

## 16. Economic Community of West African States (ECOWAS)

Extracts from the fourth report on the provisional application of treaties, by Juan Manuel Gómez-Robledo, Special Rapporteur:<sup>280</sup>

168. As the Special Rapporteur mentioned in the oral presentation of his third report to the Commission on 14 July 2015, he had received, on a date subsequent to the preparation and submission of the third report to the Secretariat for processing, a publication from the Ministry of Foreign Affairs of Nigeria entitled “*The Treaty, Protocols, Conventions and Supplementary Acts of the Economic Community of West African States (ECOWAS)*”.<sup>281</sup>

169. This publication is a collection of a total of 59 treaties concluded under the auspices of ECOWAS in the period 1975–2010. After an exhaustive review of the 59 treaties, it was observed that only 11 of them did not provide for provisional application. Moreover, it was particularly interesting that the formula generally used in the remaining instruments is as follows:

The treaty shall enter into force provisionally upon the signature by Heads of State and Government and definitively upon ratification.

170. Clearly, the use of the phrase “enter into force provisionally” instead of “provisional application” confirms that States continue to draw a precise distinction between the two concepts of the law of treaties, and this has an impact subsequently on the way in which universal organizations like the United Nations perform their registration and depository functions, as we have seen above. However, the reiteration of this formula shows that the States of this region are interested in ensuring the full effectiveness of the treaties they conclude as soon as possible.

171. Only one instrument, *ECOWAS Protocol A/P4/1/03 on Energy*,<sup>282</sup> refers explicitly in article 40 to its provisional application. This provision, which is quite long, sets out *in extenso* the rights and obligations arising out of provisional application as they apply to a State or regional economic integration organization.

172. The following temporal observation may also be made: from the adoption of the treaty establishing ECOWAS in 1975 until the adoption of the revised treaty in 1993, all instruments contained the same clause on provisional application.

173. For some reason, starting in 1993, this clause stops appearing in treaties concluded under the auspices of ECOWAS. It has been only since 2001 that the provisional application clause has been reincorporated in a protocol (A/SP.2/12/01), which has since remained, except in three cases: *Protocol A/P.1/10/06, on the establishment of a Criminal Intelligence and Investigation Bureau; the Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials; and Protocol A/SP.1/06/06, amending the revised ECOWAS treaty*, all in 2006.

174. All these examples illustrate the importance of provisional application in regional commitments of States, the relationship of such application to international organizations and its vitality in the practice of the law of treaties.

<sup>280</sup> Doc. A/CN.4/699 (2016).

<sup>281</sup> *The Treaty, Protocols, Conventions and Supplementary Acts of the Economic Community of West African States [1975–2010]*, Abuja, Ministry of Foreign Affairs, 2011.

<sup>282</sup> For the ECOWAS documents mentioned, see also <https://ecowas.int/publication/treaty/>.