

## LEGAL AND POLITICAL IMPLICATIONS OF WITHDRAWAL OF MEMBERSHIP IN ECOWAS

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### Abstract

*This article discusses the legal and political implications of withdrawal of membership in the Economic Community of West African States (ECOWAS), by Mali, Niger and Burkina Faso. There were unconstitutional changes of government in these states for which sanctions were imposed on them. On 28 January 2024, the governments of countries issued a coordinated joint communiqué on national televisions in their respective countries announcing their withdrawal from ECOWAS. The aim of this article is to unravel the constitutionality of their respective notices. Withdrawal is an act by which a member of an international organization willingly terminates its membership. The right to withdraw is most of the time contained in the legal instrument of such an organization and this varies from one to the other. There have been previous withdrawal from ECOWAS by Mauritania and it was done according to the enabling Treaty. Doctrinal methodology is adopted and quantitative analysis of data is also used. The finding of this work shows that the three states of ECOWAS did not follow the provisions of the legal instrument of withdrawal. This work recommends that ECOWAS should not allow itself to be stampeded into lifting sanctions against a recalcitrant state.*

**Keywords:** ECOWAS, Withdrawal, Legal Implication, Political/Economic Implications, Re-admission

## 1.0 Introduction

On 28 January 2024, the governments of Burkina Faso, Mali, and Niger issued a coordinated joint communiqué on national televisions in their respective countries announced their withdrawal from the Economic Community of West African States (ECOWAS).

<sup>1</sup> All the three countries; have been under political and economic sanctions from ECOWAS following *coup d' etats* or unconstitutional changes of government in their individual countries. Commentators on West Africa observed that these withdrawals seem designed to undermine ECOWAS' authority.<sup>2</sup> Multiple crises are affecting all three countries, including an ongoing insurgency from jihadist groups in the Sahel region, and in their joint communiqué all three States cited the inability of ECOWAS to assist them as grounds for their withdrawal.<sup>3</sup>

ECOWAS came into being in 1975 through a Treaty that was initially signed in Lagos, Nigeria by sixteen nation states.<sup>4</sup> The original Treaty was revised in 1993 (ECOWAS Treaty, 1993). The initial objective of the body was for economic development of the sub-region. This she started pursuing by removing barriers to movement of persons and goods, trying to create a common currency, gas pipeline, regional court of justice and so

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<sup>1</sup> F Cowell, 'ECOWAS Withdrawal and the Law of Treaty Withdrawal', *EJIL*, 2024 <https://www.ejiltalk.org/ecowas-withdrawal-and-the-law-of-treaty-withdrawal/> accessed 15 July, 2024

<sup>2</sup> Institute for Security Studies, 'Proposed ECOWAS Exit leave West Africa at a Cross Road, 2024 <https://issafrica.org/iss-today/proposed-ecowas-exits-leave-west-africa-at-a-crossroads> accessed 16 July, 2024

<sup>3</sup> European Parliament, 'Sahel Exit' in West Africa: Implications for ECOWAS and the EU [https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2024\)762295](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2024)762295) accessed 16 July, 2024.

<sup>4</sup> ECOWAS Treaty, 1975 <https://www.ecowas.int/publication/treaty/#:~:text=The%20Economic%20Community%20of%20West,in%201975%20in%20Lagos%2C%20Nigeria> accessed 17 July, 2024.

on.<sup>5</sup> In pursuing the objectives, the sub-regional body was faced by conflicts and this made her to set up peacekeeping operations (code named, ECOWAS Monitoring Force, ECOMOG) that intervened in Liberia, Sierra Leone and Ivory Coast. On democracy, there had been democratic transitions in nearly all the countries, and there have been cases where incumbents lost re-elections, for example in Senegal, Ghana and Nigeria. ECOWAS is a regional reference point for other sub-regional organizations on African continent.<sup>6</sup> ECOWAS is presently a union of 15 sovereign West African States, but at formation in 1975, they were 16, Mauritania has withdrawn her membership in year 2000. ECOWAS constitutes a total area of 5.12 million km<sup>2</sup> and a population of about 397.21 million people, of which Nigeria has over 200 million people (ECOWAS History). The lingua franca in which it operates is English, French and Portuguese. These official languages, somewhat essentially, underpin the histories of colonization of the member states.<sup>7</sup> Today, uncertainties or challenges to regional governance have remarkably pushed organizations to now operate a complex-based approach and institutional structures in facilitating the performance of their roles. The ECOWAS has developed six institutions and 10 specialized agencies with varying responsibilities.<sup>8</sup> Even with such a number of institutions and agencies performing certain roles, most views have portrayed the ECOWAS as non-effective and in a more general description of 'failure'.<sup>9</sup>

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<sup>5</sup> N Nwafor, E Onyebuchi & O Alozie, 'The Economic Community of West African States and its members: A Success Story of Integrated Development' <https://www.africabib.org/rec.php?RID=A00005428> accessed 16 July, 2024.

<sup>6</sup> H A Idowu, 'Historical Patterns of Democratization in Ghana & Nigeria' *NILDS Journal of Democratic Studies* 2(2) <https://ir.nilids.gov.ng/handle/123456789/1403> accessed 16 July, 2024; Ibrahim J., 'Democratic Transition in Anglophone West Africa' CODESRIA, 2003 <https://bookshop.codesria.org/index.php/product/democratic-transition-in-anglophone-west-africa/> accessed 16 July, 2024.

<sup>7</sup> A A Boahan, 'General History of Africa' (1935) <<https://unesdoc.unesco.org/ark:/48223/pf0000134379>> accessed 15 July, 2024.

<sup>8</sup> G I Kowla, 'Economic Community of West Africa Study Regional Integration Process: A Study of the New Regionalism Phenomenon in Africa, Being a Master of Science in International and European Relations, Department of Management & Engineering Linköping' <http://www.diva-portal.org/smash/get/diva2:208290/FULLTEXT01.pdf> economic accessed 16 July, 2024.

<sup>9</sup> Ibid.

Withdrawal or cessation of membership is an act which a state member of an international organization willingly terminates her membership.<sup>10</sup> Of course the right to withdraw from a treaty based organization is included in almost all the legal instruments creating such an organization.<sup>11</sup> In the case of ECOWAS, this is contained in the ECOWAS Protocol on Democracy and Good Government This contains what can be described as series of anti-coup provisions, such as prohibiting States from altering election law in the six months prior to an election and allows for the suspension of States from ECOWAS if there is an unconstitutional transfer of power. The Protocol was ratified by all three parties (Burkina Faso, Mali and Niger) and came into force in 2005 and contains its own withdrawal clause – interestingly the Protocol and ECOWAS Treaty withdrawal clause are not interlinked. Niger has previously been suspended from ECOWAS under the Protocol in 2010 after a coup following an attempt by the then President to remain in office more than his term limit, but was readmitted in 2011 following a transfer to civilian rule.<sup>12</sup>

Bilateral and multilateral relations between states have a very long history, but the establishment of public international organizations functioning as institutions is essentially a development of the late nineteenth century.<sup>13</sup> The nineteenth century has been described as the era of preparation for international organization, this chronological period being between 1815 and 1914, while the years which have passed since the momentous events of 1914 must in a sense be regarded as the era of establishment of international organization, which, in these terms comes to be regarded as a phenomenon of the twentieth century. International organization means an organization established by treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members, in

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<sup>10</sup> V Rashica, The Right, Procedure and Reasons of Withdrawal from International Organizations, <https://intapi.sciendo.com/pdf/10.2478/seeur-2019-0019> accessed 16 July, 2024.

<sup>11</sup> Ibid.

<sup>12</sup> Cowell (n 1).

<sup>13</sup> Sinclair between Functionalism and Hegemony: Regional International Organization in the History of Int'l Law, 2024 <<https://researchspace.auckland.ac.nz/bitstream/handle/2292/68780/Sinclair%20-%20Between%20Functionalism%20and%20Hegemony-%20Regional%20International%20Organizations%20in%20the%20History%20of%20International%20Law%20%282024%29.pdf?sequence=1&isAllowed=y>> accessed 16 July, 2024

addition to states, other entities.<sup>14</sup> The Peace of Westphalia in 1648, the Congress of Vienna in 1815, the Congress of Berlin in 1871, The Hague Conferences in 1899 and 1907, and the Treaty of Versailles in 1919 were international conferences that preceded the establishment of international organizations.<sup>15</sup> It was in 1919 during the aftermath of the tragedy and suffering caused by World War I and after the Treaty of Versailles, when the League of Nations was created in 1920, as an attempt to create a political organization of an open and universal character.<sup>16</sup>

The League of Nations was an absolute novelty in the history of international relations. An organization on such a scale, covering all fields of international cooperation, never existed before.<sup>17</sup> This organization was designed to promote international cooperation and to achieve peace and security based on open, just, and honorable relations between nations.<sup>18</sup> By the late 1930s, the League was discredited as an instrument of collective security and its demise was rapid. After the outbreak of World War II in September 1939, the League's operations in Geneva were suspended. The League continued to exist in the United States and Canada but without a significant role in international relations. Plans began to be made toward the end of the war for a new, stronger international organization to replace it, this was the United Nations in 1945. The members of the League gathered for a final meeting in April 1946 at which they voted the organization out of existence.<sup>19</sup>

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<sup>14</sup> D Boyd & K Crawford, *Critical Questions for Big Data: Provocations for a Cultural, Technological, and Scholarly Phenomenon. Information, Communication, & Society*, 2012. <<https://www.scirp.org/reference/referencespapers?referenceid=1519557>> accessed 7 October, 2024.

<sup>15</sup> S Patton, 'The Peace of Westphalia as it affects on International Relations, Diplomacy and Foreign Policy' [https://digitalcommons.lasalle.edu/cgi/viewcontent.cgi?article=1146&context=the\\_histories](https://digitalcommons.lasalle.edu/cgi/viewcontent.cgi?article=1146&context=the_histories) accessed 16 July, 2024

<sup>16</sup> C F Amerasinghe, *Principle of Institutional Laws of International Organizations*, Cambridge University Press 2009, <<https://www.cambridge.org/core/books/principles-of-the-institutional-law-of-international-organizations/04E1704996E6E64DDBEFAD5446895FBA>> accessed 7 October 2024, 2024.

<sup>17</sup> Baietti, K. and Ginneken, *Characteristics of Well-Performing Public Water Utilities. Water Supply and Sanitation Sector Board of the Infrastructure Network of the World Bank Group. Water Supply & Sanitation Working Notes, Journal of Environmental Protection* (2006) <<https://www.scirp.org/reference/referencespapers?referenceid=2157612>> accessed 7 October 2024.

<sup>18</sup> M Herren, *Networking the International System: Global Histories of International Organizations*, 2014. <<https://link.springer.com/book/10.1007/978-3-319-04211-4>> accessed 7 October 2024.

<sup>19</sup> P Lamb F R Snape, *Historical Dictionaries of International Relations: Historical Dictionaries of International Organizations* 2017. <<https://www.amazon.com/Historical-Dictionary-International-Dictionaries-Organizations/dp/1538101688>> accessed 7 October 2024.

By the revised ECOWAS Treaty,<sup>20</sup> which sets out that States wishing to withdraw must give to the Executive Secretary one year's notice in writing and during that period a member state shall continue to comply with the provisions of this Treaty. However, on 7 February 2024, the government of Mali issued a statement saying it would not follow the one year wait period in Article 91 and it would withdraw without delay from ECOWAS due to the violation by the organization of its own texts, as well as the other legitimate reasons.<sup>21</sup>

### **1.1 Withdrawal Clauses from International Treaties**

According to Cowell, the Vienna Convention on the Law of Treaties (VCLT) which stipulates that withdrawal from a treaty may take place in conformity with the provisions of the treaty which entails that where there is a withdrawal clause it should be used to withdraw from a treaty.<sup>22</sup> Most treaties concluded since 1945 have withdrawal clauses. Duration, or waiting provision, regulating the time between the depositary receiving a notification of denunciation by a state party and the termination of legal obligations as withdrawal becomes effective, are a relatively common feature of withdrawal clauses. Of the treaties with withdrawal clauses a plurality require a wait period of a year between denunciation and withdrawal becoming effective, with Weapons and Disarmament treaties<sup>23</sup> being the only type of treaty where the majority of wait provisions are under in length.<sup>24</sup> In 1999 Mauritania formally announced its withdrawal from ECOWAS, in part

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<sup>20</sup> Article 91 of the revised ECOWAS Treaty, 1993.

<sup>21</sup> Premium Times, 2024. <<https://www.premiumtimesng.com/>> accessed 7 October, 2024.

<sup>22</sup> Art 54 of the Vienna Convention on the Law of Treaties (VCLT).

<sup>23</sup> The following are the list of some key International Disarmament Treaties and Agreement: Anti-Personnel Mine Ban convention, 1987, Arms Trade Treaty, 2013, Biological Weapons Convention, 1972, Chemical Weapons Convention, 1992, Comprehensive Nuclear-Test-Ban Treaty, 1996 and the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (Firearm Protocol), 2021, among others, <<https://disarmamenthandbook.org/handbook/annexes/list-of-key-international-disarmament-treaties-and-agreements/>> accessed 4 March, 2024

<sup>24</sup> S Yee, 'Towards an International Law of Co-progressive, Amasons, 2014 <https://www.amazon.com/Towards-International-Co-Progressiveness-Part-Responsibility/dp/9004250603> accessed 17 July, 2024.

out of concern about the organization's plans for a West African currency, but in line with Article 91 its withdrawal did not become effective until 2000.<sup>25</sup>

Withdrawal clauses are indivisible from the rest of the provisions in a treaty and, as Article 42 (2) of the VCLT sets out, the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty.<sup>26</sup> It is not open to a state to claim that their original act of consent to that treaty is invalidated by its issuing of a notice of denunciation, as a withdrawal clause specifically constrains a state in respect of future actions.<sup>27</sup> Burkina Faso (under its old name, Upper Volta), Mali and Niger had all become party to the original ECOWAS Treaty of 1975 and would have been aware of, and had consented to, its withdrawal clause, which were also incorporated, unmodified, into the revised 1993 ECOWAS Treaty. There is no basis in customary law for the existence of an independent right to retract from a treaty that can operate outside a treaty's express withdrawal clause.<sup>28</sup> Even in circumstances where there is no withdrawal clause, as the Inter-American Court of Human Rights held in *Ivcher-Bronstein v Peru*,<sup>29</sup> Article 56(2) of the VCLT imposes a 12-month wait provision that under the requirements of good faith...according to the law of treaties means there is no possibility of a termination or release with immediate effect.

If there is no way of effecting an instantaneous termination of obligations to the ECOWAS Treaty, there are two additional possibilities suggested by the Malian statement of 7 February 2024; that ECOWAS actions in suspending the three States and imposing various sanctions on them constituted a material breach of the treaty on the part

<sup>25</sup> The New Humanitarian, Mauritania Pulls out of ECOWAS <https://www.thenewhumanitarian.org/news/2000/12/28/mauritania-pulls-out-ecowas> accessed 16 July, 2024.

<sup>26</sup> L R Helfer, 'Terminating Treaties, OUP, 2012' [https://scholarship.law.duke.edu/faculty\\_scholarship/2662/](https://scholarship.law.duke.edu/faculty_scholarship/2662/) accessed 16 July, 2024.

<sup>27</sup> J Quigley, 'The United States' Withdrawal from Int'l Court of Justice Jurisdiction in Consular Cases: Reasons and consequences Duke Law Scholarship Repository, 2009 <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1057&context=djcil> accessed 16 July, 2024.

<sup>28</sup> S P Mulligan, 'Withdrawal from Int'l Agreement: Legal Framework, the Paris Agreement, and the Iran Nuclear Agreement, Congressional Research Science, 2017 <https://sgp.fas.org/crs/row/R44761.pdf> accessed 16 July, 2024.

<sup>29</sup> *Ivcher-Bronstein v Peru* [https://www.corteidh.or.cr/docs/casos/articulos/seriec\\_74\\_ing.pdf](https://www.corteidh.or.cr/docs/casos/articulos/seriec_74_ing.pdf) accessed 4 April, 2024

of ECOWAS institutions<sup>30</sup> (engaging Article 60 of the VCLT); or that the current crisis and ECOWAS actions constitutes a change of circumstances (as envisaged by Article 62 of the VCLT). These could provide a route for the departing States to avoid the one-year duration provision.<sup>31</sup>

Most International Organizations constitutive instruments contain a provision on withdrawal from the organization, but some do not. The UN, the World Health Organization (WHO) and – until 1954, the United Nations Educational, Scientific and Cultural Organization (UNESCO) are three prominent examples of organizations with constitutive instruments that lack such a provision.<sup>32</sup> Still, the UN in 1965 received a declaration of withdrawal from Indonesia;<sup>33</sup> in 1949 the USSR had given notice of withdrawal to the WHO, followed by a number of countries in the Soviet political sphere;<sup>34</sup> and in the years preceding the insertion of a withdrawal clause in its Constitution in 1954, UNESCO received withdrawal notifications from Czechoslovakia, Poland and Hungary.<sup>35</sup> This practice is not entirely conclusive as to the consequences of these notifications, but arguably suggests that such withdrawal is unlawful, or in any case without legal effect. In this case the legal relations bounce back to the sphere of the law of treaties, where especially article 54 (Denunciation of or withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal) of the VCLT is relevant. If no consensual basis can be found, withdrawal from an organization amounts to unilateral withdrawal from the constitutive treaty, that is, treaty denunciation without the consent of the co-contracting parties.<sup>36</sup> Such would be lawful only in the –

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<sup>30</sup> See art 60 of the VCLT.

<sup>31</sup> Mulligan (n 28).

<sup>32</sup> Klabbers J, 'The EJIL Foreword: The Transformation of Int'l Organization Law' *European Journal of Int'l Law* 26 (1) 2015 <https://academic.oup.com/ejil/article/26/1/9/497508> accessed 16 July, 2024.

<sup>33</sup> Letter dated 20 January, 1956 from the First Deputy Prime Minister and Minister for Foreign Affairs of Indonesia to the Secretary-General, UN Docs/6157 (20 January, 1965); Indonesia resumed collaboration in 1966 <<https://www.jstor.org/stable/20689903>> accessed 4 March, 2024.

<sup>34</sup> J Siddiqi, *World Health and World Politics: The World Health Organization and the UN System* (University of South Carolina Press, 1995) 104.

<sup>35</sup> CF M van Rij, *Withdrawing from international organizations in the absence of a withdrawal clause* (LLM Thesis, University of Amsterdam, 28 June 2018).

<sup>36</sup> L Brilmayer & I. Y. Tesfalidet, (2011) Denunciation and Withdrawal from Customary Interventional Law: An Erroneous Analogy with Dangerous Consequences, *The Yale Law Journal* 1990 <https://www.yalelawjournal.org/forum/treaty-denunciation-and-withdrawal-q-withdrawal-q-from-customary-international-law-an-erroneous-analogy-with-dangerous-consequences> accessed 15 July, 2024.



unlikely – case that articles 60 – 62 of the VCLT are successfully invoked and therewith trump the foundational rule of *pacta sunt servanda*.<sup>37</sup>

Having said this, many constitutive treaties do contain provisions on withdrawal. The withdrawals from the ICC serve as an example.<sup>38</sup> Furthermore, in December 2017 both the US and Israel gave UNESCO notification of withdrawal on the terms of article II (6) of the (in 1954 amended) UNESCO Constitution. With a withdrawal clause in the constitutive instrument, withdrawal comes to fall under the remit of institutional law. A question that may arise in these cases, however, is to what extent the law of the organization then covers the withdrawal and its legal consequences. What is the scope and reach of the pertinent institutional rules – in the pertinent case, is all general law of treaties rules subsumed in the rules of the organization, or only some? The more complex and densely regulated the organization, the more perplexing this question may become. This is illustrated in the Britain exit from European Union (Brexit) processes, when discussion focused on pending debt and outstanding payments. In 2017, when the general political mood was perhaps more categorical than it is now (‘no deal is better than a bad deal’),<sup>39</sup> the House of Lords (European Union Committee) published Brexit and the EU Budget, in which it held that ‘Article 50 (of the) *TEU* allows the UK to leave the EU without being liable for outstanding financial obligations under the EU budget and related financial instruments, unless a withdrawal agreement is concluded which resolves this issue’ and that ‘(t)he ultimate possibility of the UK walking away from negotiations without incurring financial commitments provides an important context’.<sup>40</sup>

## 1.2 The Legal Implications of the Suspension

Of course, a lawful exercise of powers under the Protocol could not constitute a material breach by ECOWAS as defined in Article 60(3)(b) of the VCLT, entitling the three

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<sup>37</sup> Ibid.

<sup>38</sup> Leon-Perez-Acevedo, ‘Why Retain Membership of the International Criminal Court? Victim-Oriented Considerations’ (2018) 15(2) International Organizations Law Review.

<sup>39</sup> L Elliott, ‘Theresa May’s Election Victory will prove Pyrrhic indeed’ *The Guardian (online)*, 11 June 2017.

<sup>40</sup> European Union Committee, Brexit and EU Budget (House of Lords Paper125, session 2016-17 (2017) (135) and 3.

countries to suspend their participation in ECOWAS. It could be argued that ECOWAS suspensions are contrary to the object and purpose of the ECOWAS treaty under Article 2(a) to promote co-operation and integration and maintain and enhance economic stability. However, the Protocol is expressly clear that ECOWAS may impose certain sanctions as she has done to some other states, for example, Niger in 2011. On the other hand, the fact that ECOWAS was not negotiating with the suspended state, or was not recognizing its transition to democracy, this would still be unlikely to justify a breach justifying termination. In the *Gabcikovo-Nagymaros Project* the International Court of Justice (ICJ) held that only a material breach would justify termination and that a violation of other rules would not necessarily justify termination, even though it may justify counter measures from the affected state.<sup>41</sup>

There is a school of thought that instruments like the Protocol are too politically inflexible and ECOWAS overall political decision-making has come in for criticism. However, the Protocol and ECOWAS Treaty are still legally binding instruments and the ‘wait’ provisions provide an important function, giving time for disputes to be resolved, property claims to be dealt with and arrangements for protecting individual rights to be put in place, prior to termination of a treaty coming into effect. Asserting the right to instant termination, which has no obvious legal basis, risks a much broader threat to the international rule of law in the region, especially when ECOWAS contains a complex array of trading agreements and is linked to the regional monetary union.<sup>42</sup>

Termination of membership may clearly take place when an organization is dissolved. But, while the organization continues to exist, membership may be terminated by withdrawal (a voluntary act of the member state), by expulsion (a measure taken by the organization against the member state) and by the loss of membership upon failure to accept an amendment of the constitution of the organization. Another reason for

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<sup>41</sup> E K Proukaki, ‘The Problem of Enforcement in International Law (2009) accessed 16 July, 2024 [https://library.oapen.org/bitstream/id/d5c7d75a-7b27-4737-bc04-3f5294d1362f/external\\_content.pdf](https://library.oapen.org/bitstream/id/d5c7d75a-7b27-4737-bc04-3f5294d1362f/external_content.pdf) accessed 16 July, 2024 ’

<sup>42</sup> S Raube, ‘An International Law Assessment on ECOWAS’ Threat to use Force in Niger Just Securely 2023 <https://policycommons.net/artifacts/4650020/an-international-law-assessment-of-ecowas-threat-to-use-force-in-niger/5474521/> accessed 16 July, 2024

termination not often mentioned is the disappearance of the member state or loss of its essential characteristics as a state.<sup>43</sup> As earlier noted, the right to withdraw is expressly referred in the constitutions of most of international organizations and the conditions attached to the right of withdrawal vary. Some organizations impose clear limitations on withdrawal, in some cases it is not permitted during an initial period, so as to allow the organization time to become established.<sup>44</sup> Whereas in some cases, a period is prescribed between the giving of notice to withdraw; and the coming into effect of withdrawal; a kind of 'cooling-off' period, to allow for reconsideration and other possibilities for example, a change of mind.<sup>45</sup>

Another condition sometimes attached to withdrawal is that outstanding obligations must be fulfilled before withdrawal is effective. In general the obligations specified are simply the financial obligations incurred as part of the budgetary commitment, but in some cases the fulfillment of obligations other than financial ones is required. It should be emphasized that when an organization finances itself, as is the case with the financial organizations, the settlement of accounts with a withdrawing member is even more complicated. Policy considerations favoring the view that withdrawal is permissible even in the absence of express provision have been based on the concepts of sovereignty and self-determination, equity, expediency and general principles of law. There is a question whether a member state can suspend its notice, once given. The answer should be that it cannot, unless the rest of the members agree.<sup>46</sup>

The difficult question is what happens in the absence of a withdrawal clause. Some have argued that in such a situation member states have no right of unilateral withdrawal, this view being sometimes expressed as a consequence of the applicability of Articles 54 to 56 of the Vienna Convention on the Law of Treaties to the constitutions of international

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<sup>43</sup> Helfer (n 26).

<sup>44</sup> Rashica (n 10).

<sup>45</sup> P. S Atrib, F. O Blazquez, & J M Exora, 'The Right of Withdrawal in Consumer Contract: A Comparative Analysis of American and European Law (2018)' <https://indret.com/wp-content/uploads/2019/01/1403-1.pdf> accessed 15 July. 2024.

<sup>46</sup> P Carley, 'Self-Determination Sovereignty, Territorial Integrity, and the Right to succession Report from a Roundtable held in Conjunction with the US Dept of States' Policy Planning Staff.(1996)

organizations as to any other treaty. The Article 54 states that the termination of a treaty or the withdrawal of a party may take place:

- i. In conformity with the provisions of the treaty;
- ii. At any time by consent of all the parties after consultation with the other contracting States.

The Article 55 is about reduction of the parties to a multilateral treaty below the number necessary for its entry into force which highlights that: 'unless the treaty otherwise provides, a multilateral treaty does not terminate by reason only of the fact that the number of the parties falls below the number necessary for its entry into force'. Withdrawal from a treaty containing no provision regarding termination, denunciation or withdrawal is emphasized on the Article 56 that states:

A treaty which contains no provision regarding its termination and which does not provide for denunciation or withdrawal is not subject to denunciation or withdrawal unless: It is established that the parties intended to admit the possibility of denunciation or withdrawal; A right of denunciation or withdrawal may be implied by the nature of the treaty. A party shall give not less than twelve months' notice of its intention to denounce or withdraw from a treaty under paragraph 1. Article 56, which applies to both bilateral and multilateral treaties, distinguishes between three terms: the termination of a treaty, the denunciation of a treaty and the withdrawal from a treaty.<sup>47</sup>

This is the legal position and best practice all over the world.

### **1.3 Political/Economic Implications of the withdrawal**

Experts are predicting a possible import inflationary effect on food commodities from Burkina Faso, Niger and Mali as a result of those countries' withdrawal from the ECOWAS bloc.<sup>48</sup> Global Credit Rating (GCR) – a subsidiary of Moody's – has indicated that leaving ECOWAS will have a general inflationary impact in the domestic markets of all the three countries, which will inevitably be transferred to the price of food

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<sup>47</sup> Art 56 of the EU Treaty.

<sup>48</sup> Raube (n 42).

commodities imported into neighbouring countries including Ghana.<sup>49</sup> It says the movement of people across various borders and trading in these countries will likely be limited – a situation that could possibly promote commodity hoarding with price hikes. The GCR also noted that the three countries' withdrawal will further weaken economic development in the three Sahel nations, who already rank among the worlds poorest.<sup>50</sup>

Ghana currently imports 90% of its fresh tomatoes from Burkina Faso, with a national consumption demand in excess of 800,000 metric tons per annum, according to data from the Ghana Incentive-Based Risk-Sharing System for Agricultural Lending (GIRSAL). Trade data from the Ghana Vegetable Producers and Exporters Association show that the country imports some US\$400million worth of tomato from Burkina Faso each year. Burkina Faso and Mali also account for almost 70% of Ghana's livestock import.<sup>51</sup> Similarly, Niger remains a key exporter of dry onions in the region; responsible for almost two-thirds of total exports according to market intelligence platform, index box. In 2021, the main destinations of onion exports from Niger and Ghana are (US\$21.7million), Ivory Coast (US\$1.15million), Benin (US\$451,000), Togo (US\$84,500) and Nigeria (US\$35,100).<sup>52</sup> In 2022, onion import from Niger, according to the Ministry of Food and Agriculture, was valued at US\$26million – with that amount expected to reach US\$30million by the end of this year. Indeed, market watchers have also predicted that the cost of a box of imported tomato – which fell by 43% from GHc3,000 in the first and second quarter last year to GHc1,700 by December, and currently sells between GHc1,000 and GHc1,200 – may double again the coming weeks. This development is also expected to affect prices of imported legumes, cereals and grains from Nigeria and Mali due to their exit from the bloc. Mali, according to the Peasant Farmers Association of Ghana (PFAG), has equally in recent years increased

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<sup>49</sup> M Chirikure, O Abimbola, & G Chelwa, 'How are the 'Big Three' rating Agencies Impact African Countries African Policy Research Institute, 2022 <https://afripoli.org/how-are-the-big-three-rating-agencies-impacting-african-countries-54> accessed 15 July, 2024.'

<sup>50</sup> P O Idisi, (2021) Food Security, Economic Growth and Price Stability Nexus and Conceptual Issues, *Central Bank of Nigeria, comic and Financial Review* <https://www.cbn.gov.ng/Out/2024/RSD/Food%20Security,%20Economic%20Growth%20and.pdf> accessed 16 July, 2024

<sup>51</sup> EJZ Robinson & S Kolavalli, 'The of Tomato in Ghana Marketing' <<https://cgspace.cgiar.org/items/d92f4a30-4d63-46f3-a6fb-c35e526d3a28>> accessed 4 November, 2025.

<sup>52</sup> Ibid.

exports of beans, millets and corns to Ghana. To initiate solutions to these unforeseen events and reduce food imports from neighboring countries, key agriculture sector stakeholders and have been advocating support for research institutions to undertake seed development in greenhouse environments to enable year-round nursery. There are also calls for mechanized irrigation, inputs and access to capital to combat changing trends in the current erratic climate circumstances.<sup>53</sup>

The political implications of the withdrawal are enormous. The sub-region has been enjoying the Protocol on Free Movement of Persons, Goods and Services for so many years now which the three countries will no longer enjoy.<sup>54</sup> In addition, the three countries are landlocked and it will affect their transportation system to the coastal area in the sub-region. Added to this is the issue of the war against insurgency and terrorism which will be greatly impaired by the reason of the withdrawal. Chad, Niger, Central Africa Republic (CAR), Cameroon and Nigeria are members of the Multi-National Task Force (MJTF) fighting the Boko Haram insurgency in the Lake Chad Basin, the withdrawal may significantly affect the narratives.<sup>55</sup>

#### **1.4 Specific cases of Withdrawals**

Under this sub-heading this paper will discuss various withdrawals from international organizations. The organizations to be considered include the United Nations, the European Union, the African Union and so forth.

##### **1.4.1 Withdrawal from the United Nations**

The Charter of the UN contains no express provision prohibiting, permitting, or regulating the question of withdrawal from the organization, and the organization has on

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<sup>53</sup> FAO, 'The State of Food and Agriculture 2020' <<https://openknowledge.fao.org/server/api/core/bitstreams/6e2d2772-5976-4671-9e2a-0b2ad87cb646/content> > accessed 4 November 2025.

<sup>54</sup> M. L Brown, 'Nigeria and the ECOWAS Protocol on Free Movement': *The Journal of Modern African Studies* 27 (2) 1989 <https://www.africabib.org/rec.php?RID=058835962> accessed 15 July, 2024.

<sup>55</sup> P Dadur & S K Aliyu, 'View of the Impact' of Multinational Joint Task Force Counter-Operation in the Fight against Boko Haram Insurgency (2021). <https://gijmss.com.ng/index.php/gijmss/article/view/86/70> accessed 15 July, 2024.

only one occasion had to deal with this situation.<sup>56</sup> The only case of withdrawal that can be cited is that of Indonesia in 1965, when this state announced and put into effect its intention to withdraw from the UN as a protest against the election of Malaysia as a non-permanent member of Security Council.<sup>57</sup> Notice of withdrawal was given in a letter to the Secretary General. Although in his letter of reply, the Secretary left open the issue of the legality of Indonesia's conduct, the UN'S acquiescence to the withdrawal-defined as 'inactive membership' can be inferred from a series of conclusive acts of the Organization, such as the cancellation of Indonesia from the list of members, the removal of the Indonesian flag and plate from the UN, its exclusion from the budget documents, and so on.<sup>58</sup>

However, at the end of 1966, Indonesia informed the Secretary-General that Indonesia had decided to resume participation in its activities starting with the Twenty-First Session of the General Assembly.<sup>59</sup> Flowing from its peculiar characteristics, and especially because of the rather tenuous and *sui generis* justification brought by Indonesia as grounds for withdrawal, this case seems to testify to the view that each member state has a complete and unconditional right to withdraw from the UN. According to the UN Handbook on the Final Clauses of Multilateral Treaties, the words denunciation and withdrawal express the same legal concept. Denunciation (or withdrawal) is a procedure initiated unilaterally by a state to terminate its legal engagements under a treaty.

Nonetheless, two articles of the UN Charter should not be overlooked because they relate to the compulsory withdrawal or to expulsion of states from the UN. Article 5 states that a Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the

<sup>56</sup> L. B Sohu, 'Expulsion or Forced Withdrawal from an Int'l organizational (1964) Harvard Law Review' <[https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751410/EPRS\\_BRI\(2023\)751410\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/751410/EPRS_BRI(2023)751410_EN.pdf)> accessed 16 July, 2024

<sup>57</sup> D Akande., 'Withdrawal from the United Nations World it have been Lawful for Philippines? Blog of the European Journal of International Law 2016' <<https://www.ejiltalk.org/author/bloggeditor/page/2/?pagenum=24>> accessed 15 July. 2024

<sup>58</sup> Ibid.

<sup>59</sup> Blum Y. Z., 'Indonesia's Return to the United Nation (1967) JSTORT' <<https://www.jstor.org/stable/757388>> accessed 16 July, 2024.

Security Council. The exercise of these rights and privileges may be restored by the Security Council. Whereas Article 6 states that a Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.<sup>60</sup>

In considering the legality of withdrawal from the UN, two questions will need to be addressed. First, is withdrawal possible at all? Second and this question will only arise if one gives a positive answer to the first question: what are the circumstances under which, and by which procedure may a state withdraw?<sup>61</sup> Thus, even if withdrawal were possible in the abstract, were the circumstances of the Philippines scenario such that it would have been permitted to withdraw? Unlike BREXIT and withdrawal from the European Union, the absence of a withdrawal clause in the UN Charter means that the answer to the first question must be derived from the general law of treaties.

After all, withdrawal from the UN is a case of withdrawal from a treaty, the UN Charter. Art. 56(1) of the Vienna Convention on the Law of Treaties provides that where a treaty does not explicitly provide for the possibility of withdrawal, withdrawal is not legally permissible unless it is established that the parties intended to admit of that possibility or a right of withdrawal may be implied by the nature of the treaty. In the case of the UN Charter, a proposal to include a withdrawal clause was rejected by a small margin. Nevertheless, the drafting history of the Charter indicates quite clearly that the parties intended to admit of the possibility of withdrawal and that despite the permanent nature of the organization created by the Charter, the treaty was not regarded as one that would admit of no right of withdrawal.

In the discussions around the drafting of what was to become Article 108 dealing with amendments to the Charter, the Committee and the Plenary of the Conference adopted a declaration that contemplated the possibility of withdrawal in a number of cases. According to this declaration, withdrawal might occur in exceptional circumstances. The

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<sup>60</sup> Ibid, Rashica (n 10).

<sup>61</sup> Akande (n 54).



declaration went on to state that where the organization was unable to fulfill its role of maintaining peace or where a member was unable to accept an amendment that had come into force, or in cases where an amendment was accepted by a majority of the Assembly but failed to secure sufficient ratifications to bring it into force, members could withdraw.<sup>62</sup>

#### **1.4.2 Withdrawal from the European Union**

While it has always been generally assumed that the EU could be dissolved and individual withdrawals permitted by an agreement of all the member states, most publicists believed before the entry into force of the Treaty of Lisbon<sup>63</sup> in 2009 that the European treaties in their nice version did not permit unilateral withdrawals, in view of express provisions stating that these treaties were concluded for unlimited periods.<sup>63</sup> The Lisbon Treaty for the first time defined the possibility of voluntary withdrawal of a member state from the EU according to the Article 50 which states that:

If a member state decides to leave the EU, initially notifies the European Council for its intention, then the EU negotiates and reaches an agreement with that state, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the EU. This agreement shall be concluded on behalf of the EU by the EC, acting by a qualified majority, after obtaining the consent of the European Parliament. If no agreement is reached two years after the withdrawal notice, the BC in agreement with the member state unanimously decide to extend this period.<sup>64</sup>

Brexit is a term formed by the unification of the words "Britain and Exit", referring to the referendum held on 23 June 2016 in the United Kingdom, in which the British voted 51.9 % with 48.1% in favor of withdrawal from the EU. The British Government on 29 March 2017 confirmed to the EU its decision to activate the Article 50 and the EC on 22 May 2017 approved the authorization decision to open Brexit negotiations, the commission

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<sup>62</sup> Ibid.

<sup>63</sup> European Parliament, 'The Treaty of Lisbon: Historical Development of European Union (2007)' <https://www.europarl.europa.eu/factsheets/en/sheet/5/the-treaty-of-lisbon> accessed 16 July, 2024.

<sup>64</sup> Art 50 of the EU Treaty.

and negotiating directives. The European Council has adopted a decision to extend the period under Article 50, in the context, of the UK's intention to withdraw from the EU.<sup>65</sup> This is a third extension of Brexit that lasted till 31 January 2020 to allow more time for the ratification of the withdrawal agreement. European Council adopts decision to extend the period under Article 50 The European Council has adopted a decision to extend the period under Article 50.<sup>66</sup>

### **1.4.3 Withdrawal from African Union (AU)**

In 1976, and after being pressured by Algeria and Libya, the Organization of African Unity (OAU) Committee, based at the time in Maputo, Mozambique, recognized the Polisario Front calling as a Liberation movement in Africa. The separatist movement had self-proclaimed the Sahrawi Arab Democratic Republic. At the OAU conference held in Khartoum, Sudan, on the 17<sup>th</sup> of July 1978, leaders of the participating countries called for a cease-fire in Western Sahara urging the two parts to find a political solution for the conflict. The summit was concluded by the establishment of a committee of five African leaders, including Sudanese, Guinean, Malian, Nigerian and Tanzanian presidents, to study the Western Sahara conflict in order to put forward a number of concrete proposals at the next African summit. The summit that was held on November the 12<sup>th</sup>, 1984 in the Ethiopian capital, Addis Ababa was attended for the first time by a delegation representing SADR and led by Mohamed Abdelaziz. This was the reason why Morocco decided to withdraw from the OAU.<sup>67</sup>

On July the 9<sup>th</sup>, 2002, the African Union (AU) was created upon the ruins of the Organization of African Unity (OAU). The new members of the organization remained the same, including the separatist movement. More than three decades after Morocco's withdrawal from the Organization of African Unity, the situation in Africa has dramatically changed. The Algerian and Libyan influence started to fade away and many

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<sup>65</sup> F F Fabbrini & Schmidt (2019) 'The Extension of UK Membership in the EU, causes and Consequences, European University Institute' [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3448598](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3448598) accessed 16 July, 2024

<sup>66</sup> Ibid.

<sup>67</sup> L Louw-Vaudran, 'The Meaning of Morocco's Return to the African Union' (2018) <<https://issafrica.s3.amazonaws.com/site/uploads/nar-1.pdf>> accessed 4 November 2025.

African countries have stopped recognizing SADR as a state.<sup>68</sup> On the 18<sup>th</sup> July, 2016, King Mohammed VI sent a letter to the 27<sup>th</sup> Summit of the Union, held in Kigali, Rwanda of her interest to re-join the union. At the African Union summit held in Addis Ababa at the end of January, 2017, Morocco's request to formally join the African Union was accepted, despite the opposition of the SADR delegation, Algeria and South Africa.<sup>69</sup>

### **1.5 The Lifting of the Sanctions and the Re-admission**

Leaders of the Economic Community of West African States (ECOWAS) met to address a political crisis in the coup-hit region that deepened in January with military-ruled Niger, Burkina Faso and Mali's decision to exit the 15-member bloc. After closed-door talks, ECOWAS said it had decided to lift the sanctions including border closures, the freezing of central bank and state assets, and the suspension of commercial transactions with immediate effect. In a communiqué it said this was done for humanitarian reasons, but the move will be seen as a gesture of appeasement as ECOWAS tries to persuade the three junta states to remain in the nearly 50-year old alliance. Their planned exit would bring a messy disentanglement from the bloc's trade and services flows, worth nearly \$150 billion a year.

The bloc 'further urges the countries to reconsider the decision in view of the benefits that the ECOWAS member states and their citizens enjoy in the community', it said. It also said it had lifted certain sanctions on junta-led Guinea, which has not said it wants to leave ECOWAS but like other junta states has not committed to a timeline to return to democratic rule. ECOWAS Commission President Omar Touray said some targeted sanctions has been lifted, but the political sanctions remained place for Niger, without giving details.

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<sup>68</sup> Y Dahmani, 12 November 1984 'Whem Morocco Withdrew from the Organization of African Union (2017) <https://en.yabiladi.com/articles/details/59322/november-1984-when-morocco-withdrew.html> ', accessed 15 July, 2024.

<sup>69</sup> Ibid.

## **1.6 Conclusion**

In this work withdrawal from treaty based organizations has been discussed. Provisions from treaty based organizations have been illuminated upon; and where there is no provision in the treaty, VCLT have filled the lacuna. Some states that hesitate to transfer parts of their sovereignty within international organizations choose the option of withdrawal, which means a voluntary act of the member state to withdraw its membership in the organization. The right to withdraw is expressly referred to in the treaties of most of international organizations and the conditions attached to the right of withdrawal vary. In general, the specified obligations of states that decide to withdraw are mostly the financial ones. Some international organizations have emphasized on their statutes the procedures which must be followed by states that decide to withdraw, whereas some organizations only insert the reasons of the expulsion of states. While the article that regulated the withdrawal of states was part of the Covenant of the League of Nations, the Charter of the UN does not have any provision by which a member state may withdraw. With the exception of the League of Nations, a considerable part of the withdrawals of states from international organizations were made during the Cold War, a period characterized by various ideological clashes. Nevertheless, the 21st century is facing serious threats of some of the most important states in the world with big political and economic importance, to withdraw from international organizations, whether universal or regional, that has a major role in the international arena.

## **1.7 Recommendations**

This work in the light of the submissions will therefore make the following submissions.

One, West African countries should imbibe the tenets of democracy and good governance as a medium of best practice. West African cannot afford to be the weeping child of the African continent. Out of about five countries under military dictatorship in Africa, three are from West Africa; this ought not to be so. Two, in as much as we do not advocate the total disintegration of ECOWAS, at the same time, her leaders must not succumb to cheap blackmail of threat of withdrawal by any of her members by whittling down her legal framework so as to sooth any of her members. This may lead to dire consequences of gales of military rule in West Africa thereby destroying the democratic rules already attained.

Three, passionate appeal is hereby made to Non-Governmental Organizations (NGOs) to be awake and educate the citizenry more about democratic governance as the acceptable mode all over the world. In some of this countries, the citizens were rejoicing that the military government is back, thereby giving tacit approval to their come back. Finally, following from the above, civilian administrations ought to perform better than their military counterparts, political offices holders should imbibe good democratic principles and ensure that the populace actually feel and enjoy democratic dividends.