

# Court Bulletin

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## Status Of Applications Lodged In The Court

*Page 11*

## ECOWAS Court Elects New President

*Page 6*

## Hadidjatou Mani Koraou V. Republic Of Niger: Impact Of A Judgment Of The Court Of Justice Of ECOWAS

*Page 8*

## **OPINION** Proliferation Of International Courts: At What Risk?

*Page 24*





# Contents

## Editorial

Tribute to the pioneer judges of the Court  
Page 3

## The Court in Brief

THREE ECOWAS COURT JUDGES  
TAKE OATH OF OFFICE

ECOWAS COURT ELECTS NEW PRESIDENT  
Page 5

## What is New?

HADIDJATOU MANI KORAOU V. REPUBLIC  
OF NIGER: IMPACT OF A JUDGMENT OF THE  
ECOWAS COURT OF JUSTICE.  
Page 8

## Judicial Activity

STATUS OF APPLICATIONS  
LODGED IN THE COURT  
Page 11

## Other Activities

GIABA AND ECOWAS COURT JOIN  
FORCES AGAINST ORGANISED CRIME  
Page 17

JUDGES AND PROFESSIONAL  
STAFF OF THE COURT RECEIVE  
TRAINING ON GENDER  
Page 19

ECOWAS COURT SUPPORTS THE FIGHT  
TO REMOVE OBSTACLES TO FREE  
MOVEMENT OF PERSONS, GOODS  
AND CAPITAL  
Page 22

ECOWAS INSTITUTIONS, NGOS PAY  
SOLIDARITY VISITS TO ECOWAS COURT

## Opinion

PROLIFERATION OF INTERNATIONAL  
COURTS: AT WHAT RISK?  
Page 24

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# Editorial

## TRIBUTE TO THE PIONEER JUDGES OF THE COURT

**T**he current year has turned on a new page in the life of the Court, with the arrival of three new Judges and the departure of three others. The publication of this volume of the Court Bulletin provides an occasion for me to welcome the new Judges and to pay homage to those who have left. Their departure constitutes a significant event because from the time the first Judges of the Court were appointed, in 2001, it is the first time new Members of the Court are replacing old ones, in accordance with the relevant texts.

Since the adoption of Protocol A/P1/7/91 relating to the Court, on 6 July 1991, the process leading to the establishment of the Court has more or less been a long one. Indeed, the Protocol entered into force only in 1996 and the appointment of the first judges had to wait till the year 2000.

On 30 January 2001, the then President of the Republic of Mali and Chairman of the Authority of Heads of State and Government of ECOWAS, His Excellency Alpha Omar Konaré, administered the Oath of Office to the 7 judges appointed by the Authority of Heads of State and Government, during

its 24th Ordinary Session held on 15 and 16 December 2000 at Bamako.

The seven Judges in question were: Hon. Justice Anthony Alfred Benin from the Republic of Ghana, Hon. Justice Hansine Napwaniyo Donli from the Federal Republic of Nigeria, Hon. Justice Aminata Mallé Sanogo from the Republic of Mali, Hon. Justice Soumana Sidibé Dirarou from the Republic of Niger, Hon. Justice El Mansour Tall from the Republic of Senegal, Hon. Justice Barthélémy Toé from Burkina Faso, and myself Hon. Justice Awa Daboya Nana from the Republic of Togo.





# Editorial

The heavy responsibility of laying the foundation of the nascent Court, providing it with an organisational framework, and ensuring that it became operational, both judicially and administratively, rested upon the shoulders of these seven personalities.

It was not easy as a task for the Court to take off. There was the need for know-how, genius and determination, for putting up the ECOWAS 'temple of Themis', and for providing it with the necessary equipment and the suitable professional and supporting staff.

It is appropriate to lay particular emphasis on the decisive effort made by the first President of the Court, Hon. Justice Hansine Donli, for her significant role in the process of putting the Court on its feet.

It is often said that, "It is at the tail end of a rope that one weaves a new one". The successor to Hon. Justice Donli at the presidency of the Court, Hon. Justice Aminata Mallé Sanogo, devoted herself to improving upon the quality of output in the administrative departments of the Court, and that of the working conditions of the staff.

Moreover, not long after taking up their positions, the first Judges addressed themselves to difficulties related to weaknesses in the texts governing the functioning mechanism of the Court. With support from the

civil society, they embarked upon the process which, in January 2005, resulted in the amendment of the 1991 Protocol on the Court, and the amended text widened the powers of the Court and opened up the access of individuals and corporate bodies to the Court.

The Honourable Pioneer Judges of the Court, as they may rightly be called, spared no effort, in only three years, in laying down the foundations of the case law of the Community Court of Justice, ECOWAS.

Their efforts ensured that the Court's presence and image were enhanced, in terms of credibility and notoriety, as judged by the importance the Court has assumed amongst the Community Institutions.

Today, one can indeed acknowledge that the first judges have risen to the challenge of setting up a judicial institution of high repute.

**Hon. Justice Awa Nana Daboya**  
*President*  
*Community Court of Justice, ECOWAS*

# The Court in Brief

## THREE NEW ECOWAS COURT JUDGES TAKE OATH OF OFFICE

*By Mustamusi Odah Kilimbe*



The new three (3) Judges of the Community Court of Justice taking their oaths



The outgoing three (3) Judges of the Community Court of Justice

The chairman of the Authority of Heads of State and Government of ECOWAS, President Umaru Musa Yar'Adua of Nigeria on Tuesday, 10<sup>th</sup> February, 2009 administered Oath of Office on three new Judges of the Community Court of Justice, ECOWAS. They are, Hon. Justice Clotilde Medegan Nougboide (Benin Republic) Hon. Justice Mosso Ramos Benfeito (Cape Verde) and Hon. Justice EIAM Monsedjoueni Potey (Cote D'Ivoire).

The three new Judges are replacements of the following three pioneer out-going Judges of the Court: Hon. Justice Aminata Malle Sanogo (Mali), former President of the Court, Hon. Justice Bethelmy Toe (Burkina Faso) former Doyen and Hon. Justice El-Mansour Tall (Senegal) Vice-President of the Court from 2001-2004.

The new Judges were appointed by Heads of State of ECOWAS countries on 19<sup>th</sup> December, 2008 following their selection by the regional Judicial Council in Ouagadougou on 26<sup>th</sup> November, 2008.

The ceremony was held to give effect to Article 5 of 1991 Protocol of the Court which provides that Members of the Court be sworn in by, or take an oath of office in the presence of, the Chairman of Authority prior to their assumption of duty.

Addressing the new Judges, President Yar'adua congratulated them and urged them to uphold the rule of law and discharge their duties with integrity and diligence.

In his speech at the occasion, the President of ECOWAS Commission, Dr. Mohammed Ibn Chambas, who led the Judges to State House Abuja, venue of the ceremony, thanked President Yar'adua for his commitment to the integration of the sub region and reminded the Judges that their appointments were based on their excellent track records which would enable them to easily apply the law of the Community.



# The Court in Brief

## ECOWAS COURT ELECTS NEW PRESIDENT

*By Mustamusi Odah Kilimbe*

**H**on. Justice Awa Nana Daboya (Togolese Republic) has been elected President of the Community Court of Justice, ECOWAS by her peers for a two-year term along with Hon. Justice Mosso Ramos Benfeito (Cape Verde) as the Vice-President, while Hon. Justice Hansine N. Donli is to serve as Doyen for the period in her capacity as the most senior serving Judge in the Court.

Justice Awa N. Daboya will take over from Hon. Justice Aminata Malle-Sanogo (Mali) whose tenure as President and a Member of the Court expires on the 10<sup>th</sup> of February, 2009. The tenure of two other Members of the Court, Hon. Justice Barthelemy Toe (Burkina Faso) and Justice El Mansour Tall (Senegal) also expires the same day.



*The elected President*

Justice Awa N. Daboya, born in 1949 has been a serving Judge of ECOWAS Court since its inception in 2001. She held several positions in her country before her appointment to the Court, which includes, among others: Adviser to the Appeal Court of Togo, President of the Appeal Court of Togo and a Judge of the Supreme Court of Togo.

The election and the Oath of Office taken previously by the three new judges of the Court ushered in a new composition of the Court in this order:

- Hon. Justice Awa Nana Daboya (Togo), President
- Hon. Justice Mosso Ramos Benfeito (Cape-Verde), Vice-President
- Hon. Justice Hansine N. Donli (Nigeria), Doyen
- Hon. Justice Anthony A. Benin (Ghana), Judge
- Hon. Justice S. D. Sidibe (Niger), Judge
- Hon. Justice Coltilde Medegan Nougboode (Benin Republic), Judge
- Hon. Justice Eliam Monsedjoueni Potey (Cote D'Ivoire), Judge

## AFRICAN REGIONAL COURTS CONFER IN BAMAKO

*By Mustamusi Odah Kilimbe*

**A**frican regional courts of UEMOA, ECOWAS, OHADA AND CEMAC held a conference between 9<sup>th</sup> and 13<sup>th</sup> February, 2009 in Bamako, the capital of Republic of Mali. The Conference, which was held under the auspices of the President of

# The Court in Brief

Mali, His Excellency, Amani Toumani Toure, was aimed at highlighting the important role of regional courts in the development of the continent.

The President of the Community Court of Justice, ECOWAS, Hon. Justice Awa Nana Daboya, who was represented at the conference by Dr. Daoudu Fall of the Court, underscored the central role the rule of law plays in good governance, stressing that courts and governments of the continent have a common duty to uplift the conditions of their community citizens through justice and good governance.

At the conference, legal experts from the courts and universities discussed a range of topics, Notably:

Conflict and Competition of Competence between Community Courts in West and Central Africa, Conflicts between Community Norms: Positive Aspects and Prospects; CEMAC Court of Justice in the Era of Institutional Reforms: Continuity or Rupture? Prejudicial Recourse: Mechanism of Inter-jurisdictional Cooperation; Reflection on the Reform of the Arbitration System of the CEMAC Court of Justice.; Problem of Immunity of Public Persons in OHADA Law and Merger or Specialization as Solution to Risk of Conflict of Competence between Regional Courts.

Participants at the meeting observed that the conference had enabled participants to share their experiences, which would help harmonize their positions and lead to the triumph of community law as source of security and development for the people of the continent.

## AAFHC ENDORSES ECOWAS COURT'S MEMBERSHIP

*By. Mustamusi Odah Kilimbe*

The African Association of Francophone High Courts (AAFHC) has approved the admission of the Community Court of Justice, ECOWAS into the association. The Court's application to join the association was granted at the meeting of the association held in November 10<sup>th</sup>, 2008 at N'Djamena. At the same session, the Appeal Courts of Haiti, and Central African Republic and the Supreme Court of Madagascar were also admitted into the association. The association aspires to strengthen continental integration and legal security in the Francophone African region through cooperation among members, by holding meetings and sharing corresponding legal works.

Created in November 1998 as West African Association of Francophone High Courts, the association was transformed into the African Association of Francophone High Courts in July 2004 with a membership of 23 Courts made up of 20 Supreme Courts.



# What is new?

## HADIDJATOU MANI KORAOU V. REPUBLIC OF NIGER: IMPACT OF A JUDGMENT OF THE ECOWAS COURT OF JUSTICE.

By Maître Abdoulaye Bane

*From the darkness to light, from the shackles of slavery to the flight of steps leading up to the White House of the United States of America and to the Royal Palace of the Kingdom of Spain. Such was the destiny of Hadidjatou Mani Koraou, not in the least trivial, after the judgment delivered by the ECOWAS Court of Justice in the now famous case concerning Hadidjatou Mani Koraou v. Republic of Niger.*

This lady, who, in the eyes of the whole world, has become the symbol of feminine courage, the rejection of a seemingly inevitable fate, and the fight against archaic and degrading social practices, has also earned international fame and harvested honours, prizes and awards from the highest personalities of this world, after her legal battle against slavery.

Hadidjatou Mani Koraou brought her case before the ECOWAS Court of Justice to press charges against the Republic of Niger for violation of her fundamental human rights, i.e. for the Court to find that she had been in a situation of slavery and to prefer sanctions for

violation of her rights.

In 1996, the Applicant was sold for a sum of CFAF 240,000 in accordance with the 'wahiya' practice of the Bouzou custom in the northern part of Niger, which consisted of acquiring a young girl, generally under conditions of servitude, for her to serve both as domestic servant and concubine.

After living for nine years in the worst of conditions, with the firm resolve to come out of her condition of slavery, she embarked upon a true judicial marathon before the national courts of Niger, which, despite having found that Hadidjatou Mani Koraou had been in a situation of slavery, did not grant her justice.

It was this inaction on the part of the administrative and judicial authorities of Niger that was sanctioned by the ECOWAS Court, which asked the Republic of Niger to pay CFA F 10,000,000 in damages to Hadidjatou Mani Koraou.

This landmark judgment of the Court of Justice of ECOWAS had a multi-dimensional impact, not only in judicial terms, but on the national, regional and international plane.



# What is new?

Indeed, the wide media coverage of the case brought onto the international scene a poor slave who fought against the established order of customs and traditions in order to claim and obtain her dignity as an independent human being.

For that exceptional courage, Hadidjatou Mani Koraou received on, 11 March 2009, the 2009 Women of Courage Award from the hands of Mrs. Hillary Clinton, Secretary of State of the United States of America, in the presence of Mrs. Michelle Obama.

This recognition was all the more exceptional because it was awarded to a person about whom nothing seemed to predict that, one day she would receive such an outstanding honour.

Hadidjatou Mani Koraou received other high honours, notably from Spain, and she has gone round the continents to condemn certain customary practices which violate human dignity, in order to see to it that such practices are outlawed in her country, the sub-regional Community, and all other nations.

Her example provides genuine hope for all women who suffer all over the world from the injustice of slavery, discrimination and intolerance.

But this hope has equally been nourished by the courage of the Judges of the ECOWAS Court of Justice, who have unequivocally set down a much expected case-law in the area of Human Rights and more specifically on the subject-matter of slavery.

Not only has this court decision contributed in generating a debate in all circles, both judicial and political, and among the civil society, but it has equally made the ECOWAS Community

Court of Justice known across the world, which is very important for a young court like ours.

The educative value of the Court's judgment, one can hope, will make a positive impact beyond the legal and judicial microcosm, and will no doubt be of interest to associations devoted to the defence of human rights, who, it must not be forgotten,

were at any rate key players in the proceedings of the case.

Indeed, the support and assistance of international bodies for the defence of human rights, particularly Inter Right, was crucial for the wide media coverage of the case and for amplifying its historic and symbolic significance.

**“judgments of the Court are without appeal, and by virtue of the commitments made by ECOWAS Member States, the Member States are under obligation to enforce decisions made by the ECOWAS Court. But the Court can only rely on the good faith of the Member States to see its judgments enforced”**

# What is new?

One should therefore expect heightened interest from these groups and associations, to step up their fight in the cause of victims of the practice of slavery and other customs which contravene national and international conventions.

One of the happy ends to the Hadidjatou Mani Koraou case, though not the least, is certainly the due compliance of the Republic of Niger to the decision of the Court, in paying the amount of CFAF 10,000,000 to the Applicant.

This positive attitude of the Republic of Niger is to be commended on another account: as soon as the Judgment was read out, the Niger authorities very quickly declared their willingness to comply with the Court's verdict and promised to take all the necessary measures to that effect.

It must be recalled that judgments of the Court are without appeal, and by virtue of the commitments made by ECOWAS Member States, the Member States are under obligation to enforce decisions made by the ECOWAS Court. But the Court can only rely on the good faith of the Member States to see its judgments enforced.

That is why the Republic of Niger's payment of the amount imposed by the court, in compliance with the Court's Judgment, is a shining example of the political will of a Member State, to comply fully and totally with the law and with Community justice.

At the end of it all, if the Hadidjatou Mani Koraou case were not concerned with the tragic incident of slavery, it could have been entitled *Chronicle of an Interesting Judicial Story*, the judgment on the case having registered such an extraordinary and positive impact at various levels.

It is true that the role of the judiciary is to state the law and to deliver justice. If, in addition to this cardinal function, the Court of Justice of ECOWAS has turned an ordinary citizen into a symbol and an icon in the fight for human dignity, and also contributed in putting the name of the Community Court of West Africa on the world map, being cited as a court of reference, then one can only say that the Court has indeed carried out its mandate.

This mandate is first of all to be exercised at the service of the citizen, great or small, rich or poor, as was Hadidjatou Mani Koraou, who, today, is the ideal ambassador for combating slavery and the condition of the battered woman, humiliated and discriminated against all over the world.



# Judicial Activity



*Current Judges of the Court*

## STATUS OF APPLICATIONS LODGED IN THE COURT

*By Mr. Tony Anene-Maidoh*

**S**ince inception, a total of fifty-six (56) cases have been lodged before the Court. The Court has held a total of one hundred and forty eight (148) Court sessions since its inception.

### NEW CASES LODGED BETWEEN OCT 2008 AND MARCH 2009

Between October 2008 and March 2009 eight new cases were filed. They are:

1. **ECW/CCJ/APP/07/08**  
**Hissein Habre**  
V.  
Republic of Senegal  
In this case, the Applicant, the

Former President of Chad, obtained asylum in Senegal after being overthrown in a military coup d'etat mounted by Idris Deby Itno. But contrary to the expectations of the Applicant, and in contrast with judicial decisions which had become final, the Defendant changed its Legislation in order to have the Applicant tried in one of its Courts, for acts committed while he was Head of State in Chad. The Applicant therefore considers that the Defendant does not guarantee him any condition whatsoever of a fair and just trial. He is asking the Court to determine the violation of the principle of non-retroactivity of Criminal Law, the principle of equality before the law and the right to an equitable trial.

And also for an order directing the Republic of Senegal to stop all prosecutions and actions against him.

2. **ECW/CCJ/APP/08/08**  
**Petrostar Nigeria Limited**  
V.  
**Blackberry Nigeria Limited & 2 Ors**

The Applicant, a legally incorporated Company, delivered on request 5 Million Litres of Automotive Gas Oil (AGO) to shell at a total sum of 485 Million Naira. The Applicant filed an application against the Defendants for breach of

# Judicial Activity

the terms of contract of sale, and for attempting to bribe and influence the Counsel to the Plaintiff, in order to prevent him from proceeding with the recovery of the remaining 255 Million Naira.

3. ECW/CCJ/APP/09/08  
Dauda Garba  
V.  
Republic of Benin

The Applicant, a citizen of the Community and a Programme Officer at the Centre for Democracy and Development, situated in Abuja, was questioned and beaten up by officers of the Immigration Services of Benin. He filed an application before the Court for the alleged violation of his fundamental human rights and the right to free movement, as guaranteed by Articles 1, 5 and 12 of the African Charter on Human and People's Rights.

4. ECW/CCJ/APP/10/08  
Nuhu Ribadu  
V.  
Federal Republic of Nigeria

Mr. Nuhu Ribadu, a Nigerian citizen and senior officer of the Nigerian Police, who was promoted to the

rank of Assistant Inspector - General of Police and later demoted, filed an action for the violation of his human dignity.

5. ECW/CCJ/APP/11/08  
Mahamat Seid Abazene Seid  
V.  
Republic of Mali & 2 ors

Mr. Mahamat Seid Abazene filed an application for the violation of his fundamental human rights by the Defendants, who dismissed him from his office without regard to the provisions of the Staff Rules and Regulations.

6. ECW/CCJ/APP/01/09  
Amouzou Henri & 5 ors  
V.  
Republic of Cote d'ivoire

The Applicants jointly filed an action alleging the violation of their rights to fair hearing, presumption of innocence, unlawful detention, defamation and violation of the rights of pregnant women and breast-feeding babies. Consequently, the Applicants are demanding for their immediate release from unlawful detention and compensation for damages suffered.



# Judicial Activity

7. ECW/CCJ/APP/02/09

The National Co-ordination of the Departmental Delegates of the Coffee and Cocoa Sector

V.

Republic of Cote D'Ivoire

The Applicants jointly filed an action for alleged violation of their human right to equal remuneration and the violation of the principle of equality before the law by all citizens.

Furthermore, the Applicants are seeking from the Defendants compensation for violation of their human right.

8. ECW/CCJ/APP/03/09

Private Aliyu Akeem

V.

Federal Republic of Nigeria

The Plaintiff, a Community citizen, was arrested and detained in military custody without trial for two years on the allegation that a rifle was missing from General Malu's house. He filed an action before this Court for alleged violation of his fundamental human right to dignity and personal liberty and for 10,000,000 (Ten Million Naira) compensation for injuries suffered.

## INTERLOCUTORY APPLICATIONS

Within the said period, ten (10) interlocutory applications were filed in the following cases:

a. ECW/CCJ/APP/02/07

Mrs Tokunbo Lijadu Oyemade

V.

Council of Ministers & 4 ors

- An application by the Defendants for extension of time within which to file their defence.
- Notice of additional Counsel filed by the Plaintiff.

B. ECW/CCJ/APP/07/08

Hissein Habre

V.

Republic of Senegal

- An application by Monsieur Souleymane Guengueng & 116 Ors to intervene in the matter.
- An application challenging the jurisdiction of this Court and the admissibility of the suit.

c. ECW/CCJ/APP/10/08

Nuhu Ribadu

V.

The Federal Republic of Nigeria

- Preliminary objection challenging the jurisdiction of the

# Judicial Activity

Court to hear and determine the suit.

- Notice of discontinuance filed by the Plaintiff

d. ECW/CCJ/APP/08/08

Petrostar Nigeria Limited

V.

Blackberry Nigeria Limited & Anor

- Application to enter final judgment for the Plaintiff due to failure by the Defendants to file their defence.

E ECW/CCJ/APP/04/08

Chief F.O. Offia

V.

Community Parliament  
ECOWAS & Anor

- Notice of discontinuance filed by the Plaintiff

f. ECW/CCJ/APP/11/07

Musa Sadykhan

V.

Republic of the Gambia

- Notice of preliminary objection challenging the jurisdiction of the Court to entertain the suit.

g. ECW/CCJ/APP/01/08

Starcrest Investment Limited

V.

The President ECOWAS  
Commission & Anor

- Application by Starcrest Nigeria Energy Ltd & Anor to intervene in the matter.

## COURT SESSIONS

The Court held Twenty one (21) Sessions between October 2008 and March, 2009.

## JUDGMENTS

In addition, four Judgments were delivered in the following cases:

1. ECW/CCJ/JUD/05/08

Qudus Gbolahan Folami & Anor

V.

Community Parliament ECOWAS &  
Anor

Judgment delivered on 28<sup>th</sup>  
November, 2008

2. ECW/CCJ/JUD/06/08

Dame Hadijatou Mani Koraou

V.

Republic of Niger

Judgment delivered on 27<sup>th</sup> October,  
2008



# Judicial Activity

3. ECW/CCJ/JUD/01/09  
Djotbayi Talbia & 14 ors  
V.  
Federal Republic of Nigeria & 4 ors  
Judgment delivered on 28<sup>th</sup> January,  
2009

4. ECW/CCJ/JUD/02/09  
Linax International Limited  
V.  
Ambassador of Mali & 2 ors  
Judgment delivered on 19<sup>th</sup> March,  
2009

## RULINGS OF THE COURT BETWEEN OCTOBER 2008 AND MARCH 2009

1. ECW/CCJ/RUL/04/08  
Emmanuel Akpo & Anor  
V.  
G77 South South Healthcare  
delivery programme
2. ECW/CCJ/RUL/01/09  
Nuhu Ribadu  
V.  
Federal Republic of Nigeria
3. ECW/CCJ/RUL/02/09  
Starcrest Investment Ltd  
V.  
President ECOWAS Commission &  
Anor

4. ECW/CCJ/RUL/03/09  
Chief F.O. Offia  
V.  
Community Parliament, ECOWAS &  
Anor

There are sixteen (16) pending cases before the Court, ten (10) of which are being heard while six (6) cases are not yet ready for hearing and are still in the written procedure phase.

## PENDING CASES

### CASES ON THE CAUSE LIST

1. ECW/CCJ/APP/02/07  
Mrs Tokunbo Lijadu Oyemade  
V.  
Council of Ministers ECOWAS & 4  
Ors
2. ECW/CCJ/APP/10/07  
Femi Falana & Anor  
V.  
Republic of Benin & 14 ors
3. ECW/CCJ/APP/11/07  
Musa Saidu Khan  
V.  
Republic of The Gambia
4. ECW/CCJ/APP/12/07  
The Registered Trustees of the  
Socio-Economic Rights &  
Accountability Project (SERAP)

# Judicial Activity

- V.  
The Federal Republic of Nigeria &  
Anor
5. ECW/CCJ/APP/01/08  
Starcrest Investment Ltd
- V.  
Executive Secretary ECOWAS & 4  
ors
- ECW/CCJ/APP/02/08  
Mr Adediji Benjamin Adeleke
- V.  
Executive Director RECTAS & 3 ors
- ECW/CCJ/APP/03/08  
Mr Remmy Okeke
- V.  
Republic of Benin
- ECW/CCJ/APP/06/08  
Hon Tony Anyanwu
- V.  
Federal Republic of Nigeria
9. ECW/CCJ/APP/08/08  
Petrostar Nigeria Ltd
- V.  
Blackberry Nigeria Ltd & 2 ors
10. ECW/CCJ/APP/09/08  
Dauda Garba
- V.  
Republic of Benin

## CASES NOT READY FOR HEARING

Cases lodged in the Court undergo certain processes before they are ready for hearing. This is mainly due to the fact that under the Rules of the Court, we have a written procedure and an oral procedure. Until the written procedure is completed, the oral procedure cannot commence. Secondly, the applications and pleadings have to be translated in the official languages of the Court. Because of the limited number of Translators in the Court, it takes some time before a case can be ready for hearing. In a nutshell, the written procedure must be concluded and the service of the Court processes effected before a case can be ready for trial. The following cases are not ready for hearing.

1. ECW/CCJ/APP/05/08  
Ocean King Nigeria Ltd
- V.  
The Republic of Senegal
2. ECW/CCJ/APP/07/08  
Hissein Habre
- V.  
Republic of Senegal
3. ECW/CCJ/APP/11/08  
Mahamat Seid Abazene Seid
- V.  
Republic of Mali & 2 ors



# Other Activities

## GIABA AND ECOWAS COURT JOIN FORCES AGAINST ORGANISED CRIME

By Félicien Hounkanrin

**J**udges in the sub-region have recommended the creation of specialised divisions of courts within the municipal courts, for dealing with money laundering and the financing of terrorism. And they have equally suggested the promulgation of a law to combat terrorism financing.



This recommendation was made during a seminar held at Hôtel Mercure Sarakawa, at Lome, in Togo, from 2 to 4 December 2008.

The seminar, which was organised by GIABA (Inter-Governmental Action Group Against Money Laundering in West Africa) in collaboration with the Community Court of Justice, brought together French-speaking and Portuguese-speaking judges from West Africa, as well as professionals and certain women's organisations and businessmen. The objective of the seminar was to:

- Disseminate and bring to people's knowledge the norms and laws relating to the fight against money

laundering and the financing of terrorism (LBA/CFT);

Sensitise actors in the judicial world on the powers, mandate, strategies and activities of GIABA and of the Community Court of Justice, ECOWAS;

- Strengthen the capacities of judges in the fight against money laundering and financing of terrorism;
- Establish links of collaboration and action between actors of the judicial world and GIABA;
- Promote national, regional and international co-operation in matters of the fight against money laundering and financing of terrorism.

The opening ceremony was marked by the speech of Hon. Justice Aminata Mallé the then President of the Community Court of Justice, ECOWAS, Hon. Justice Aminata Mallé Sanogo, who first of all welcomed the distinguished guests and thanked them for gracing the occasion with their presence.





# Other Activities

She indicated that an integrated legal system is a medium for the enhancement of both national and international investments, and that it equally provides a real opportunity for the economic expansion of our States. But then this opportunity for expansion is only available when our sub-region is equipped with both the national and community mechanisms for combating, among other scourges, money laundering and terrorism financing, which undermine our economies and threaten the socio-economic stability of our States. She added that the huge challenges presented by the fight against money laundering and the financing of terrorism compel us to fashion out, develop and implement a regional or even international strategy for addressing them.

For the Deputy Director General of GIABA, Dr. Léye Elisabeth Diaw, money laundering and financing of terrorism are offences or criminal activities which can have serious consequences economically, politically, and socially, with particularly destructive consequences for developing countries.

Turning to the judges, she indicated that they constitute in one way or the other, "the armed hand" in the fight being waged, for it is only those wielding judicial power that can bring down these outlaws who go by the name of money launderers and terrorists. Without the contribution and involvement of the judges, she added, the battle being waged against these two scourges would be

doomed to failure.

Following the speeches, the working sessions began under the direction of experts like Justice El-Mansour Tall of the ECOWAS Court, Madam Isabelle Schoonwater, former World Bank Consultant on matters dealing with money laundering and terrorism financing, and Mr. Gabriel Bestard, former Chief Prosecutor of The Court of Appeal of Aix-en-Provence.

They enlightened participants on the existing texts and the powers and limits of the judicial weapon for suppressing money laundering and terrorism financing. They also examined the issue of creation of a judicial zone equipped with a unified system of norms for dealing with organised crime.

The speeches and statements made by the experts during the three days enabled participants to take a critical look at certain sensitive issues relating to the judicial and institutional framework for combating money laundering and terrorism financing. Participants equally developed interest in regional groups and institutions involved in this endeavour, as well as judicial co-operation and extradition. Concrete cases of inquiry were examined in order to appreciate the difficulties encountered on the job by the judges.

In the final analysis, participants emphatically conceded that one cannot claim to have succeeded in the integration effort, with the upsurge in armed conflict being witnessed in the sub-region.

It is therefore necessary to put in place a development planning scheme backed by a set of preventive measures, which would steadily encourage all professional groups to undertake with civil society and governing bodies, relevant programmes and activities which would aim at addressing the concerns expressed by the States.



Group Photographs of Participants at the Seminar on the Fight against money laundering and financing of terrorism in Lomé.



# Other Activities

## JUDGES AND PROFESSIONAL STAFF OF THE COURT RECEIVE TRAINING ON GENDER

By Félicien Hounkanrin

Acquiring a better understanding of the question of gender, in order to help resolve the issue of equity and equality of the sexes in the integration programmes of ECOWAS, this was the rationale behind the joint effort of the ECOWAS Gender Development Centre (EGDC) and the Community Court of Justice (CCJ), in organising a training workshop on "Gender" for the Honourable Judges and Professional Staff of the Community Court of Justice, ECOWAS, from 29 to 30 April 2008, at Lamonde Hotel, Jos, in Nigeria.

The workshop was aimed at capacity-building for statutory appointees and staff of the Community Court of Justice, ECOWAS to enable them understand the concept of gender, and to examine and assimilate it, so as to contribute more actively towards the realisation of gender equality in ECOWAS, within the context of the Community integration process.

In her speech, Mrs. Aminatta Dibba, Acting

Director of the ECOWAS Gender Development Centre (represented by Mr. Awudu Gumah, Planning, Research, Monitoring and Evaluation Officer) stressed that the Court of Justice of ECOWAS has a fundamental role to play in the fight against injustices meted out to women and children in the region.

She indicated that the major challenges of development confronting the ECOWAS zone have to do with the widespread disparities and inequalities, typified by the marginalisation of women and the absence of adequate opportunities for women, to participate effectively in development efforts and to have a fair share in the benefits accruing from development.

In this connection, she emphasised that appropriate measures must be taken to transform ECOWAS into a zone of equal opportunities and responsibilities, where men and women can equally contribute to the development of the region and fairly benefit from the fruits of development.

It was for the purposes of attaining this objective that the ECOWAS Heads of State decided, in January 2003, to set up the ECOWAS Gender Development Centre (EGDC). To this end, the Centre is mandated to conceptualise and put in place, and also facilitate, co-ordinate and monitor programmes and strategies aimed at ensuring that questions relating to disparities between men and women in regional integration programmes and women's promotion are addressed within the framework of the aims and objectives of ECOWAS.



Judges of the Community Court of Justice at the Seminar on Gender in Jos



# Other Activities

y associating the Court with this endeavour, the Centre intended to demonstrate that the principal legal organ of the Community is capable of contributing to the success of the integration process of ECOWAS, thereby promoting gender equity and equality.

conscious of the role assigned the Court in the fight against injustices in West Africa, Hon. Justice Aminata Mallé-Sanogo, the then President of the Community Court of Justice, urged all actors and stakeholders to put in greater efforts at protecting and promoting Human Rights in order to maximise the chances of gender equality in all spheres of life, at both the national and Community levels.

He reassured the Centre that the judges and professional staff of the Court will do everything possible to promote equality, censure discriminatory laws and rules, and sanction acts and attitudes which deprive women of their right to derive equal benefits from the endowments of the society.

In the course of two (2) days of deliberations, judges and professional staff of the Court acquainted themselves with the concepts of sex, gender, relations between men and women, and stereotypes. Practical exercises were conducted by participants to illustrate these concepts. The session also generated important debates on the role of women in all aspects of our Community life.

It was deduced thereby, that the issue at stake is not the superiority of man or woman over the other sex, but rather, the equality which must exist between them as advocated by Islam and Christianity, which, both, emphasise on the importance of women. Similarly, it was pointed out that illiteracy should not be a criterion for excluding unlettered women, because there have been cases of illiterate women who have conceptualised and put in place local development strategies.

At the end of the workshop, solutions were proposed by the participants. For instance, the institution of special quotas for women, and offering women special incentive packages to enable them gain greater access to health services, and to means of production and education.

## ECOWAS COURT SUPPORTS THE FIGHT TO REMOVE OBSTACLES TO FREE MOVEMENT OF PERSONS, GOODS AND CAPITAL

By Me. Moussa KOCHI MAINA

From 18 to 20 November 2008, the Court of Justice of ECOWAS organised at the International Conference Centre of Cotonou, in the Republic of Benin, a conference on "Free Movement of Persons, Goods, Services and Capital, and the Right of Residence and Establishment".



Judges of the Community Court of Justice at the Conference on "Free Movement of Persons, Goods, Services and Capital, and the Right of Residence and Establishment" in Cotonou.

Participants at this conference included officers of the customs and immigration service, police officers at the border posts, officials from the ministries of finance and integration, and agents of the civil society of ECOWAS Member States.



# Other Activities



The President of ECOWAS Commission, Dr. Mohammed Ibn Chambas at the Conference on "Free Movement of Persons, Goods, Services and Capital, and the Right of Residence and Establishment" in Cotonou.

The theme may appear to be a dull one for the Court, whose essential mandate is to deliver judgments. Throughout the committee-based sessions and the plenary discussions, it was realised, however, that the initiative was a much laudable one and could not have come at a better time.

Indeed, from inception, the Court has organised sensitisation missions across the ECOWAS sub-region, focused on various themes, including the protocol relating to free movement of persons, goods and capital; the trade liberalisation scheme; etc.

Unfortunately, despite the efforts made towards popularising the various protocols and derived texts, officers at the border posts seem to have placed a premium on sticking to the same old daily routine. Of course, such a practice generates huge sums of money, for the sole benefit of the officers on ground.

The organisation of this seminar by the Court gives practical expression to promises it made to citizens of the Community during its various sensitisation outings. From the direct-contact encounters with target groups among the masses of the people, the fact clearly stands out that harassment by police officers at the borders of the ECOWAS sub-region is so disconcerting that free movement of persons and goods remains nothing but an illusion in the eyes of the Community citizens.

By means of the chosen theme, and beyond searching for an ideal tool for integration, the Court equally took the opportunity to enlighten participants on the various protocols and texts relating to the subject-matter dealt with. This approach will have the benefit of dissuading sufficiently enough the border-patrol officers, who, by their frequently mischievous attitude, undermine all the efforts put in towards a model integration of the ECOWAS sub-region, with a view to creating an economic union so dear to the Heads of State of the member countries.

At the opening ceremony, chaired by Benin's *Garde des Sceaux* (Keeper of the Seals), Minister of Justice, Legislation and Human Rights, representing His Excellency Dr. Yayi Boni, President of the Republic of Benin (who had travelled out of the country), the various speakers, namely, the President of the ECOWAS



Participants at the Conference on "Free Movement of Persons, Goods, Services and Capital, and the Right of Residence and Establishment" in Cotonou.

Commission, Dr. Mohamed Ibn Chambas, the President of the Court of Justice, Hon. Justice Aminata Mallé Sanogo, laid particular emphasis on the hindrances to free movement of persons and goods.

Putting aside his prepared speech, and with a deep sense of concern, Dr. Mohamed Ibn Chambas denounced the hindrances to free movement of food products within the ECOWAS zone. According to the



# Other Activities

resident of the Commission, it is inconceivable that certain countries in the ECOWAS sub-region greatly abound in food surpluses whereas others suffer from ironic food shortages, with no access to these surplus food products.

He pointed out that the peasant farmers are unable to sell their surplus produce due to the non-implementation of the relevant protocol.

He finally urged the officers manning the border posts to adopt attitudes which aid free movement of persons, goods and capital.

Harassment was adjudged to be so rampant at the borders that participants proposed several solutions. Hereto, the most significant of them forming the commendations below, presented at the plenary session:

Creation of a multidisciplinary mobile unit on customs, police, gendarmerie, water bodies, forests, with a view to exercising control on implementing the Community texts relating to free movement;

Modernisation of equipment and computerisation of check points at the airports, ports and land borders;

Interconnection of check points at borders (airports, ports and land borders);

Proceeding to take a second look at the texts dealing with free movement of persons, goods, services and capital, in order to plug loopholes and make up for insufficiencies, and adapt them to the contemporary socio-economic context;

Entrusting the Parliament and the Commission with tangible powers of sanction and oversight function in the application of texts on free movement of persons, goods and capital;

Stepping up sensitisation campaigns on free movement of persons, goods, services and capital.

## ECOWAS INSTITUTION NGOs PAY SOLIDARITY VISITS TO ECOWAS COURT By Koffi Kouchanou

The election of Hon. Justice Awa Nana Daboya as the new President of the Community Court of Justice, ECOWAS, on 10 February 2009, was followed by numerous visits, to congratulate and encourage her.

At the beginning of March 2009, the following visitors came to congratulate the President-elect and the new Bureau of the Court, and to pledge the support of their institutions to the programmes being run by the Court: Mr. Esoh Wella, Chargé d'Affaires at the Embassy of the Republic of Togo in Nigeria; Mrs. Muibi Bosede and Mr. Peter Ocheikwu from the OSIWA (Open Society Initiative) NGO; Mrs. Sanda Mohamed, Deputy Controller of Immigration at the Ministry of the Interior, in charge of ECOWAS.

The President of the Court of Justice of SADC (South African Development Community), Justice Arirango Govindasamy Pillay, on mission at Abuja, to ECOWAS and the United Nations, paid a courtesy call on the Court of Justice of ECOWAS on 13 March 2009. He was received by the Bureau of the Court. During discussions, the President,



A delegation from Cape Verde Parliament who are also Member of ECOWAS Parliament received by the Honourable Judges of the Court



# Other Activities

Hon. Justice Awa Nana Daboya, indicated that in line with the consolidation of relations between the two institutions, the ECOWAS Court would soon send a mission, on study tour, to the SADC Court of Justice.

Mr. Tolentino, Counsellor at the Ministry of Foreign Affairs of Cape Verde, on official mission, in connection with preparation for the inauguration of the West African Institute for Regional Integration, paid a courtesy call on the Community Court of Justice on 1 April 2009. He informed Members of the Bureau that the inauguration of the Institute is scheduled for 2010 and that the headquarters will be at Praia in Cape Verde. The objective of the Abuja meeting, he said, was principally to engage civil society in business, at the Community level, so as to move the West African sub-region from a Community of States to a Community of people, and to prepare for the 3rd Business Forum, which will bring together businessmen and women to examine the various shades of experience and find for solutions to the major economic problems confronting the region. Mr. Tolentino pointed out that the major challenge of the Court is to demonstrate that its attention is focused on the masses of the people and on Human Rights. Stressing the positive impact of recent decisions by the Court, Mr. Tolentino made it known that the international community and the economic operators take a serious view of the observance and application of law.

On 13 March 2009, a twelve-member delegation of the Committee of Regional Affairs on Conflict Settlement and the Legislative Assembly of East Africa, led by its President, Hon. Mike Sebalu, visited the Court. On study tour at the ECOWAS Parliament, the delegation seized the opportunity to hold a working session with the Judges of the Community Court of Justice. The objective of the visit, according to Hon. Sebalu, was to get himself acquainted with the functioning mechanism of the Court and to inform his colleagues at the East African Court of Justice. They expressed satisfaction at the presentation made on the Court.

On 15 May 2009, Mrs. Filomena Delgado and Mr. Jean Emmanuel Da Cruz, Cape Verde Parliamentarians at the ECOWAS Parliament, came on a familiarisation tour of the Court. A little earlier on, Mr. Nicolas Oudet of the French Cultural Centre came to propose training programmes on French language to the Court. The President promised to consult the ECOWAS Commission and the Bureau of the Court on the proposal so that interested staff may be able to acquire or master a second official language of the Community.

To these visits, one must add inter-institutional working visits. The Financial Controller of the Community, Mrs. Nelly Taylor, and the Commissioner for Administration and Finance, Dr. Ada Okwuosa had working visits with the Bureau of the Court.

Finally, on 3 March 2009, in connection with the employment of officers into the Institutions of the Community, nine officers newly recruited by the ECOWAS Commission came on a familiarisation tour of the Community Court of Justice, ECOWAS. The President asked them to devote themselves to their duties, to enable the Community attain its objectives, and wished them success in the conduct of their assigned duties.



Mr. Nicolas, OUDET, Director of Studies CCF, Abuja (Left) Received by the Bureau of the Court



# Opinion

## PROLIFERATION OF INTERNATIONAL COURTS: AT WHAT RISK?

By Maître Athanase Atannon

Our century has seen a multiplication of international courts. In 1921, the first of them was created, namely the permanent Court of International Justice (CIJ), which, on the heels of the Second World War, was succeeded by the International Court of Justice (ICJ), the principal judicial organ of the United Nations, with a mandate for settling disputes which member states of the UN may agree to submit to it. At the world level would emerge additionally, other judicial bodies, like certain administrative courts, notably criminal courts, with a mandate to try certain crimes injudicial to humanity, like the crimes committed in the ex-Yugoslavia and Rwanda.

The same thing is observed at the regional level. The Court of Justice of the European Communities was mandated by the Treaty of Rome to see to the observance of Community law by both the Institutions of the Union and the member States. It has proved judiciously dispensable for every regional grouping of states to create, among other institutions, a court that will not only settle disputes that may arise from the institutional functioning of such a grouping, but which will also harmonise and make common use of a number of legal norms capable of being applied nationally. Indeed, one can hardly perceive of a situation where several states decide to pool a number of interests together, to be managed by different institutions, without a regulatory organ that will safeguard the efficient implementation of the

convention or treaty that created such a Community of States.

The multiplication of courts also derives from the general consent being widely perceived for several years now, that the bedrock of every development is the observance of human rights, by every nation of the world. The respect for these rights, having become so essential, justifies on its own the creation of the numerous international courts to stem State prejudicial excesses vis-à-vis these same rights.

In reality, such profusion of courts translates a degree of progress of law and international justice, and must therefore be applauded. But these diverse courts and tribunals remain totally independent of each other and the fear is now being expressed whether this situation would not lead to conflicts in jurisdiction and vexatious inter-court decisions, which would jeopardise the unity of law and in turn fail to offer sufficient assurance to decision makers for them to take these numerous courts into account in their decision-making process.

It appears that on the international plane, inter-court conflicts remain limited, in the technical sense of the term. It is very unlikely that litigations with the same object and between the same parties may come before different courts. This does not mean however that every risk of conflict is ruled out. Indeed, one and the



# Opinion

same situation may give rise to several disputes with common features which may go before different courts. We have thus seen the attitude of NATO member countries being violently attacked both by a Serbian national before the European Court of Human Rights, and by Serbia and Montenegro, before the International Court of Justice. Besides, at the time President Milosevic was accused of genocide in Bosnia and Herzegovina before the International Criminal Court for ex-Yugoslavia, Bosnia and Herzegovina sued Serbia and Montenegro before the International Court of Justice for violation of the UN Convention on Prevention and Suppression of Genocide. It is equally possible that one of the numerous frontier disputes between ECOWAS Member States pending before the International Court of Justice may come before the ECOWAS Community Court of Justice under violation of the fundamental principle enshrined in Article 4(e) of the ECOWAS Treaty.

One could imagine that in so far as the courts hearing the cases remain specialised, each in its own domain, and applying different laws, the risks of conflict may be reduced. On the other hand, one may look forward to differing conclusions between the International Court of Justice and the International Criminal Court for ex-Yugoslavia in the Bosnia and Herzegovina cases.

Even though harmless as at now, overlapping trends in the functioning of these courts and vexatious inter-court decisions pose two dangers for justice and international law. It is

possible that certain courts or tribunals, desirous of developing their judicial activities, may dispose their case law in such manner as to attract disputes in their direction, which may be detrimental to an objective approach to the dispensation of their judicial functions, thus leading to a declaration of the court's lack of jurisdiction in such disputes. Such a development would be harmful to international justice. One may also entertain the fear that with the rising rate of specialisation of these courts, a global view of international law may soon have to be forgotten. As has always been the case in the context of municipal law, international law will certainly have to adapt itself to each of the various branches to which it addresses itself.. It will also have to adapt itself to local and regional needs. But it will have to preserve its unity and provide actors in the international sphere with a harmonious and reliable framework within which to operate.

But then what should be done so that the proliferation of courts may be a source of enrichment, and not a cause for anarchy?

First of all, we must avoid aggravating the situation, both at the national and international levels. The international or community lawmaker must henceforth find out whether the functions he intends to bring under his judicial control could not be appropriately fulfilled by another existing court or body. Moreover, the judges must be constantly aware of the dangers which arise from the proliferation of international courts, and they must be abreast with the development of



# Opinion

case-law in other forums, and thereby maintain a relationship of active co-operation with them, at least at the regional level.

And this is where one may modestly, even though appropriately, express a few words of commendation to the lawmaker of the ECOWAS Court, for making certain pledges towards a prospective view of the unity of international law. First of all, in Article 19 of Protocol A/P1/7/91 on the Community Court of Justice, ECOWAS, it is clearly stated that apart from the ECOWAS Treaty and the Rules of Procedure, the Court shall also apply, as necessary, the body of laws as contained in Article 38 of the Statute of the International Court of Justice.

This is a mark of significant progress, as regards the idea so conceived of Community law, which, without being diffuse and limitless, remains committed to the universal values expressed in the Statute of another Court, to which all the ECOWAS Member States have already subscribed. This is very much important to be mentioned at a time when the Court of Justice of the European Communities (the oldest example of a Community court) is striving to establish the autonomy of the European Community law, like in the Judgment of the *Costa v. Enel* case where the Court held that unlike international treaties, the EEC Treaty has instituted a distinct legal order integrated into the legal system of the Member States. Thus, in the judgments of the Court of the European Communities, very little reference is made to the case-law of the International Court of Justice. It is a rather curious approach for the Court of the European Communities to preserve the links between International Law (whose principles it cannot

ignore, because the Community finds its origins in Treaties, just as it is invested with an international legal personality) and Community Law.

Besides, as regards overlapping in the functioning of these courts, Supplementary Protocol A/SP.1/01/05 (which also relates to the Court), while rightly extending the jurisdiction of the court to cover human rights issues (an area where applications are flooding), carefully adopted, in the same instance, necessary safeguards against every form of overlap between proceedings instituted before the Court and another court. Thus, in terms of human rights issues, Article 10 (d)-ii indicates that for an application to be admissible, the same matter must not be instituted before another International Court for adjudication. This aspect of the provision, which may appear commonplace on the face of it, turns out to be a significantly regulatory feature of international justice when one realises that, to ensure the success of their cases, litigants readily take their cases before different courts at the same time.

One may entertain fears that such minimal solutions may not suffice. Every judicial organ has the tendency of developing independently, and in this respect, judicial deliberations constitute particular risks, notably as it pertains to specialised courts like the Court of Justice of ECOWAS, entrusted essentially with the interpretation and application of the promulgated laws of ECOWAS.

National courts have resolved the issue of unity of the law by instituting supreme courts charged



# Opinion

with ensuring the consistency of court decisions, and thereby of the law. This approach may be replicated on the international plane, in an area like Human Rights, where the universality of concepts and values is established: the International Court of Justice may receive in that regard, questions referred to it on preliminary grounds by the other International Courts. Such a reform would certainly be a modest one but it would sensitise the judges at least towards the necessity of maintaining consistency in international law.

This proposed remedy may be deficient but none other, which should be both institutionally and realistically appropriate, is yet to be proposed, whereas the issue has been raised for a long time now and continues to be debated upon in numerous research endeavours and at various colloquiums, within the context of the future development of International Law.

At a certain stage in the development of the Criminal Court for ex-Yugoslavia, the latter had proposed to the UN Security Council to request for an advisory opinion on its behalf (the Court could not have done so directly), from the International Court of Justice (ICJ), in respect of the interpretation of a provision in the Statute of the ICJ concerning Judges having dual citizenship. The same International Court of Justice (ICJ) was discreetly approached by the European Court to assist it in ascribing a specific meaning to the concept of "aggression", for the purposes of implementation of the Rome Convention.

We realise indeed that in practical terms, the concern and desire for preserving a common legal asset exists; it only remains therefore to institutionalise this concern and desire, for the purposes of a unified and harmonious international law.

