13–19 Aug. 1990), 2280.

[103] See the Statement of the Nigerian President: WA 3820 (12–18 Nov. 1990), 2836; M.A. Vogt, Nigeria's Participation in the ECOWAS Monitoring Group – ECOMOG, NJIA 17 (1991), 112.

[104] Interview with the Secretary-General of ECOWAS, WA 3822 (26 Nov. 1990), 2895; OAU Secretary-General Salim: WA 3807 (13–19 Aug. 1990), 2280; see also WA 3851 (1–7 July 1991), 1076; WA 3808 (20–26 Aug. 1990) 2309.

[105] Keesings 36 (1990), 37644; WA 3911 (31 Aug.–6 Sept. 1992), 1471; WA 3807 (13–19 Aug. 1990), 2280.

[106] R. Hofmann, Refugee Law in the African Context, ZaöRV 52 (1992), 331–332.

[107] See O. Schachter, The Legality of Pro-Democratic Invasion, AJIL 78 (1984), 645.

[108] Keesings 38 (1992), R11 and R18 (Reference Supplement).

[109] Comp. the proposal of Prime Minister Robert Mugabe of Zimbabwe, WA 3831 (4–10 Febuary 1991), 141.

[110] SC Res. 688 of 5 April 1991.

[111] ECOMOG has claimed to have evacuated 7000 of its nationals, Keesings 36 (1990), 37644.

2. Humanitarian Intervention

The declared intention "to stop the senseless killing" is a more serious attempt to justify the invasion. It raises the question of whether there is a general right to conduct "humanitarian interventions". A great majority of authors, however, holds that such a right is incompatible with the prohibition of the use of force in Art. 2 (4) of the UN Charter[112]. Moreover, the most popular policy argument made in favour of such a right during the Cold War – the fact that the global collective security system did not work properly – appears much weaker today[113]. Given the possibility of its abuse a general right to intervene by force for humanitarian purposes cannot be admitted to justify the ECOWAS action[114].

The ECOWAS action could be distinguished from other "humanitarian interventions" by its collective character. Grewe has shown that the collective nature of humanitarian intervention was relevant in the nineteenth century as a factor which provided the necessary guarantee against an abuse of the right which, at the time, was widely held to exist[115]. However attractive this criterion may appear for devising a limited right of humanitarian intervention, it is nevertheless inadequate for restricting the general prohibition on the use of force. This prohibition is of a deliberately formal and comprehensive character so as to provide the clearest rule possible[116]. This characteristic of Art. 2 (4) of the Charter would change radically if the article's application turned on such highly subjective judgments as whether a particular group of states is sufficiently large or its members mutually independent enough to ensure the minimum level of impartiality. One need not conclude, however, that "humanitarian interventions" are absolutely prohibited under international law. Under the Charter system it is the Security Council which has the monopoly on deciding whether a particular situation is sufficiently serious to justify the use of force. In its recent practice with respect to the

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[112] See only P. Malanczuk, Humanitarian Intervention and the Legitimacy of the Use of Force (Amsterdam 1993), 26–28 with further references.

[113] Malanczuk, ibid., at 27.

[114] T. Marauhn, Humanitär motivierte militärische Aktionen?, Humanitäres Völkerrecht – Informationsschriften 1993, 20; but see P. Hassner, Im Zweifel für die Intervention, EA 1993, 151–158.

[115] W. Grewe, Epochen der Völkerrechtsgeschichte (Baden-Baden 1984), 580.

[116] B. Simma, Universelles Völkerrecht (Berlin, 3. Aufl. 1984), 287; A. Randelzhofer, Art. 2 Ziff. 4 notes 34–36, in: B. Simma (ed.), Charta der Vereinten Nationen, Kommentar (München 1991).

Kurds in Iraq[117] and with respect to Somalia[118] the Security Council has indeed come very close to authorizing "enforcement measures" against a state in order to stop massive violations of human rights[119].

3. "Breakdown of Effective Government"

In the case of Somalia the Security Council authorized the use of force in a situation in which there was a complete breakdown of governmental authority. The question raised by the ECOMOG action is whether the use of force under such circumstances, even if not authorized by the Security Council, was permitted under the Charter despite Art. 2 (4) since it was not directed against the political independence or territorial integrity of a state[120]. Even if this argument had some merit it could not be applied to the Liberian civil war. Since not more than three rival factions took part in it, this conflict can only be distinguished from an "ordinary" civil war by the number of atrocities which were committed. However, if it were possible to derive the breakdown of authority from the number of atrocities which are committed by parties to a civil war it would be all too easy to introduce the right of unauthorized humanitarian intervention through the backdoor.

4. Invitation by the Government

Although the official justifications given above are not convincing it does not necessarily follow that the invasion by ECOMOG violated international law. Indeed, the ECOWAS states, for a compelling political reason, did not forcefully put forward their strongest legal argument: President Doe had issued an invitation to representatives of ECOWAS states to intervene militarily[121]. This fact does not figure in official texts, but has been reported in the serious press and not officially contradicted. Since Doe had previously washed his hands in blood, to support him openly would have thwarted the possibility of concluding agree-

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[117] SC Res. 688 para. 1 of 5 April 1991.

[118] SC Res. 794 of 3 December 1992.

[119] Neither Iraq nor Somalia are clear cases of an authorized "humanitarian intervention", see Malanczuk (note 112), 18–19 and 24–25; K.-K. Pease/D.P. Forsythe, Humanitarian Intervention and International Law, Austrian Journal of International Law 43 (1993), 5–20.

[120] See Vogt (note 103), 110.

[121] NYT, 12 Sept. 1990, 3; Economist, 1 Sept. 1990, 39; AdG 1990, 34864.

ments among the warring factions. Thus, instead, the Standing Mediation Committee chose to stress that the intervention was "not designed to save one part"[122].

Both prevailing scholarly opinion and state practice support the view that military action by third states which is undertaken within a country upon the request of its lawful government is not prohibited by Art. 2 (4) of the Charter[123]. And because such military action is not undertaken against the will of the state concerned it would not qualify as "enforcement action", which would necessitate an authorization by the Security Council under Art. 53 (1)(2) of the Charter[124]. As far as the principle of non-intervention is concerned, the International Court of Justice, in its Nicaragua decision, has reaffirmed the traditional rule that, in principle, "intervention is allowable at the request of the government"[125]. On the other hand, at the time of his request President Doe had lost control over almost the whole country with the exception of a small part of Monrovia. Therefore one might argue that he had become no more than a minor contender for power who had lost the right to request help from outside in the name of the state. Some authors hold that the principle of non-intervention prohibits states from entering a full-scale civil war. Oppenheim, for instance, maintains that assistance may only be given if the "internal disturbances are essentially limited to matters of local law and order or isolated guerilla or terrorist activities", otherwise "the right of the state to decide for itself its form of government and political system" would be compromised[126]. And Louise Doswald-Beck, relying on a thorough analysis of state practice, has come to the conclusion "that there is, at the least, a very serious doubt whether a state may validly aid another government to suppress a rebellion, particularly if a rebellion is widespread and seriously aimed at the overthrow of the incumbent regime"[127]. These authors suggest that the rather general dictum of the International Court of Justice should be narrowly interpreted.

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[122] UN doc. S/21485 of 10 Aug. 1990 (Annex), 3.

[123] A. Randelzhofer (note 126), Art. 2 Ziff. 4 note 30.

[124] Frowein (note 99), 120–121.

[125] Military and Paramilitary Activities in and against Nicaragua (*Nicaragua* v. *United States of America*), Merits, Judgment, I.C.J. Reports 1986, at 116 (no. 246).

[126] R. Jennings/A. Watts (eds.), Oppenheim's International Law, vol. 1 (Harlow, 9th ed. 1992), 438.

[127] L. Doswald-Beck, The Legal Validity of Military Intervention by Invitation of the Government, BYIL 56 (1985), 189–252, at 251; A. Oyebode thinks that this applies to the Liberian situation, WA 3804 (23–29 July 1990), 2165.

There certainly exist significant arguments in favour of limiting the right of governments to request military help from other states. These arguments, however, appear to consist mainly of policy considerations[128] which do not have the same persuasive force in a situation such as that of Liberia. It seems that a phenomenon which reached its climax during the time of the cold war motivated many scholars to claim that the originally unlimited right of recognized governments to request military help from outside is restricted: Movements of "national liberation" rose up against the (sometimes dictatorial) governments of states which, in turn, requested military support from outside. This constellation typically threatened to internationalize the conflict and contained the seeds for prolonged civil war[129]. As a result, in the spirit both of the Chartergoal of world peace and of the principle of self-determination, scholars derived a rule according to which intervention on request must end before the overthrow of the government is actually accomplished. Such a rule is premised on the assumption that military help from outside manipulates the natural play of forces in a civil war and is usually extended for hegemonial, in particular colonial or neo-colonial purposes[130]. However, in cases such as Liberia the member states of a regional organisation have freely entered into a promise of mutual support for precisely the sort of conflict which is at issue. The regional framework provides both the necessary degree of impartiality and the chance of containment of the conflict which make it possible to tackle a serious problem: Structurally weak and ethnically divided entities such as the African states have a vital and legitimate interest in entering into promises of mutual support to avoid bloody civil wars which may lead to their disintegration, as underscored by what happened in Somalia[131].

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[128] See I. Brownlie, International Law and the Use of Force by States (Oxford 1963), 321–327.

[129] See e.g. J.H. Leurdijk, Civil War and Intervention in International Law, NILR 24 (1977), 143–159.

[130] Doswald-Beck (note 127). 252.

[131] France has concluded treaties with several African countries which provide for the possibility of French military support in case of a request of the government concerned, see: Cameroon, RTAF 1975 II, 1601; Central African Republic, RTAF 1960 II, 592; Chad, RTAF 1978 I, 596; Comores, RTAF 1983, 76; Côte d'Ivoire, RTAF 1962, 82; Djibouti, RTAF 1985, 640; Gaboon, RTAF 1960 II, 650; Upper Volta (today: Burkina Faso), RTAF 1961, 237; Mali, JO 5 Dec. 1990, 14941; Niger, RTAF 1962, 185; Senegal, RTAF 1976 III, 1611; Zaïre, RTAF 1980, 796. The French policy of intervention in Africa is officially justified with the need to help weak and unarmed states ("Etats faibles et désarmés") to defend themselves against attacks which are carried out or supported from

Sufficiently strong reasons exist for concluding that neither Art. 2 (4) nor the principle of non-intervention have been violated in the case of Liberia. Formal conditions have been met to justify the exclusion of such an invasion from the scope of Art. 2 (4) if the invitation for intervention has unquestionably originated from the internationally recognized government and if that government is capable of paving the way for the intervening troops to enter the country. Moreover, the purpose of the principles of non-intervention and self-determination would support an action designed not in the first place to protect a dictatorial regime but to prevent massive violations of human rights. It is where the less formal principles of non-intervention and of self-determination are at issue that the arguments which have been put forward in favour of the legality of collective humanitarian intervention have their legitimate place: A collective decision to act upon a request to intervene ensures the necessary degree of impartiality, and, in turn, leaves more space for exercising the right of self-determination. Under such circumstances good reasons exist for not restricting the rule expressed in the Nicaragua decision[132]. Oppenheim also agrees that "collective action which might otherwise have constituted an intervention may also be taken by other organs of international society, acting within their areas of competence"[133]. The two available precedents seem to confirm this view. Both in the case of the OAU peacekeeping force in Chad in 1981–1982 and in the case of the Arab League Force in Lebanon in 1976–1983 the positions of the respective governments which issued the invitations were precarious. Still, the international community relied mainly on the fact of the invitation to justify these actions[134].

It is true that Nigeria has been accused of hegemonial aspirations, in

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the outside, see the Declaration of the French Minister of Foreign Affairs with respect to the policy of intervening in Africa, in: Ch. Rousseau, Chronique des Faits internationaux, RGDIP 83 (1979) 1036; see in particular with respect to armed intervention in Chad: C. Alibert, L'Affaire du Tchad, RGDIP 1986, 368 (2ème partie); Ch. Rousseau, Chronique des Faits Internationaux, RGDIP 84 (1980), 1047–1048; 1981, 586–588; 1984, 288–292; 1985, 477–482.

[132] Frowein (note 99), 120.

[133] Jennings/Watts (note 126), 449.

[134] For Chad see Cot (note 4), at 175, and SC Res. 504 of 30 April 1982, and for Lebanon see Isselé (note 4), at 203, who notes that "although formal lip service was paid throughout, respect for the consent of the host state was in practice compromised at the time of the shelling of East Beirut when President Sarkis threatened to resign".

particular in connection with the Liberian crisis[135]. But even if such aspirations exist they have so far not come close to those classical instances of hegemonial exercise of power against which the rules pertaining to intervention and the use of force are designed to protect. Doe's invitation to intervene was not fabricated, as were the invitations in the cases of the Soviet interventions in Hungary in 1956 and in Czechoslovakia in 1968. It was issued by the internationally recognized government and not simply by one contender for power who, as in the the case of the Dominican Republic in 1965, was only recognized by the intervening force[136]. And Doe was not just a purely nominal Head of State such as the Governor-General of Grenada in 1983[137]. Doe was in a situation roughly comparable to that of the Congolese government in 1960 or the Lebanese government in 1982[138]. He held (only) parts of the capital and was capable, by agreeing to a cease-fire with an otherwise rival faction, of paving the way for entry of the intervention forces into his country. That he had been degraded to a minor contender for power is irrelevant. State practice shows that international recognition is usually not withdrawn from an established regime, even if it has lost control over large portions of the country, if no successor regime has taken its place[139].

To hold Doe's invitation to be relevant conforms with the recent practice of the Security Council. In the case of Somalia the Council still emphasized the fact that there was a request long after the requesting "government" had been reduced to one of many parties to the civil war[140]. Good policy considerations support considering Doe's invitation as essential: Since the increasing recognition of the necessity to stop massive violations of human rights in civil wars and the strict obser-

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[135] As to Nigeria's role in West Africa generally see Akinrinade (note 19); see also Vogt (note 103) for an instructive example of Nigerian self-perception.

[136] V.P. Nanda, The United States Action in the 1965 Dominican Crisis: Impact on World Order – Part I, Denver Law Journal 43 (1966), at 465–467.

[137] See C.C. Joyner, The United States Action in Grenada, AJIL 78 (1984), 138–139; J.N. Moore, Grenada and the International Double Standard, AJIL 78 (1984), 159–160, and the more balanced evaluation by D. Vagts, International Law under Time Pressure: Grading the Grenada Take-Home Examination, AJIL 78 (1984), 170 and following.

[138] Doswald-Beck (note 127), 198.

[139] Doswald-Beck, ibid., 197–199; Since the situation in Liberia never reached the stage at which it could be argued that Taylor had established a *de facto* regime, the rules governing such phenomena were similarly inapplicable, see J.A. Frowein, Das de facto Regime im Völkerrecht (Köln 1968), 66 and following.

[140] SC Res. 733 of 23 Jan. 1992; SC Res. 746 of 17 March 1992; SC Res. 751 of 24 April 1992; SC Res. 767 of 24 July 1992; SC Res. 775 of 28 August 1992.

vance of the rules prohibiting the use of force and intervention are conflicting aims, only a legal construction which rests on an invitation by the government in combination with an evaluation of the conduct and purpose of an intervention can adequately address both concerns. In their official statements the governments of ECOWAS states naturally laid more stress on the substantive motives for the intervention, which partly happened to be their real motives. But this should not cloud the decisive fact that they also obtained the endorsement of the embattled President. Only this can explain how it was possible for UN Secretary-General Pérez de Cuéllar to say prior to the intervention that the Liberian conflict was of an internal nature so that the United Nations would not intervene[141] but at the same time that the ECOWAS action would not need an authorization by the Security Council[142].

In sum, the existence of a valid invitation to ECOWAS served to avoid violations of both Art. 2 (4) of the Charter and of the principle of non-intervention. And as long as the use of military force by ECOWAS troops conformed with general international law, it was not an "enforcement measure" requiring authorization from the UN Security Council under Art. 53 (1)(2) of the UN Charter[143]. Even if an invitation alone would not suffice it may be possible to justify the intervention on the grounds that Taylor's rebellion was supported by other states. If such support indeed existed, and it is very probable that it did[144], most authors agree that a government may request foreign help in order to offset foreign support to the rebels[145].

5. ECOMOG: A Peacekeeping Force?

It follows from the preceding analysis that it is immaterial whether or not ECOMOG can be called a "peacekeeping force". If the ECOWAS states could intervene on the side of the government in the civil war they could, *a fortiori*, also perform peacekeeping functions. However, addressing this question more specifically may help to put the intervention into perspective.

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[141] AdG 1990, 34863.

[142] WA 3851 (1–7 July 1991), 1076.

[143] A.C. Arend, The United Nations and the New World Order, Georgetown Law Journal 81 (1993), 518–520, leaves this open.

[144] Keesings 36 (1990), 37367; interview with the Secretary-General of ECOWAS, WA 3822 (26 Nov. 1990), 2895.

[145] Doswald-Beck (note 127), 213 and 221.

Apart from landing in Liberia against the will of a major party to the civil war, ECOMOG has twice acted in a way which cannot easily be brought within the classical concept of peacekeeping: In September 1990 it forced Taylor's troops out of Monrovia and in October 1992 it pushed back the NPFL forces even further. It is true that peacekeeping forces usually have a right to defend themselves. But this right does not extend to mounting a counter-attack with the purpose of altering the basic strategic balance. It may be argued that in September 1990 it was necessary to push Taylor's forces out of Monrovia in order to create a viable bridgehead and a secure environment both for the contending forces and for the civilian population. But the same can most certainly not be said with respect to ECOMOG's actions after October 1992. Since then it has fought the NPFL, at times directly, at times indirectly, by occupying positions taken from the NPFL by ULIMO forces. The question must be asked whether it is possible to bring such actions within the broad concept of peacekeeping as developed during the Congo crisis. In that case ONUC, the United Nations peacekeeping force, had received a mandate from the Security Council to use force, if necessary, "to prevent the occurrence of civil war"[146]. The International Court of Justice did not consider this mandate as referring to an enforcement action under Chapter VII since ONUC had not been "authorized to take military action against any state"[147]. Because Taylor has never claimed to head a separate state, and because he has never even ruled a recognized and stabilized *de facto* regime, it may be argued that ECOMOG was merely used for "internal security purposes"[148] when it repulsed Taylor's troops in September 1990 and October 1992. On the other hand, both actions strongly resemble the activities of ONUC with respect to the secessionist forces in Katanga in 1962/63. These actions are generally seen as having received separate authorization by the Security Council under Art. 40 of the Charter[149]. But regardless of whether ECOMOG's actions can be reconciled with the traditional forms of peacekeeping, the way ECOMOG has proceeded conforms almost ex-

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[146] SC Res. 161 of 21 Feb. 1961.

[147] Certain Expenses of the United Nations (Art. 17 para. 2 of the Charter), Advisory Opinion of 20 July 1962, ICJ Reports 1962, 151, at 177.

[148] E.M. Miller, Legal Aspects of the United Nations Action in the Congo, AJIL 55 (1961), at 8.

[149] See SC Res. 169 of 24 Nov. 1961, and D.W. Bowett, United Nations Forces (London 1964), 174–180; disagreeing: J.A. Frowein, Article 40 note 12, in: Simma, Charta (note 116).

actly with how the Secretary-General sees the future of peacekeeping in the changing international environment[150].

V. The Appointment of an Interim Government

Another legal problem in the Liberian crisis arose after President Doe was killed by a rival rebel force on 10 September 1990. The appointment of an "interim government" might be considered an unlawful act of intervention by ECOWAS. As a general rule, efforts by one state to bring a particular group to power in another state violate the right of every state to the enjoyment of political independence (Arts. 2 (4) and (7) of the UN Charter)[151]. This is especially true if the new regime is established by way of use of force. But a closer look at the facts of this case suggests that ECOWAS did not impose or install the interim government, but rather left the choice to an all-Liberian conference open to every Liberian faction to attend. And the interim government only officially took office in Monrovia after the constituency of the killed president had agreed. This government seems to enjoy the support of the great majority of Monrovia's inhabitants, a group which constitutes more than half of all Liberians now living in the country[152]. Under such circumstances it cannot reasonably be argued that ECOWAS has installed a puppet government and thereby violated the principle of non-intervention.

VI. The Continued Presence of ECOMOG in Liberia

If it is accepted that the interim regime under Amos Sawyer is the legal government of Liberia, it would follow that the continued presence of ECOMOG in the country has a valid basis in the continued consent of his government. As time goes by, however, the question arises whether a regime which has become increasingly dependent on foreign forces can forever continue to claim legitimacy based on the presence of such forces. If so, international law would seem to permit the creation of a puppet state or even a puppet region within another state. This means that, instead of providing for legitimate political self-expression by organizing

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[150] Press Release, SG/SM/1407, 2 Feb. 1993, 1–2.

[151] See the provisions concerning the duty not to interfere in the Declaration on Friendly Relations among States, GA Res. 2625 (XXV) of 24 Oct. 1970; comp. also J.A. Frowein, Freundschaft und Zusammenarbeit unter den Staaten, EA 1973, 73–74.

[152] Report SG UN doc. S/25402 of 12 March 1993, 1–2; Neue Zürcher Zeitung, 23–24 May 1993, 4.

democratic elections, ECOMOG might in fact become the main obstacle to Liberians' self-determination. It follows that ECOMOG cannot content itself with supporting an interim government in Monrovia *ad indefinitum*. In order to remain credible as a force which supports an authentically Liberian cause ECOWAS states must make bona fide efforts at restoring a "normal" political environment. These efforts may involve either a political or a military solution. Here ECOWAS, in cooperation with the interim government, possesses a large margin of appreciation in determining what efforts are promising and worthwile. It may even suffice to continue to stand by if the government possesses its own forces which make serious efforts at driving out the rebels. This seems to be the case with the ULIMO forces. And, as the Security Council has since early 1991 regularly "commended" its efforts ECOWAS can now act on the basis of the Council's authorization (see below VIII.).

The question of ECOMOG's continuing right to stay in Liberia is not to be confused with another problem for which the passage of time is also of crucial importance: The longer ECOMOG remains in Liberia the less it can retain the posture of a neutral party to the conflict. This problem, however, is mainly political, for the legality of ECOMOG's presence does not depend on its neutral posture but on the effective consent of the Liberian government. Neutrality may well determine the extent to which ECOWAS and ECOMOG are able to preserve their political credibility[153] but, as far as the international norms pertaining to civil war are concerned, ECOMOG could just as well transform itself into a force which openly supports the government in driving out the rebel forces[154].

VII. The Decision to Impose Sanctions

Taylor's attack in October 1992 prompted the ECOWAS states to impose economic and other sanctions against "any party to the Liberian conflict which fails to comply with the implementation of the Yamoussoukro IV Accord, and in particular against the National Patriotic Front

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[153] It has been suggested that the political support of the United States would depend on a neutral posture of ECOMOG, see WP, 12 Nov. 1992, A34.

[154] Frowein (note 139), 66. I am assuming that Taylor has not succeeded in establishing a stabilized de facto regime. Given the lack of the most basic infrastructure and the low number of fighters involved in the Liberian conflict, it would be inappropriate to say that a situation had evolved in which the opposing forces had created for themselves a stable and regularly administered territory, see Le Monde, 9 April 1993, 6; DFASP, Dec. 1990, 32.

of Charles Taylor"[155]. These sanctions included an arms embargo, a trade embargo and a mutual obligation among ECOWAS member states not to support the NPLF in certain ways, such as by manifesting behaviour which "might be construed as a recognition of the authority and control ... of the NPLF over any part of the territory of Liberia"[156].

In imposing these sanctions ECOWAS relied on Art. 5 of the ECOWAS treaty which establishes the "Authority of Heads of State and Government", the highest decision-making organ of ECOWAS. Since ECOWAS is competent to act on economic matters and the ECOWAS treaty does not contain limiting clauses for defence-related or strategic products (in contrast to the EEC treaty), we may assume that ECOWAS was entitled under its own ground-rules to impose economic sanctions. The situation is not so clear, however, in regard to the decision not to recognize the NPFL. Since this decision did not involve economic issues, it was most likely taken by the states in their individual capacities, just as the member states of the EEC "meeting in Council" sometimes take decisions which are outside the scope of the EEC treaty[157].

Under general international law, the only possible ground for doubting the legality of the sanctions is the rule according to which no enforcement action shall be taken under regional arrangements or by regional agencies without the prior authorization of the Security Council (Art. 53 (1) and (2) of the UN Charter). There has been much argument as to whether the term "enforcement action" also encompasses economic sanctions or whether it is restricted to actions involving the use of force[158]. But this question need not to be answered here. If a regional organisation is entitled to use force on the basis of an invitation by the government, it must, *a maiore ad minus*, also be entitled to impose economic sanctions against a rebel notwithstanding the rule in Art. 53 of the Charter. In addition, it is highly unlikely that any ECOWAS member state had previously entered into legally binding agreements with Taylor's rebels which would be overridden by the sanctions decision.

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[155] Art. 1 of the Decision A/DEC.1/10/92 relating to the implementation of decision A/DEC.8/7/92 on sanctions against parties to the Liberian conflict which fail to comply with the implementation of the Yamoussoukro Accord of 30 Oct. 1991, UN doc. S/24811 of 16 Nov. 1992 (Annex I).

[156] Arts. 2 to 4 of the same decision, ibid.

[157] T.C. Hartley, The Foundations of European Community Law (Oxford 1981), 78–80.

[158] See Frowein (note 99), 121–122; Wolfrum (note 78), 580–584; G. Ress, Article 53 note 14, in: Simma, Charta (note 116).

VIII. The Role of the United Nations

According to the preceding analysis ECOWAS states were not obligated to obtain the prior authorisation of the UN Security Council for their actions. But since ECOWAS has undoubtedly acted as a "regional agency or arrangement" (Art. 52 of the UN Charter)[159], it was obliged to keep the Council fully informed at all times of its activities regarding the Liberian conflict (Art. 54 of the UN Charter). Although the Security Council has not received all important documents on time – the Yamoussoukro IV Accord, for example, was only transmitted to the Council more than one year after its conclusion[160] – the ECOWAS states did immediately inform the Council of their two most important decisions: the decision to send ECOMOG into Liberia[161] and the decision to impose sanctions against the NPFL[162].

1. The Council's Confirmation of ECOMOG

The Security Council's reaction to the activities of the ECOWAS states has been ambiguous. When the representative of the Liberian interim government was invited to speak before the Security Council in January 1991, he deplored that the efforts to seize the Council with the conflict before the intervention "had not been approved". In his opinion, the principle of non-interference had "hampered the effectiveness of the Council"[163]. Thus it seems that members of the Security Council had, at first, informally discouraged the West African States from officially seizing the Council of the matter. It is improbable, however, that members of the Council at that time had indeed regarded the Liberian conflict as lying outside the Council's competence. This would be inconsistent with the unofficial encouragement that the ECOWAS member states have received from the Secretary-General and important members of the Council[164].

When ECOMOG entered Liberia in August 1990 there was no im-

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159 Wolfrum (note 78), 579.

160 UN doc. S/24815 of 17 Nov. 1992 (Annex).

161 UN doc. S/21485 of 10 Sept. 1990 (Annex).

162 UN doc. S/24811 of 16 Nov. 1992 (Annex I).

163 UN doc. S/PV.2974 of 22 Jan. 1991, 3.

164 Report SG UN doc. S/25402 of 12 March 1993, 7; see also WA 3807 (13–19 Aug. 1990), 2280; WA 3811 (10–16 Sept. 1990), 2438; WA 3851 (1–7 July 1991), 1076; WA 3906 (27 July–2 Aug. 1992), 1258; one of the difficulties might have been the reluctance of Côte d'Ivoire, at that time a member of the Security Council, to support a statement of endorse-

mediate official reaction from the Security Council. Indeed, the issue was not even put on its agenda. This fact is a first indication that the Council did not consider its authorization under Art. 53 of the UN Charter necessary for ECOMOG to proceed. A few months later, ECOWAS transmitted a communiqué of an extraordinary session of its Authority of Heads of State and Government which provided a review of its efforts at resolving the Liberian conflict[165]. Only then did the Council react by issuing a statement by its President, made in the name of all its members, which "commended" the efforts of ECOWAS[166]. A similar exchange took place in the spring of 1992 when ECOWAS transmitted a document containing a reaffirmation of the Yamoussoukro IV Accord[167]. Here again the Security Council, through the vehicle of a presidential statement, "commended" ECOWAS for its efforts[168].

A statement by the President of the Security Council has legal significance. A statement which expresses a consensus among the members of the Council may have the same legal effect as a regular resolution[169]. They are decisions of the Council and they are binding if such an intention can be derived from the circumstances[170]. Since there is no reason why authorization under Art. 53 must be expressed by way of a formal resolution, and because such an authorization need not necessarily be formal or explicit[171], there are three possible ways to interpret the statements in question. First, they may have been a formal authorization according to Art. 53 of the Charter (in their effect at least *pro futuro*).

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ment in July/August 1990, see Interview with the Secretary-General of ECOWAS, WA 3822 (26 Nov. 1990), 2895.

[165] UN doc. A/45/894-S/22025 of 20 Dec. 1990 (Annex).

[166] UN doc. S/22133 of 22 Jan. 1991.

[167] UN doc. S/23863 of 30 April 1992 (Annex).

[168] UN doc. S/23886 of 7 May 1992.

[169] F.Y. Chai, Consultation and Consensus in the Security Council (New York 1971) (UNITAR PS No. 4), 40; S.D. Bailey, Voting in the Security Council (Bloomington 1971), 83; R. Sonnenfeld, Resolutions of the Security Council (Warsaw 1988), 57–58; see also S.D. Bailey, The Procedure of the U.N. Security Council (Oxford, 2nd ed. 1988), 235–239; decisions taken by consensus in the General Assembly raise different questions, see Chai, ibid., 11–12, and generally R. Wolfrum, Konsens im Völkerrecht, in: H. Hattenhauer/W. Kaltefleiter (ed.), Mehrheitsprinzip, Konsens und Verfassung (Heidelberg 1986), 79–91.

[170] See Chai, ibid., 40, and R. Higgins, The Advisory Opinion on Namibia: Which UN Resolutions are Binding under Article 25 of the Charter, ICLQ 21 (1972), 282, both with reference to the Judgment of the ICJ, Advisory Opinion of 21 June 1971 (*Namibia*), 53.

[171] Frowein (note 99), 122.

Second, they may have been only a declaration of political support. Third, they may, in addition to being a political declaration, have also contained a conclusive determination that ECOWAS did not need the approval of the Security Council for its action.

The first interpretation is not persuasive because the wording of the statement is not sufficiently explicit. When the Council authorizes "enforcement measures" – as it has done with increasing frequency – it recently has always made it clear that it was "acting under Chapter VII" of the Charter. The Council has thereby indicated that an important threshold had been crossed. The same should be true when the question involves enforcement measures by regional organisations.

The second interpretation, which amounts to an assumption that the presidential statements were purely political declarations, is equally unconvincing. The Council's first action was to "commend" broadly the past efforts of ECOWAS, the crucial part of which was the intervention by ECOMOG. It would be self-contradictory for the Council, or any other political organ of the United Nations, to insist at a later date, for the purpose of attributing responsibility or otherwise, that the intervention had taken place without the necessary authorization.

This leaves the third possibility as the most plausible. Since it was never entirely clear whether an Art. 53 situation in fact existed, the Council must be seen as having exercised a power of appreciation to determine whether this provision applied, just as it has the power to determine whether a "threat to the peace" exists. Thus in the case of Chad, the Council only "took note" of the 1981–1982 OAU intervention[172] and deliberately dropped all references to Chapter VIII because the Soviet Union insisted that the Chadian case concerned a domestic affair and that international peace and security had not been at risk[173]. One may question such mixed assessments of law and of fact and the Council's power of appreciation is certainly not unlimited. But the implied determinations were in both cases not clearly unreasonable. The power of appreciation can be exercised in the form the Council prefers, since a determination that the threshold of "enforcement measures" has not been reached does not require the same level of explicitness as when such measures are themselves at issue. By "commending" the efforts of ECOWAS the Security Council necessarily implied that, in its opinion, the intervention by ECOMOG did not require the Council's authorization. The most

[172] SC Res. 504 of 30 April 1982.

[173] Cot (note 4), 175.

plausible rationale for this assessment is the assumption that the ECOMOG force received a valid invitation into the country.

2. The Council's Reaction to the Sanctions Decision

United Nations involvement acquired a new dimension with a request, introduced by Benin on behalf of the ECOWAS member states, that the Security Council should make the sanctions imposed by ECOWAS in October 1992 mandatory for all states[174]. The reaction of the Security Council to that request confirms the assumption that ECOWAS states were still acting pursuant to the consent of the Liberian government: The Council did not immediately decide on the request by Benin. Only when a letter supporting this request was transmitted from the interim government of Liberia[175] did the Security Council decide to impose an embargo on all deliveries of arms to Liberia except those to be used by "the peacekeeping forces of ECOWAS"[176]. The Council did not fully meet the demand by ECOWAS to extend the economic sanctions to the universal level. It merely requested all states to "respect the measures established by ECOWAS to bring about a peaceful solution to the conflict in Liberia"[177]. It is hard to say whether this phrase imposes any legal obligation on other member states of the United Nations, and if so, what the precise scope of such an obligation would be. Diplomatically, Resolution 788 opened a new dimension to the Liberian conflict: The Secretary-General of the United Nations was asked to become involved by sending a Special Representative to evaluate the situation. On the basis of his report[178] the Security Council passed another Resolution on 26 March 1993[179] whereby it essentially confirmed its earlier resolution.

IX. Conclusion

From a legal point of view the Liberian experience shows that the civil war remains largely below the authorization threshold of Art. 53 of the UN Charter. This is not only a consequence of the generally accepted rule that a lawful government may invite other states to intervene on its

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[174] Letter Benin, UN doc. S/24735 of 29 Oct. 1992.
[175] UN doc. S/24825 of 18 Nov. 1992.
[176] Nos. 8 and 9 of SC Res. 788 of 19 Nov. 1992.
[177] No. 10 of SC Res. 788 of 19 Nov. 1992.
[178] UN doc. S/25402 of 12 March 1993.
[179] SC Res. 813 of 26 March 1993.

territory. There is also an important legal difference between an intervention by invitation carried out by a regional organisation on the one hand and the same kind of intervention carried out by one or more friendly states on the other. The difference involves the higher legitimacy which is usually accorded the actions of regional organisations. Actions by such organisations, if they are composed of sufficient mutually independent states, indicate a higher degree of disinterestedness and objectivity than the action of one or more states which just happen to have an interest which parallels the government in power. This difference has a bearing on when the threshold of illicit intervention is reached; namely, until when an embattled government may legally issue an invitation for help[180]. As long as the threshold of Art. 53 of the UN Charter is not crossed the obligatory involvement of the Security Council is restricted to being informed under Art. 54 of the Charter.

From a policy perspective it seems that the question of whether the ECOWAS intervention was desirable can be cautiously answered in the affirmative. It is true that the efforts of the ECOWAS states have not yet succeeded in bringing peace to Liberia. Cynics could even say that peace would have come to Liberia long ago if ECOWAS had let Taylor reap the fruits of his military superiority. On the other hand, to have prevented (up to now) the very real possibility of Liberia becoming a slaughterhouse must be recognized as one of ECOMOG's chief successes[181]. In this sense the Liberian situation compares favourably with, for example, the conflicts in Bosnia-Herzegovina or in Somalia[182]. What makes this judgment a provisional one, however, is the fact that the danger is not over until a final and comprehensive settlement has been reached. Like many other conflicts, the lesson to be learned is that military intervention is extremely hard to limit and the intervening party must be prepared to change its role if it wants to attain its objective. For ECOMOG, this meant transcending, at times, its thinly veiled political posturé of being a neutral party to the conflict.

The question remains as to whether "Liberia represents a good example of systematic cooperation between the United Nations and a regional organization, as envisaged in Chapter VIII of the Charter". The assessment by the Special Representative of the Secretary-General, Sir Gordon Tre-

180 See above IV.; Jennings/Watts (note 126), 447–449.
181 USN & WR, 23 Nov. 1993 (vol. 113, no. 20), 54–56.
182 WP, 22 Nov. 1992, A29.

vor-Somers[183], may appear questionable to those who prefer the United Nations to take the lead in such crises[184]. They could argue, for example, that the impartiality of UN peacekeeping forces could not have been questioned as easily as was ECOMOG's[185]. While this may be true it is by no means a guarantee that the parties to the conflict would have complied with their undertakings in the presence of a UN force. The Angolan experience in 1992 is a sobering example of what can happen if impartiality is not backed up by determination and force. Thus, it seems that the only realistic alternative would have been the introduction of "UN-peace-enforcement units"[186] with a mandate to fight. To insist on such a response is probably to ask too much, considering the undeveloped state of the United Nations and the reluctance of its more powerful member states to engage their forces for such a purpose.

The truth is that only the West African states were prepared and interested enough to introduce their forces into this conflict. In this sense their decision is indeed, as Secretary-General Boutros-Ghali has put it, "admirable and welcome"[187]. It is not unlikely that such operations will be repeated in the future. Members of the Security Council will probably not, as in Liberia, conduct an excessively deep review of the legal basis for the military activities of regional organizations as long as the latter create the impression of having acted in the larger interest of the world community. If ECOWAS actually succeeds in bringing peace to Liberia, the Secretary-General's hope of gradually involving regional organisations in the business of securing international peace and security may be seen to rest on a first good precedent. Should it fail, the operation was at least a noteworthy first attempt that should be carefully analysed and not prematurely rejected. In Africa, at least, ECOMOG is so far considered to be a success which merits repetition in comparable circumstance[188]. The Liberian conflict is one of the first instances to show that regional action in the post-cold-war world need not be regarded through the old lense of

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[183] Report SG UN doc. S/25402 of 12 March 1993, 11.

[184] See. e.g. O'Neill (note 6), 217.

[185] This issue was often raised by Taylor but always rejected by the other parties; Keesings 37 (1991), 38379; WA 3859 (26 Aug.–1 Sept. 1991), 1410.

[186] See: An Agenda for Peace, UN doc. A/47/277-S/24111 of 17 June 1992, 13.

[187] Press Release, SG/SM/1411 of 17 Feb. 1993, 2.

[188] WA 3846 (27 May–2 June 1991), 853–854; WA 3851 (1–7 July 1991), 1077; WA 3911 (31 Aug.–6 Sept. 1992), 1471.

"universalism v. regionalism"[189]. Rather, regional action might be seen, as the Secretary-General has suggested, as an important and increasingly necessary complement to the global system of collective security[190].

[189] See O. Kimminich, Peace-keeping on a Universal or Regional Level, in: R. Wolfrum (ed.), Strengthening the World Order – Universalism v. Regionalism (Kiel 1989), 37–47.

[190] Press Release, SG/SM/1411 of 17 Feb. 1993, 4–5.