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Sleeping Beauty – Explaining the Legalization of Democracy Standards in the Economic Community of West African States (ECOWAS)¹

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In the fairy ‘Sleeping Beauty’ the princess Helen is put to sleep for one hundred years – until a charming prince kisses her awake. Far from being princesses, African regional organizations (RO) have experienced a long period of abandon, although not lasting one hundred years.² Far from being princes, member states (MS) have started to give new life to their regional integration projects. While in the original fairy, a wicked witch was responsible for the long sleep (and a good one for the ending of the spell), the history of the Economic Community of West African States (ECOWAS), the most prominent West African regional organization, is far from being pre-determined.³ This paper therefore addresses the question who the princes were; or: how and under which conditions African regional organizations legalize democracy standards.

1. ECOWAS matters

Before turning to the conceptualization of the question, different theoretical approaches and finally the empirical analysis, it is necessary to address the following concern. In the view of some authors “regional organizations in Africa sustain clientilism, corruption and discrimination” (Söderbaum 2010:1; Mustapha 2008). In this view, regional integration in

¹ This article is a shorter version of the master thesis “Sleeping beauties. Explaining legalization of democracy standards in ECOWAS, SADC, and the EAC (1991-2008) (Striebinger 2011).

² Africa is understood as meaning Sub-Saharan Africa.

³ The choice of ECOWAS as the central RO in this paper is due to its exceptional character. Including the Southern African Development Community (SADC) and the East African Community (EAC) in a comparative approach would increase the generalizability of findings. In this short paper, however, this cannot be fully provided (for an outlook, see section 4; for a complete comparison see Striebinger 2011)



Africa was only a means of the executive to secure (more) funds for their corrupt and self-enriching activities (Asche & Brücher 2009:174).⁴

However, I contend that the stated research question is of relevance because provisions of regional organizations *are* implemented. In fact, some ROs have a wide array of instruments at their disposal to enforce democracy standards in their member states: They mandate and conduct military interventions against the will of the concerned state, institute mediation operations, or send election observation missions (Hartmann 2010; Hartmann 2008; Vleuten 2007). ECOWAS, for example, has used the “clearest form of external influence on politics”, “outright invasion and occupation”, (Gourevitch 1978:883) to reinstate a democratically elected president in Sierra Leone (Hartmann 2010; Kabia 2009) and has exerted high political pressure on Laurent Gbagbo in Côte d’Ivoire so that he leaves office (Ohia 2011). ECOWAS also conducts more election observation missions than any other external actor in the region: ECOWAS observers have monitored 19 out of 48 presidential and legislative elections between 1999 and 2007 (Gandois 2009, pp. 190–196).

This shows that ECOWAS uses the written rules for its day-to-day activities. This behavior by a regional organization is puzzling and unexpected, for example from a perspective of ‘realist’ international relations theory. In a world of sovereign, power-maximizing states, domestic political systems should not be of concern to other countries; allowing for an international organization to enforce a specific political system by military means is even more surprising (Carr 1946). Furthermore, in a context of colonial history, countries that have recently gained sovereignty are expected to hold on to it vigorously (Kahler 2000:666).

In order to answer the question why ECOWAS has legalized democracy standards, I first need to look at the conceptualization of the concept of legalization and the definition of democracy standards as well as the theoretical explanations for varying degrees in this level

⁴ A first look at the budget of ECOWAS paints a different picture. ECOWAS does not suffer from material shortcomings. In 2005, the West African organization had a surplus of over 40 Million US\$ (ECOWAS 2006a). If it was only about corruption, then this money would not be recorded as ‘surplus’ but disappear. Further in-depth research would, however, be needed to conclusively determine the degree of corruption.



of legalization of democracy standards (section 2). Then, I will turn to the empirical analysis and determine which of the four alternative explanations provides the most convincing account. Each explanatory factor is measured separately and compared over time. Through changes in values in these factors, the changes in the level of legalization of democracy standards can be explained.

2. Legalization, democracy standards, and regional organizations

First, I need to clarify and operationalize the concept of legalization and delimitate the meaning of ‘democracy standards’. Thereby, I capture the two distinct dimensions of the dependent variable: the level of legalization and the substance of the norms. Then, I look at the existing literature and describe the three independent variables.

2.1 Capturing degrees of democracy standards

The research question asks why institutions are the way they are. A well-accepted definition of institutions describes them as “enduring sets of rules, norms, and decision-making procedures that shape the expectations, interests, and behavior of actors” (Goldstein *et al.* 2000:387). Although informal aspects are included in this definition, actors on the international scene often use formalized, i.e. ‘legalized’ institutions in order to solve political problems. I address these formal institutions with the present research question.

Different conceptions refer to distinct characteristics of regional organizations (Gandois 2009, pp. 19–21; Jong Choi & Caporaso 2002; Salomon 2008, pp. 20–21). For the purpose of this paper, regional organizations will be defined as “formal institutions whose membership is limited by geography” (Pevehouse 2005:3). In addition, these institutions need to have the mandate to serve multiple purposes; merely technical or economic organizations will not be considered because they are not likely to set democracy standards.

For the purposes of this study, which aims not at comparing the overall institutional design of international organizations but at explaining the specific characteristics of one issue area in a specific type of IO, namely regional organizations, the concept of legalization is best



suited. The concept captures all of the relevant characteristics, and provides clear guidelines for assessment. Legalization “refers to a particular set of characteristics that institutions may (or may not) possess” (Abbott *et al.* 2000:401).⁵

The three characteristics of legalization are defined as follows (Abbott *et al.* 2000:401, emphasis in original):

1. “Obligation means that states or other actors are bound by a rule or commitment or by a set of rules or commitments [...] it means that they are *legally* bound”;
2. “Precision means that rules unambiguously define the conduct they require, authorize, or proscribe”;
3. “Delegation means that third parties have been granted authority to implement, interpret, and apply the rules; to resolve disputes; and (possibly) to make further rules”.

According to the guidelines proposed by Abbott *et al.*, I capture the level of legalization in official RO documents.⁶

This study defines democracy standards – in agreement with the Polity-Project of the Center for Systemic Peace and Colorado State University as texts of law prescribing principles of conduct pertaining to the following three dimensions of democracy (Marshall *et al.* 2010:14) captured in six components⁷:

1. “institutions and procedures through which citizens can express effective preferences about alternative policies and leaders”;
2. “institutionalized constraints on the exercise of power by the executive”;

⁵ For a critique of the concept of legalization, which does not substantially limit its use for my purposes but refers to an allegedly narrow understanding of law, see Finnemore & Toope (2001). For a response, see Goldstein *et al.* (2001). A competing concept, the rational design of international institutions, is not used since it rather aims at comparing different types of international organizations with varying membership, and scope (Koremenos *et al.* 2001).

⁶ The template is simplified from the original and adapted to the present research question. It features fewer dimensions, which are included in the original in order to capture distinct dimensions of international law.

⁷ The component “regulation of chief executive recruitment” (XRREG) does not apply to my question because I look at legal documents and would therefore always find it to be “regulated”. The same is true for the component “regulation of participation” (PARREG) which addresses the empirical situation of civil society participation and can logically not be addressed in legal texts at the regional level.



3. “guarantee of civil liberties to all citizens in their daily lives and in acts of political participation”.

Note that I apply the Polity measures and their coding of individual countries’ authority structures to the regional organizations’ view on how the authority structures in their member countries should look like. I do not capture the degree of democracy of the RO as such, but rather determine to what extent their view on the substance of political authority is democratic.⁸

In order to be able to effectively compare the levels of legalization of democracy standards over time, I have to aggregate both the different components of democracy and the levels of legalization, which might diverge between different standards. Regarding the standards, I can transfer the Polity-scale weight, determining the relative importance of each component, to the present model. Regarding the level of legalization, no such quantitative measure exists (Finnemore & Toope 2001). The different levels have to be pragmatically aggregated into one value by an in-depth qualitative assessment of the relevant documents. Each dimension of legalization “can vary independently” (Abbott *et al.* 2000:401; Finnemore & Toope 2001, pp.747–748). The application of the legalization concept by researchers has however revealed that precision and obligation vary in the same direction, whereas delegation varies independently from the first two (for example Hawkins & Shaw 2008; Moravcsik 2000; Solingen 2008). When finally aggregating the data I will, therefore, attribute one common value to obligation and precision, while separating them from delegation.

2.2 Explaining degrees of democracy standards

What can explain the varying degrees of legalization of democracy standards? The special issue of *International Organization*, introducing the concept of legalization, identifies three strands of independent variables (Kahler 2000). These include “functionalist” explanations,

⁸ This can be called the ‘variety of democracy standards’ addressed by or “democraticness” of the RO.



the influences of asymmetries in power, and of domestic politics on legalization (Kahler 2000, pp. 662–672; also Moravcsik 2000:225 *et seq.*; Solingen 2008:261).⁹

In adaptation to my research question, I will follow this categorization and consider two independent variables. The first is inspired by the realist school of international relations, putting emphasis on power relations. I will both consider “structural realism” (IV_{1a}) and “traditional realism” (IV_{1b}). The second independent variable is inspired by liberalism and considers the domestic sources of legalization (IV₂).

2.2.1 IV_{1a} Interest and power of the regional hegemon

According to structural realism, it is the most powerful state in the region, the hegemon, which determines the level of legalization of democracy standards (Solingen 2008:286). As a power-maximizing entity, the hegemon aims to project its power on other states through international institutions (Mearsheimer 1994:13). The interests of weaker states and their domestic political system should not be of interest to the hegemon (*Risse-Kappen 1995:16 et seq.*). Normative considerations are “transparent disguises of selfish vested interests” (Carr 1946:87 *et seq.*). However, the realist “fall-back position” works around this problem by implying that it is in the interest of the hegemon to spread its values because it believes the values are right or because it can use norms to increase its influence over other countries in which it has a geopolitical interest; thereby possibly creating a normative cover for intervention (Hawkins & Shaw 2008:465; Moravcsik 2000:220). From this perspective,

⁹ I thereby include social-constructivist accounts, which would need a different methodological approach and which are only measurable with difficulties and could not adequately be described in this paper. Also, I deliberately exclude the possible influence of the regional organization itself on the level of legalization. The regional organizations analyzed are, to a large extent, intergovernmental organizations. States determine and set standards through negotiations among them. The influence of supranational institutions is – for the setting of these standards – negligible. Secondly, the setting of democracy standards, as already mentioned, infringes upon the fundamental sovereignty of a state to devise one’s political system independently. While the creation of a regional competence is already unlikely, the possibility that regional organizations arrogate these powers without consent of the member states seems almost impossible. I also exclude another factor stemming from the international context, which can have an important impact on the level of legalization in regional organizations: the role donor states play in the legalization of democracy standards. Empirical analysis as far it was possible with limited data has revealed that budget financing is not a means used by donor agents to influence the level of legalization of democracy standards (cf. Striebinger 2011).



regional democracy standards are only an instrument of the hegemon to project its norms on other countries.

For the hegemon, legalization can be problematic because it can also restrict its own policy-making autonomy (Kahler 2000:665). An interest in legalizing democracy standards can therefore only be assumed, if these standards are congruent with the hegemon's standards (Moravcsik 2000:229). The hegemon is therefore expected to push for the adoption of binding and precise democracy standards to the extent to which these standards 'fit' the domestic situation of the hegemon. In this case, the hegemon only has advantages from legalization (weaker states have to adapt to the hegemon's understanding of democracy), while limiting the impact of the standards on the hegemon itself (because the hegemon already complies with them).

The concept of legalization, however, also includes the delegation of enforcement power to a third body. This poses a potential threat of sovereignty loss to the hegemon. If, for example, an independent oversight body is established, rules might be interpreted in a way that is not shared by the hegemon. No rule is so precise that a court would not need to interpret it. While a high level of delegation would also ensure that weaker states have to abide by the rules, the hegemon prefers to enforce the rules itself – guaranteeing that its interpretation prevails and that the independent structure does not impact back on it.

The translation of a hegemonic interest into specific institutions and their setup is straightforward. A hegemon can pressure other states into following by "coercion, bribery or socialization" (Risse-Kappen 1995:16).

H_{1a} Provided that there is no misfit between democracy standards at the regional and domestic level of the hegemon: the more powerful the regional hegemon relative to other member states, the higher the level of obligation and precision and the lower the level of delegation of democracy standards.

As a broad definition of a hegemon would increase measurement problems, I will use a narrow definition (Nye 2009). A regional hegemon is a state that unites the material (military, economic, and demographic) resources for power projection (Nolte 2006:28; Vleuten & Ribeiro Hoffmann 2010:741).



The degree of fit between domestic political structures and the possible adoption of democracy standards at the regional level determines if the hegemon could have been primarily responsible for their adoption. The fit between the systems will be analyzed through the Polity score for the time given on the national level and the data on the level of ‘democraticness’ at the regional level – which is collected in this study.

Additionally, the relative power of the hegemon is determined through its share of the regional gross domestic product (GDP), through its share of the regional population, and through its share of the number of soldiers in the region (Hawkins und Shaw 2008:463). In lack of any generally acknowledged scale, the relative power of the hegemon will be qualified as ‘high’ if it unites about 50% of a region’s GDP, population or army (at least two out of three).

2.2.2 IV_{1b} Interest and power of weaker states

Traditional realism adopts a diverging perspective. In this view, the role of weaker member states cannot be neglected. The hegemon who is expected to be interested in the relative power position should even try to secure support by weaker states (Risse-Kappen 1995, pp. 18–20). This logic assumes negotiating processes with fixed interests in whom the hegemon’s interest does not prevail unconditionally (cf. *ibid.*).

In fact, weaker states have a high interest in constraining the hegemon through higher legalization if they have to fear even “more fundamental encroachments on state sovereignty” by the hegemon (Abbott & Snidal 2000:436–437; Risse-Kappen 1995:21). If the hegemon has shown a tendency towards unilateral intervention in other states, then weaker states “could try to increase their leverage by pooling resources and building a **united front** against the superpower” (Risse-Kappen 1995:22; Rosecrance 2001).

If they do not have the means to do so with material power, they try to pursue it through higher legalization. For them, a higher level of legalization is a means to constrain the hegemon. Even an imprecise and non-binding norm is more constraining on behavior than no norm at all. Especially a higher level of delegation is favored by weaker states because it



would place the decision to intervene to an institution, which is not under the single control of the hegemon.¹⁰

H_{1b} The higher the perceived threat from the regional hegemon to intervene unilaterally, the higher the overall level of legalization of democracy standards.

Measuring something as the level of threat is not obvious and could be subject of an additional paper. “Threats depend on power, but not all power differentials produce threats” (Hawkins & Shaw 2008:465; Thompson 2006). Therefore, actual behavior of the hegemon has to be considered. If the hegemon has militarily intervened unilaterally in member states of the regional organization in the past, then these are inclined to feel threatened. There are, of course, other more indirect forms of threat, but these cannot be discussed here due to the limited nature of this study. Although this argument is imperfect since it implies a link between a past inclination towards unilateral interventionist behavior and the expectation of other states that this behavior will not change, I will – in lack of viable alternatives – use this proxy measure.

I will use data from the Correlates of War Project (COW) to first identify all wars between countries of the target region (Sarkees & Wayman 2010). A war that has ended after the establishment of the RO will be noted. The involvement of the hegemon in the war, its inclusion of the regional organization in its resolution, and the consequences on bloc formation will be determined through secondary literature and then contribute to a qualitative assessment of this variable.

Between these two realist views, the hegemon decides everything, and weaker states have an impact, there is no solution to be found on a theoretical level. It is then an empirical question which of these motivations for the specific nature of the level of legalization prevailed.

¹⁰ For a discussion of this point, see Hawkins & Shaw (2008:465) who argue that weaker states would try to avoid higher legalization because this would provide the hegemon with a “normative cover” and make intervention more likely. This counter-intuitive reasoning putting into question the idea of law itself is not prominent in the literature; see for example (Lutz & Sikkink 2000:639).



If the hegemon has a clear interest in binding and precise democracy standards without a high level of delegation, but the outcome, for example, shows a high level of delegation, Hypothesis_{1a} is not likely to have important explanatory power. If weaker states fear unilateral intervention by the hegemon, but the level of legalization is neither binding, precise, nor its enforcement delegated, then Hypothesis_{1b} seems to play a minor role.

2.2.3 IV₂ Regime type influence

In the perspective of “liberal republicanism”, the “domestic political self-interest of national governments” and their regime type play a crucial role in determining the level of legalization (Moravcsik 2000:220). The existence of member states with democratic polities enables international cooperation through genuine understanding of each other’s domestic situation (Risse-Kappen 1995:33–35). It is the regime type that determines the level of legalization of democracy standards at the regional level. Whereas newly established democracies would prefer, established democracies and autocracies are expected to avoid legalizing democracy standards.

Dictatorships are neither normatively nor politically interested in democracy and, therefore, want to avoid any institutionalization that might play in the hands of a pro-democracy coalition at home.

A similar argument is advanced for well-established democracies. These do not want to push for high legalization and especially higher delegation because subsequent developments might constrain their domestic policy-making autonomy (Moravcsik 2000).¹¹ Although democracy or human rights are portrayed as universal principles, the actual implementation and realization of these principles varies a lot. It would not be assured that standards and their interpretation would reflect the usage of the established democracy.

The regimes that are expected to be the most ardent supporters of legalizing democracy standards are newly established democracies. It is in the interest of democratizing

¹¹ They can however easily support the promotion of democracy standards for third countries because these do not apply to them (section 3.3).



governments to lock-in and consolidate domestic democratic institutions via legalizing democracy standards at the regional level. Newly established democracies can thereby decrease future political uncertainty about the own political system and commit their own and future governments as well as other domestic coalitions to democracy (Hawkins & Shaw 2008:464; Moravcsik 2000:220).

H₂ The higher the number of newly established democracies, the higher the overall level of legalization of democracy standards.

In order to analyze the impact of newly established democracies on the level of legalization, I first need to define and identify these countries. Different scholars have found different solutions to these questions. At one time, individual categorization based on historical circumstances has been conducted by Moravcsik(2000:231–232). This approach does not allow for applicability to other regions and time periods since it lacks clear definitions and time frames.

Another measure of democracy, the Freedom House Index (FHI), captures “freedom [...] according to [...] political rights and civil liberties” (Freedom House 2010). Notwithstanding the methodological concerns (Munck&Verkuilen 2002:21), for my purposes, the FHI is not well suited because it combines a vast array of indicators ranging from political participation to socioeconomic rights and thereby cannot reliably provide information for a change in the relatively restricted realm of political authority.

The Polity project, however, provides a very useful data set (Hawkins & Shaw 2008:462). It “continues the Polity research tradition of coding the authority characteristics of states in the world system for purposes of comparative [...] analysis” (Marshall *et al.* 2010:1). Coders analyze each country separately according to well-defined components and attribute a Polity score that describes the country’s authority patterns. The Polity continuum ranges from autocracies (values -10 to 0) over partial democracies (values +1 to +6) to full democracies (values +7 to +10). The Polity index thereby gives a good classification of the overall political system and serves well to “examin[e] general regime effects” (Marshall *et al.* 2010:17).



In order to identify newly established democracies, I need to establish regime changes, from autocratic or less democratic to less autocratic or (full) democratic systems. The Polity project itself measures regime transitions through several attributes (REGTRANS indicators). Based on these definitions, I record a country as a newly established democracy when it sees a “three or more point increase in the polity score” (Marshall *et al.* 2010, pp. 35–36).

This might also include autocratic countries (shift from -8 to -5, for example). While it is possible that autocratic regimes with some democratic elements might seek to lock-in democracy standards at the regional level, this cannot be expected *per se*. If an autocratic government has an interest in further democratizing, then it is, in accordance with the REGTRANS indicator, expected to do this in the first three years. If no shift into the democracy-spectrum can be observed in these three years, it is no longer coded as a new democracy.

As soon as countries witness a decrease of three points in the Polity score or have attained a Polity score between +7 and +10 (full democracy), I will no longer consider them as new democracies. A country attaining a full democracy score immediately after a transition from autocracy, state failure (-77), or transition (-88) is coded as new democracy for another five years because the likelihood that a country will recede to autocracy in these five years is the highest (Power & Gasiorowski 1997:133–134). The same applies for countries that are founded as democracies.

It would be too strict and yield no results to assume that all countries have to be new democracies in order for this variable to have an effect. Most decisions are taken by consensus, so there would not be any legalization of democracy standards if I only expected one hundred percent of new democracies to have an effect. Rather this variable is probabilistic. The likelihood of higher legalization increases with the number of new democracies. Again, there is no conclusive scaling in the literature. I assume that a critical mass of 40% of new democracies is considered to be a ‘high’ value because it can be expected that 40% of the member states of a RO have considerable influence on the decision making process. If it is below 20%, the value is ‘low’. Everything in between is ‘moderate’. Since the



Polity project only captures countries with more than 500.000 inhabitants, Cape Verde is not represented in this variable.

Even when values on IV_{1b} and IV_2 are such that a similar outcome is to be expected, the explanatory power of each explanation can be determined by carefully examining the process through which the decision has been reached. Was the outcome due to a coalition-building process of newly established democracies pushing for high legalization or was it due to a majority of weak states fearing hegemonic intervention?

In addition to the correlation between the number of new democracies and the level of legalization, literature needs be consulted in order to follow the negotiation process. If, for example, a newly established democracy is member of a council preparing documents legalizing democracy standards, this indicates a certain commitment to and influence on standard setting. If states opposing hegemonic action are driving forces behind legalization, this would substantiate Hypothesis_{1b}.

Since I do not have access to the minutes of meetings, I have to rely on secondary literature. The relatively detailed description of policies in a given year in the Africa Yearbooks will be my primary source of information.

3. ECOWAS' increasingly legalized democracy standards

From 1990 until 2008, ECOWAS has adopted five documents that relate directly to democracy standards as defined above.¹² Over time, not only the substance of democracy standards but also their respective levels of legalization have increased dramatically.

ECOWAS member states adopted the Declaration of Political Principles signed July 7, 1991 (ECOWAS 1991), the Revised Treaty adopted on July 24, 1993 (ECOWAS 1993), the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security (ECOWAS 1999b),¹³ the Protocol on Democracy and Good

¹²The time frame is due to two considerations. First, the end of the cold war is generally acknowledged as having had an important influence on regional organizations (TAB). Second, empirically ECOWAS has not made any references to democracy standards before 1991.

¹³Hereafter Protocol-Mechanism.



Governance supplementary to the Protocol-Mechanism (ECOWAS 2001c),¹⁴ and the ECOWAS Conflict Prevention Framework (ECOWAS 2008).¹⁵

Table 1 Level of legalization of democracy standards¹⁶

Year	Instance (Document)	Democracy standard	Level of legalization		
			Obligation	Precision	Delegation
1991	1 (ECOWAS 1991)	+2	<i>Low</i>		<i>Low</i>
1993	2 (ECOWAS 1993)	+2	<i>Low</i>		<i>Moderate</i>
1999	3 (ECOWAS 1999b)	+2	<i>Moderate</i>		<i>High</i>
2001	4 (ECOWAS 2001c)	+7	<i>Moderate</i>		<i>High</i>
2008	5 (ECOWAS 2008)	+8	<i>High</i>		<i>High</i>

The first document, a mere declaratory statement without any legal obligations attached to it, articulates the “right to participate by means of free and democratic processes” (ECOWAS 1991, point 6). These processes are not further defined, but can be understood as an expression of wanting to promote executive recruitment on the basis of elections (XRCOMP).

The 1993 treaty signed in Cotonou replaced the ECOWAS founding treaty of 1975. Notably, it affirms the need for pooling resources at the regional level and creating powerful regional institutions (ECOWAS 1993, preamble).

It mentions, for the first time, “democratic elections” and provides for a voluntary mechanism of election observation by the RO, thereby constituting a moderate form of delegation (ECOWAS 1993, article 58). However, the conduct of elections (and their observation) is neither legally binding nor precisely formulated. The mentioned principle of “promotion and consolidation of a democratic system of governance” (ECOWAS 1993, article 4j) is vague and abstract. The breadth of ECOWAS’ democracy standards can therefore be rated as +2 while not being binding or precise, although featuring a moderate level of delegation.

¹⁴Hereafter Protocol-Democracy.

¹⁵Hereafter ECPF.

¹⁶ See the tables for each document and provisions including the Polity-classification and extended quotes in the Annex. Here, an overview in the form of a short text and a table shall suffice.



The legally binding Protocol-Mechanism is maybe even unique in the world (Gandois 2009). The uniqueness of the protocol is its sophisticated mechanism to ensure compliance with provisions regarding the structure of domestic political systems.

In “the event of an overthrow or attempted overthrow of a democratically elected government,” the Mediation and Security Council (MSC) can be activated (ECOWAS 1999b, article 25e). The MSC, composed of nine member states, deciding with a two-thirds majority (ECOWAS 1999b, article 9-2), can adopt “all forms of intervention [...] particularly [...] the deployment of political and military missions” (ECOWAS 1999b, article 10-2c). This can lead to military interventions in order to protect or restore democracy against the will of the target state. It remains unclear, however, when a government is “democratically elected”. Furthermore, decisions adopted by the MSC are directly binding in member states (ECOWAS 1993, article 12-3).

The development of the Protocol-Democracy, enlarging the variety of standards covered from +2 to +7, remains obscure. At the summit in December 2000, many ideas were advanced regarding the establishment of a “Government of West Africa”, but no mention was made to develop a corresponding protocol (ECOWAS 2000a). It seems that the drafting of the Protocol-Democracy was a relatively closed process dominated by the MSC and the linked Defense and Security Commission (DSC) comprised of the same member states’ ministers of defense (ECOWAS 2001a, point 39). During 2000 and 2001, press statements indirectly referred to this process (ECOWAS 2000b; ECOWAS 2001b).

The legally binding Protocol-Democracy addresses a wide variety of democracy standards in a concise and precise manner (ECOWAS 2001c). In the Protocol-Democracy all four Polity-components are addressed, leading to a democracy score of +7. The protocol not only limits executive recruitment to elections. But it also determines how competitive elections should be conducted (ECOWAS 2001c, section 2). It is further guaranteed that everyone can potentially participate in the elections (ECOWAS 2001c, articles 1d, 2-3). The component “executive constraints” is the least developed, only mentioning the relations between the military and the executive in detail, making clear that there should be no



confusion. Allusions to the strength of the judiciary and legislative branch of government are vague (ECOWAS 2001c, article 1a). But the competitiveness of participation is mentioned as political parties are supposed to play a central role while refraining from any discriminating actions (ECOWAS 2001c, article 1e).

All these standards are evoked in a document that has a high legal status and is binding – once it has been ratified and entered into force. For my purposes, the date of entry-into-force, which was in 2008, is not important since I am interested in the type of document the heads of state and government chose to adopt. Using a protocol can thus be understood as conferring a high bindingness on these standards.

Generally, precision for all standards is moderate to high. However, the “executive recruitment” component is by far the most precise, whereas the formulations about “executive constraints” and the “competitiveness of participation” leave important room for interpretation.

As regards delegation, the Protocol-Democracy tasks the MSC with supervision and enforcement.¹⁷ Although the decision-making in the MSC is controlled by member states, the secretariat plays an important role (ECOWAS 1999b). In addition, the Protocol-Democracy also “complements the provisions” of the Protocol-Mechanism by other types of sanctions that can be adopted “[i]n the event that democracy is abruptly brought to an end by any means” (ECOWAS 2001c, articles 44, 45). This formulation is not very clear, but the protocol suggests a broad definition of democracy, making it possible, for example, to interpret the suspension of a supreme court as ‘an end of democracy’. The sanctions to be adopted range from the “refusal to support the candidates presented by the Member State concerned for elective posts in international organizations” to the suspension of membership (ECOWAS 2001c, article 45).

In 2008, the ECOWAS Conflict Prevention Framework further increased breadth and precision of democracy standards. On September 4, 2007 the ECOWAS technical committee

¹⁷ The stated intention of the Protocol-Democracy is to “complement the [Protocol-Mechanism] through the incorporation of provisions concerning issues such as prevention of internal crises, democracy and good governance, the rule of law, and human rights” (ECOWAS 2001c, preamble). See also Article 46.



of experts on political affairs, peace, and security, made up of directors of political affairs in the foreign ministries, asked the ECOWAS commission to draft a document regarding instruments for the implementation of the two protocols, marking the beginning of the negotiation process leading to the ECPF (Walraven 2008:49).¹⁸

The ECPF is the most advanced document regarding precision and obligation of all documents considered in this study. It attempts to “strengthen human security” by providing “a strategic framework to underpin the preventive aspects of the [Protocol-]Mechanism” (ECOWAS 2008, points 3 & 5), thereby making its provisions also enforceable through the institutions of the MSC. Democratic rights have a central place since their fulfillment is part of ECOWAS’ human security definition and their violation is cited as a negative example of conflict creation (ECOWAS 2008, points 6, 13, 14). The ECPF consists of fourteen components of which one specifically addresses “Democracy and Political Governance” (ECOWAS 2008, point 42). Each component is structured in the same way. First, the objective is laid out. Then, activities to be pursued are listed. Thirdly, benchmarks to measure progress are established. Finally, concrete “capacity requirements” for the stakeholders are enumerated.

The ECPF thereby amends the points that were lacking in the Protocol-Democracy. In fact, it addresses those topics of executive constraint and competitiveness of participation that were not well developed in the 2001 document. Read in conjunction with the two older protocols, ECOWAS has fixed, by the year of 2008, highly precise and binding standards in a wide variety of aspects of democracy while having delegated their enforcement to the MSC and the ECOWAS Commission. While the former is still mainly under the control of a smaller number of member states, the latter is independent and plays an important role in the everyday work of the MSC. How can this change in the level of legalization be explained?

¹⁸ The decision to transform the secretariat into commission had been taken in 2006 (ECOWAS 2006b).



3.1 A powerful hegemon

Nigeria is the most powerful country in West Africa. It fulfills a leadership role; some even speak of a “Pax Nigeriana” (Gandois 2009:66–101; Mazrui 2006:133; Francis 2006:147 *et seq.*). From 1991 to 1999, Nigeria was not democratic and the hypothesis that it would not push for highly legalized democracy standards is confirmed.

In the time from 1991 to 1998, Nigeria’s Polity score decreased from -5 over -7 to -6. General Babangida had promised Nigeria’s transition from military rule to democracy when he seized power in 1985. Eventually, after several postponements, presidential elections were held in June 1993 – which were “widely hailed as one of the best conducted elections ever held in the country” (Osaghae 1998:239). Babangida, however, annulled the results preventing the clear winner of the elections to take office, and installed a civilian government. This was soon disposed of by the military under the leadership of General Abacha who remained president until his death in June 1998.

Not being a democratic country and wanting to avoid adaptational pressures emanating from the regional level, Babangida worked against legalizing democracy standards. It succeeded during the treaty negotiations, and until 1999, president Abacha, chairman of the ECOWAS authority since July 1996, stalled all further attempts to legalize democracy standards (Bergstresser 1998; Mehler 1997:90).

From 1999 to 2008, Nigeria’s role changed. The fit between domestic and regional democracy, in combination with a strong hegemonic position, leads us to expect a constructive role in favor of legalizing democracy standards during the period. This expectation is confirmed – although IV_{1a} cannot explain the high level of delegation to which Nigeria agreed. Therefore, Nigeria’s status as a newly established democracy needs to be considered.

Table 2 Interest of regional hegemon

Nigeria ¹⁹	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Polity	4	4	4	4	4	4	4	4	4	4

¹⁹ Data from Marshall *et al.* 2002; World Bank 2009).



score										
% of regional GDP	44	55	56	59	57	60	64	68	67	69
% of regional population	53	53	53	53	53	53	53	53	53	53
% of regional soldiers	45	42	55	53	54	56	52	69	53	53

With Abacha's death in 1998, the democratization process led by Abdulsalami Abubakar gained momentum (Kohnert 1999). Eventually, Olusegun Obasanjo was elected to the Nigerian presidency on March 1, 1999. This peaceful transition to a civilian government explains the shift in the Polity score (from -6 in 1997 to +4 in 1999).

At the regional level, the newly elected Nigerian president urged other member states to adopt "revolutionary reforms" (Kohnert 2000:88, own translation 'radikale Reformen'), including a revision of the security mechanism (Cernicky 2008:157). The Protocol-Mechanism and Protocol-Democracy were not imaginable without Nigeria's involvement and consent (Kabia 2009:189).

The development of these high levels of legalization has to be interpreted against the background of Nigerian democratization. The domestic political discourse in a democratizing Nigeria also included foreign policy. Nigerian involvement in ECOWAS became an issue of internal debate. Demonstrating its commitment to pluralistic discourse as the preferred process of political decision-making, Nigeria was in favor of institutionalizing democratic decision-making in the form of the MSC where votes are taken with a two-thirds majority (Kabia 2009:189).

3.2 A high threat perception with little unity among weaker states

I now turn to an alternative explanation: the perceived level of threat by the hegemon that would have led the weaker states to find a common position to constrain the hegemon. The



military interventions in Liberia and Sierra Leone mark the establishment of the “*Monrovia doctrine* legitimizing intervention [by Nigeria] in West Africa” (Mazrui 2006:139, emphasis in original; Francis 2006). Weaker states, thus, had reason to fear unilateral Nigerian intervention, but the level of legalization remains low. The second hypothesis is therefore not substantiated in this case.

In both wars, Nigeria was the most important player (Kabia 2009:188). Liberia and Sierra Leone were war-ridden regions. The decision to intervene in Liberia was taken unilaterally by Nigeria’s president Babangida. It is said that his main motivation was to help his longtime friend-president Samuel Doe (Salomon 2008:222–227; Francis 2006:154). While the legal basis for intervention remains contested (Francis 2006:151 *et seq.*), Babangida used the intervention to “limit, contain and discourage some Francophone countries” of questioning Nigeria’s position (Francis 2006:155).

The most important military intervention for the adoption of the three more legalized documents under analysis was the intervention in Sierra Leone – substantially contributing to the unity of the francophone bloc thereby providing a potential explanation for the high level of delegation in the Protocol-Mechanism.

The decision to intervene in Sierra Leone was taken by Nigeria without consulting neighboring countries. Nigerian troops were already on the ground (for the ECOWAS mission in Liberia) and acted to restore President Ahmad Tejan Kabbah to power after he had been ousted by the military in 1997. The ECOWAS Ceasefire Monitoring Group (ECOMOG) II-mandate was only adopted months after Nigeria had started fighting (Sierra Leone Web News 1997).

Abacha officially justified this intervention by pointing out that Kabbah had been democratically elected and unconstitutionally removed from power. In fact, Nigeria’s intervention was “an attempt to enhance the damaged domestic and international image of Nigeria and in particular its military head of state General Abacha” (Francis 2006:162).

The vagueness of the justification was susceptible of creating concerns in the region. Other heads of state had to fear unilateral intervention if Nigeria saw fit. Under the present



legal documents, Nigeria was not obliged to consult its neighbors. Therefore, a coordinated effort of weaker member states to constrain Nigeria through higher legalization of democracy standards is to be expected.

Indeed, even close allies of the Anglophone bloc such as Ghana had “strong reservations” about Nigerian interventionism (Francis 2006:162). Divisions were so tense that Ghana deemed an extraordinary ECOWAS summit invoked in December 1997 illegal. The unilateral action by Nigeria united the weaker states that aimed at avoiding a similar interference in internal affairs through the legalization and especially delegation of intervention powers to a third body. In March 1998, all Francophone countries adopted a common declaration with the aim of preventing any further unilateral action (Kohnert 1998:83–84).

There should thus be a higher level of delegation. But Nigeria’s unilateralism did not lead to the organization of a united front; rather the states resorted to uncoordinated action – including supporting rebel troops Nigeria was fighting (Kabia 2009, pp. 68 and 188). The threat was big, but there was no stronger reaction.

3.3 The enabling drivers: newly established democracies

In fact, it is the democratizing hegemon, Nigeria, in an environment of a relatively important number of newly established democracies that can best explain the increasing legalization of democracy standards in ECOWAS. While before the adaptation of the first two documents, almost no new democracies had an influence (Striebinger 2011:43 *et seq.*), during most of the next ten to fifteen years between 40 and 50% of the member states were ‘newly established democracies’. For the adoption of the Protocol-Mechanism and Protocol-Democracy, Benin, Burkina Faso, Côte d’Ivoire, Ghana, Guinea-Bissau, Liberia, Niger, Nigeria, and Senegal are expected to have played a crucial role.



Table 3 Newly established democracies

Country ²⁰	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
BEN	6*	6*	6*	6	6	6*	6*	7	7	7
BFO	-4	-3	0	0*	0*	0*	0*	0	0	0
IVO	-88*	4*	4*	-77	-77	-77*	-77*	-77	-88	-88
GAM	-5*	-5*	-5*	-5	-5	-5	-5	-5	-5	-5
GHA	2*	2*	6*	6*	6*	8*	8*	8	8	8
GUI	-1*	-1*	-1*	-1*	-1*	-1*	-1*	-1	-1	-1
GNB	-88	5	5	5	-1	-1	6	6	6	6
LBR	0*	0*	0*	0*	-88*	-88*	-88*	6	6	6
MAA	-6	-6	-							
MLI	6*	6*	6*	7*	7*	7*	7*	7	7	7
NIR	5	5	5	5*	5*	6	6	6	6	6
NIG	4*	4*	4*	4*	4*	4*	4*	4	4	4
SEN	-1*	8*	8*	8*	8*	8*	8*	8	7	7
SIE	-77	-77	-88	5*	5*	5*	5*	5	7	7
TOG	-2*	-2*	-2*	-2*	-2*	-2	-4	-4	-4	-4
#new	4	7	8	8	7	6	6	6	5	5
%new	27	47	57	57	50	43	43	43	36	36

The expected confrontation of weak states against the threatening hegemon as proposed by *H_{lb}* does not hold. In the face of the activities by high number newly democratic governments – including the hegemon's – the preference was for locking in domestic democracy at the regional level.

First, as already outlined above, Nigeria played a crucial role in the adoption of the two protocols and also supported the ECPF. Nigeria acted as a newly established democracy wanting to lock-in domestic democratic progress also with a view to put the intervention mechanism on a more democratic and multilateral basis (Francis 2006:167).

Second, all other new democracies supported the legalization of democracy standards – except Côte d'Ivoire, Liberia, and Guinea-Bissau where civil wars and highly unstable political situations disrupted contributions to regional political integration. Francophone

²⁰ Mauritania's withdrawal took effect on New Year's Eve 2001. An asterisk denotes membership in the MSC according to available documents (ECOWAS 1999a, article 1; ECOWAS 2001a, point 47; ECOWAS 2003, article 2). Shaded cells record classification as newly established democracy.



(Benin, Niger, Senegal and to a certain extent Burkina Faso) as well as Anglophone member states (Ghana, Liberia, and Sierra Leone) contributed to the establishment of highly legalized democracy standards – thereby contradicting the traditional realist argument based on a power competition between Francophone and Anglophone countries.

Rated with a Polity score of +6 since 1990, Benin's constructive attitude towards higher legalization of democracy standards increased with the consolidation of domestic democracy (Mayrargue 2005). While the elections in 1996 and 2001 were still marked by irregularities (Kohnert 1997; Kohnert 2002), the Protocol-Democracy was signed and its provisions used to implement domestic reforms with regard to the electoral law and a new Charta for political parties (Mayrargue 2006:44–45).

Niger's return to democracy (Polity score of +5 in 1999, after three years of autocracy, -6) also marked the beginning of active involvement in regional affairs of President Mamadou Tandja (Wegemund 2000; Wegemund 2002b). After the first free and fair elections in Niger's history in 2004, Tandja was elected chairman of the ECOWAS authority over the Guinean president because of Tandja's seeming commitment to democracy (Walraven 2006:38).²¹

The Senegalese president, Abdoulaye Wade, is known as a fervent panafricanist and democrat, being able to push for a higher legalization of democracy in meetings of the MSC (Grimm 2001). The year 2000 marked the beginning of democratic consolidation – expressed in an increase in the Polity score of nine points (from -1 to +8). Contributing to the democratic development of Senegal was the drafting of a new constitution, limiting, for example, the powers of the executive. Wade, elected chairman of the ECOWAS authority in 2001, continued domestic democratization as well as international lobbying for continental and regional integration (Grimm 2002).

In 1996, for the first time in Ghanaian history, peaceful re-elections took place (Bergstresser 1997), marking the rise to a Polity score of +2. The democratization continued with the passing of power to the opposition leader John Kufour in 2000 (Bergstresser 2001).

²¹ The ending of Tandja's rule – he tried to unconstitutionally extend his rule and was ousted by a *coup d'état* in 2010 – is not subject of this paper.



Ghana's interest in locking in domestic democracy is apparent in its active commitment to promoting higher legalization of democracy standards at the regional level (Jaye 2003:266–267). For example, Ghana's good relations to longtime dictator Eyadéma of Togo helped securing support for the signing of the Protocol-Mechanism and Protocol-Democracy (Bergstresser 2002:107). As a member of the MSC from 1999 to 2008, and with the Ghanaian Ibn Chambas as the executive secretary and president of the ECOWAS Commission, Ghana played a role as defender of the legalization of democracy standards – not out of fear of Nigerian intervention but out of interest for locking-in domestic democracy.

Liberia provides a clear case of using regional organizations to secure domestic democracy. After years of instability and civil war, the first elected president, Ellen Johnson-Sirleaf, acceded to power in Monrovia on January 16, 2006 – marking the shift to a Polity score of +6. Motivated and committed to democratic change, she pushed for important reforms in Liberia. On the regional level, she became a proponent of the legalization of democracy standards (Ellis 2007). During the drafting of the ECPF, Liberia hosted a meeting of the ECOWAS defense chiefs, underlining its commitment to more legalized democracy standards (Ellis 2008).

Sierra Leone also emerged from a situation of civil war and absence of central authority as a supporter of regional democracy standards. In 2002, a democratic constitution was adopted (leading to a Polity score of +4). Presidential and parliamentary elections saw Kabbah as winner and were generally considered free and fair (Körner 2003). The signing of the Protocol-Democracy several months earlier committed the losers of elections to accept the outcome.

The story of Burkina Faso, Côte d'Ivoire, and Guinea-Bissau is different. All three had an ambiguous relationship to regional democracy standards. In 2001, Burkina Faso was neither autocracy, nor democracy (expressed by a Polity score of 0). That meant that some reforms, for example of the electoral law, and of party financing, took place – without, however, addressing the structural aspects of political violence and repression (Wegemund 2002a). Internationally, Burkina Faso has not pushed for democracy standards. In fact, due to



the continued support to rebel groups fighting against ECOWAS troops in Liberia and Sierra Leone, it rather played a destructive role (Kabia 2009:186).

Neither Côte d'Ivoire's nor Guinea-Bissau's presidents tried to lock-in fragile democracy at the regional level. The entrance of Côte d'Ivoire in the 'club of democracies' was short-lived. After years of civil war, the transition to democratic rule started with the formation of a military government under the leadership of General Gueï in January 2000. Laurent Gbagbo, president of the Front Populaire Ivoirien (FPI) was sworn in as president on October 26 (Jakobeit 2001). In 2001, during a visit by president Gbagbo in Italy, hundreds of rebels attacked strategic locations and killed Gueï – the beginning of yet another civil war (Jakobeit 2003).

Like Côte d'Ivoire, Guinea-Bissau was characterized by unstable and changing governments. After the end of the period of political instability in 1999, Guinea-Bissau increased its Polity score to +5 in 2000. Continued clashes between different political groups and the military, as well as the killing of rebel leader Mané, led to a destabilization of the situation – making a consolidation of democratic institutions unlikely (Gebhard 2001). In fact, in the year leading up to the adoption of the Protocol-Democracy, which, among others, stipulates the "separation of powers" (ECOWAS 2001c, article 1), president Kumba Yalá replaced all judges of the highest court – also in violation of the constitutional principles of Guinea-Bissau (Augel 2002).

Considering these divergent patterns of locking-in preferences and of contempt of regional democracy standards, the expectations made by the H_2 have to be attenuated. While there is some support, it is not confirmed in every individual case.

For explaining the high level of legalization of democracy standards, the liberal argument is still convincing. The adoption of the two protocols and the ECPF are mainly due to the active commitment to democracy by a large number of member states. Especially the democratization of the hegemon, in cooperation with other newly democratized countries, shows that the decision to legalize democracy standards was one of cooperation – and not counter-balancing (Cernicky 2008:157).



4. The new princes: Democratizing regional hegemons?

African regional organizations have partially been revived with new democracy promoting mandates. Founded in the seventies, member states ‘kissed’ their RO awake after the end of the Cold War – taking up the image of the ‘sleeping beauty’. ECOWAS has increasingly legalized democracy standards at the regional level.

This study asked the question ‘How and under which conditions do African regional organizations legalize democracy standards?’. Using the concept of legalization, consisting of the dimensions of obligation, precision, and delegation, to describe standards set by regional organizations pertaining to domestic democracy, this study measured the ‘democraticness’ of ECOWAS the respective level of legalization for the time period 1991 to 2008.

This study addressed two independent variables in the position to explain the varying level of legalization. In the ‘realist’ tradition of international relations research, the paper differentiated between a ‘structural realist’ argument after which the level of legalization reflects the interests of the most powerful state in the region (IV_{1a}) and a ‘traditional realist’ argument pointing to the role of weaker states, who would aim to constrain the hegemon through increasing legalization if they are threatened (IV_{1b}). In a ‘liberal’ line of thought, the domestic aspect of international negotiations was analyzed. According to this argument, ‘newly established democracies’ have an interest in locking-in their domestic democratization process at the regional level, thereby binding domestic opposition and future governments to democracy (IV₂).

My results allow for an assessment of the differential explanatory power of the independent variables. While IV_{1a} had assumed the almost direct translation of hegemonic power in high precision and obligation but low delegation, I found that the hegemon can prevent high legalization of democracy standards but is ‘powerless’ when it comes to increasing the level of legalization against the will of other member states. It is the interest of newly established democracies to lock-in domestic democracy that leads to a high level of legalization of a wide variety of democracy standards. But also in this case, the hegemon plays a crucial role: a newly democratic hegemon is a necessary condition for a high level of



legalization, especially delegation, of a wide variety of democracy standards. In short: A powerful democratic hegemon can prevent important delegation from taking place, while not being in the position to establish more precise and binding standards alone. A high number of new democracies including the most powerful country in the region are necessary for a high level of legalization of a wide variety of democracy standards.



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6. Annex

Table 4 ECOWAS 1991: Level of legalization of democracy standards

Democracy standard			Level of legalization		
Standard	RO-Text	Scale Weight	Level of obligation	Level of precision	Level of delegation
XRCOMP	“determined to concert our efforts to promote democracy on the basis of political pluralism” (ECOWAS 1991, preamble)	+2	Low A declaration by the Authority of Heads and State of ECOWAS has no legal effect.	Low It is not defined what either “democracy” or “political pluralism” imply.	Low The declaration does not institute a regional body; no enforcement mechanism is set up.
	“We believe in the liberty of the individual and in his inalienable right to participate by means of free and democratic processes in the framing of the society in which he lives.” (ECOWAS 1991, point 6)			Moderate Substantial room for interpretation is given to member states.	
Combined rating		+2	Low The content of democracy is not clear at all and even if the standard of elections is somewhat specified, the documents are not legally binding.	Low The declaration does not institute a regional body; no enforcement mechanism is set up.	



Table 5 ECOWAS 1993: Level of legalization of democracy standards

Democracy standard		Scale Weight	Level of legalization		
Standard	RO-Text		Level of obligation	Level of precision	Level of delegation
XRCOMP	“Member States undertake to cooperate with the Community [...] and] provide, where necessary and at the request of Member States, assistance to Member States for the observation of democratic elections.” (ECOWAS 1993, article 58)	+2	<i>Low</i> No member state is forced to ask for such assistance.	<i>Moderate</i> It is clear what is addressed. However, standards for democratic elections remain unspecified.	<i>Moderate</i> The member states and ECOWAS have the joined task to conduct these observation missions.
Other	“promotion and consolidation of a democratic system of governance in each Member State” (ECOWAS 1993, article 4j)	-	<i>High</i> The founding treaty has quasi-constitutional value.	<i>Low</i> “Democratic system” is not defined.	<i>Low</i> No regional body is tasked with supervision or enforcement.
Combined rating		+2	<i>Low</i> The content of democracy is not clear at all and even if the standard of elections is somewhat specified, the documents are not legally binding.		<i>Moderate</i> ECOWAS has some possibilities for monitoring compliance with the standard through election observation missions.



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Table 6 ECOWAS 1999: Level of legalization of democracy standards

Democracy standard			Level of legalization		
Standard	RO-Text	Scale Weight	Level of obligation	Level of precision	Level of delegation
XRCOMP	“[I]n the event of an overthrow or attempted overthrow of a democratically elected government” (ECOWAS 1999b, article 25e) the “mechanism” is started, leading to “all forms of intervention [...] particularly [...] the deployment of political and military missions” (ECOWAS 1999b, article 10-2c), decided by the Mediation and Security Council (MSC) which comprises nine member states and takes decisions with “a two-thirds majority” (ECOWAS 1999b, article 9-2).	+2	<i>High</i> The legal value of the protocol is high. It has entered into force upon signature.	<i>Moderate</i> While this provision specifies a concrete standard, i.e. it prohibits a certain form of executive recruitment, the terms “overthrow” and “democratically elected” remain unclear. The enforcement process is however very precise.	<i>High</i> The MSC is tasked with the enforcement of the provision. Even if member states dominate the MSC, the body can take decisions to intervene militarily in a country that is not represented in the council.
Other	“promotion and consolidation of a democratic government as well as democratic institutions in each Member State” (ECOWAS 1999b, article 2c)	-		<i>Low</i> “Democratic government” or “institutions” are not defined.	<i>Low</i> No regional body is tasked with supervision or enforcement.
Combined rating		+2	<i>Moderate</i> Overall, the bindingness of the protocol is moderate to high. The standards evoked are oftentimes precise but sometimes lack breadth, so that issues remain unanswered or open for interpretation.		<i>High</i> The establishment of the MSC and its competence to guarantee the compliance with democracy standards is a form of centralized enforcement with the possibility to adopt binding resolutions and even military interventions. The process remains however in the hands of member states.



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Table 7 ECOWAS 2001: Level of legalization of democracy standards

Democracy standard			Level of legalization		
Standard	RO-Text	Scale Weight	Level of obligation	Level of precision	Level of delegation
XRCOMP	“Every accession to power must be made through free, fair and transparent elections.” (ECOWAS 2001c, article 1b)	+2	<i>Moderate-High</i> The legal value of the protocol is high because it is directly linked to the Protocol-Mechanism. But it entered into force only in 2008.	<i>Moderate-High</i> No room is left for interpretation, although elections are not specified.	(all subject to article 45)
	“Zero tolerance for power obtained or maintained by unconstitutional means.” (ECOWAS 2001c, article 1c) “The party and/or candidate who loses the elections shall concede defeat to the political party and/or candidate finally declared the winner, following the guidelines and within the deadline stipulated by the law.” (ECOWAS 2001c, article 9)			<i>Moderate-High</i> No room is left for interpretation, although it is not clear if constitutional concerns the member state’s constitution or the constitutional principles of ECOWAS.	
	“No substantial modification shall be made to the electoral laws in the last six (6) months before the elections, except with the consent of a majority of Political actors.” (ECOWAS 2001c, article 2-1)			<i>High</i> Specific provisions regarding the conduct of elections are made. Only narrow issues of interpretation remain.	
	“All the elections shall be organised on the dates or at periods fixed by the Constitution or the electoral laws.” (ECOWAS 2001c, article 2-2)				
	Electoral commissions shall be independent, transparently working with reliable registries (ECOWAS 2001c, article 3-6).				
	“Adequate arrangements shall be made to hear and dispose of all petitions relating to the				



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	conduct of elections and announcement of results.” (ECOWAS 2001c, article 7)				
	“At the request of any Member State, ECOWAS may provide assistance in the conduct of any election. Such assistance may take any form. Also, ECOWAS may dispatch a monitoring team to the country concerned for the purpose of monitoring the elections. The decision in this respect shall be taken by the Executive Secretary.” (ECOWAS 2001c, article 12)			<i>Low-Moderate</i> This formulation is not very precise because it is unclear if the member state has to ask for assistance or if the executive secretary can dispatch a monitoring team, which would then not be understood as “assistance” (Gandois 2009, S.149).	<i>Moderate-High</i> The member states and ECOWAS have the joined task to conduct these observation missions. The role of the executive secretary is underlined and also crucial for the set-up and conduct of the mission.
	Detailed mechanism of how an election observation mission should be conducted (ECOWAS 2001c, article 13-18).			<i>Moderate</i> The process of the mission is detailed, guidelines on the content of the mission are lacking.	
XROPEN	“Popular participation in decision-making” (ECOWAS 2001c, article 1d)	+1	<i>Moderate-High</i> The legal value of the protocol is high because it is directly linked to the Protocol-Mechanism. But it entered into force only in 2008.	<i>Low</i> This is not specific at all.	<i>Low</i> No regional body is tasked with supervision or enforcement.
	Equal rights of men and women “to vote and be voted for in elections” (ECOWAS 2001c, article 2-3)			<i>Low-Moderate</i> This standard substantially adds to the understanding of the openness of the electoral process.	
XCONST	“Separation of powers - the Executive, Legislative and Judiciary.” “Empowerment and strengthening of parliaments and guarantee of	+1	<i>Moderate-High</i> The legal value of the protocol is high	<i>Low-Moderate</i> Some principles amounting to constraining executive power are listed, but	<i>Low</i> No regional body is tasked with supervision or enforcement.



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	parliamentary immunity.” “Independence of the Judiciary: Judges shall be independent in the discharge of their duties.” (ECOWAS 2001c, article 1a)		because it is directly linked to the Protocol-Mechanism. But it entered into force only in 2008.	these are not individually defined.	
	<p>“The armed forces must be apolitical and must be under the command of a legally constituted political authority; no serving member of the armed forces may seek to run for elective political.” (ECOWAS 2001c, article 1e)</p> <p>“The armed forces and police shall be non-partisan and shall remain loyal to the nation. The role of the armed forces shall be to defend the independence and the territorial integrity of the State and its democratic institutions.” (ECOWAS 2001c, article 19-1)</p>			<p><i>Moderate</i> It is clear that the military should not attempt to seize power illegally and be bound by the constitution.</p>	
PARCOMP	<p>“Political parties shall be formed and shall have the right to carry out their activities freely, within the limits of the law. Their formation and activities shall not be based on ethnic, religious, regional or racial considerations. They shall participate freely and without hindrance or discrimination in any</p>	+3	<p><i>Moderate-High</i> The legal value of the protocol is high because it is directly linked to the Protocol-Mechanism. But it entered into force only</p>	<p><i>Moderate</i> The role of political parties is recognized but substantial issues remain unclear.</p>	<p><i>Low</i> No regional body is tasked with supervision or enforcement.</p>



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	electoral process. The freedom of the opposition shall be guaranteed [sic]. Each Member State may adopt a system for financing political parties, in accordance with criteria set under the law.” (ECOWAS 2001c, article 1i)		in 2008.		
Other	“In the event that democracy is abruptly brought to an end by any means or where there is massive violation of Human Rights in a Member State, ECOWAS may impose sanctions on the State concerned.” (ECOWAS 2001c, article 45-1) The sanctions include a variety and detailed forms from “refusal to support candidates” in IO to the suspension of membership (ECOWAS 2001c, article 45).	-	<i>Moderate-High</i> The legal value of the protocol is high because it is directly linked to the Protocol-Mechanism. But it entered into force only in 2008.	<i>Moderate</i> The definition of democracy has to be gathered from the above, it is however unclear which part of democracy “ending” would cause the adoption of sanctions. The sanctions as such are precise.	<i>High</i> The enforcement is also delegated to the MSC.
Combined rating		+7	<i>Moderate</i> Overall, the bindingness of the protocol is moderate to high. The standards evoked are oftentimes precise but sometimes lack breadth, so that issues remain unanswered or open for interpretation.		<i>High</i> The establishment of the MSC and its competence to guarantee the compliance with democracy standards is a form of centralized enforcement with the possibility to adopt binding resolutions and even military interventions. The process remains however in the hands of member states.



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Table 8 ECOWAS 2008: Level of legalization of democracy standards

Democracy standard		Scale Weight	Level of legalization		
Standard	RO-Text		Level of obligation	Level of precision	Level of delegation
XRCOMP	“ECOWAS shall facilitate the provision of assistance to Member States and local constituencies in the preparations for credible elections, including technical and financial support for the conduct of census, voter education, enactment of credible electoral codes, compilation of voters’ registers and training of electoral officials, monitors and observers.” (ECOWAS 2008, point 53f)	+2	<i>High</i> The ECPF is directly binding in member states.	<i>Moderate</i> Some steps for conducting elections are enumerated, but it does not specify the exact content.	<i>Moderate</i> The commission is tasked with helping member states.
XROPEN	“ensure the active participation by all citizens in the political life of Member States under common democratic, human rights and constitutional principles” (ECOWAS 2008, point 52)	+1	<i>High</i> The ECPF is directly binding in member states.	<i>Moderate-High</i> Not only is participation encouraged generally, but more specifically, women are addressed.	<i>Moderate</i> The commission is tasked with helping member states.
	“ECOWAS shall facilitate, and Member States shall adopt and implement targeted programs to enhance the active involvement of women in decision making, seeking elective offices and participating in the electoral process.” (ECOWAS 2008, point 53d)				
XCONST	“ECOWAS shall facilitate, and Member States shall ensure, the strengthening of the Executive, Legislature and the Judiciary of Member States to promote efficient delivery, the enhancement of separation of powers and oversight responsibilities in governance.” (ECOWAS 2008, point 53a)	+2	<i>High</i> The ECPF is directly binding in member states.	<i>Moderate</i> It is made very clear that the executive cannot decide alone and is subject to important constraints. How these should look like in practice, is not fully elaborated.	<i>Moderate</i> The commission is tasked with helping member states.
	“Member States shall encourage the establishment of permanent platforms that bring together electoral management bodies, political parties, security services, the media and civil society for the exchange of views, formulation of electoral				



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	codes of conduct and modalities for the peaceful resolution of election-related disagreements.” (ECOWAS 2008, point 53i)				
	“Civil society organizations shall assist Member States to establish mechanisms to strengthen the capacity of the media, security services and the judiciary to deliver efficient electoral oversight, security and arbitration.” (ECOWAS 2008, point 53l)				
PARCOMP	<p>“Member States, in cooperation with ECOWAS and with the full participation of civil society organizations, shall assist political parties with financial resources and know-how to strengthen internal party democracy and participation, and to mobilize resources to assist political parties in the crafting of manifestos that promote national cohesion, consensus, participatory democracy and sustainable development.” (ECOWAS 2008, point 53c)</p> <p>“ECOWAS shall facilitate the enactment and enforcement of statutes in Member States to strengthen the capacity of all political parties to effectively compete in elections and minimize the impact of the incumbency factor in elections.” (ECOWAS 2008, point 53g)</p> <p>“Member States shall facilitate the active involvement of civil society organizations, including NGOs, traditional structures and community- based organizations in electoral and governance processes.” (ECOWAS 2008, point 53j)</p>	+3	<i>High</i> The ECPF is directly binding in member states.	<i>Moderate-High</i> The document specifically addresses various organizations of the civil society and even points out institutionalized forms of participation.	<i>Moderate</i> The commission is tasked with helping member states.
Other	A Monitoring and Evaluation mechanism is set up within the secretariat that follows up on implementation via annual reports “applying corrective, incremental or reinforcing measures, wherever and whenever necessary, to maximize	-	<i>High</i> The ECPF is directly binding in	<i>High</i> Details about the monitoring process are listed and stipulated in a precise manner.	<i>High</i> The commission has an explicit mandate to follow up on the implementation and to take decisions.



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outcomes” (ECOWAS 2008, point 123).		member states.	
Combined rating	+8	<i>High</i> The directly binding document lists in a precise manner a wide variety of democracy standards – building upon those that were already fixed in the Protocol-Democracy.	<i>High</i> New mechanisms for implementation are provided for the commission. The MSC can also contribute to ensuring compliance.