

**RESOLUTION OF INTERNATIONAL DISPUTES: ADVANTAGES OF AFRICA'S SUPRANATIONAL COURTS COMPARED TO NATIONAL COURTS\***

**Abstract**

*In man's daily interactions either politically, commercially or in business life and even in family setting, disputes are bound to arise. States or nations took care of these disputes by setting up courts or tribunals which were vested with coercive powers to settle, or adjudicate on same and enforce such decisions. As time went on, these disputes arose at the international levels which were later labeled 'International disputes.' The International Community through the instrumentality of the United Nations set up the International Court of Justice and later the International Criminal Court (ICC) to handle these international disputes. For reasons bordering mainly on culture and political setting, Africa did not take the opportunity to set up its own, at the same time as Europe and America. However, as a result of the need for economic integration and to reap the fruits of globalization, Africa set up its own supranational or regional courts starting first with the African Court on Human and Peoples' Rights and latter, the ECOWAS Court of Justice, the East African Court of Justice, the South African Development Community Tribunal, SADC and the OHADA Common Court of Justice and Arbitration (CCJA). Nevertheless, because of Africa's peculiarity in terms of historical evolution of its supranational courts which may have been ignored for some time now there is the need to treat it in an article of this nature. This article not only made a big attempt to treat their historical evolution but also compared the advantages of these supranational courts to that of the national courts of the continent in the resolution of international disputes and concluded that Africa's supranational courts are still relatively young compared to that of Europe and America but also a necessity in the resolution of international disputes compared to national courts existing in the continent. This work was purely doctrinal based.*

**Keywords:** Resolution of International Disputes, Supranational Courts, National Courts, Africa, Advantages, Comparison

**1. Introduction**

According to Black's Law Dictionary, supranational means, 'free of the political limitation of nations',<sup>1</sup> whilst court was defined by the same Black Dictionary as a governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice.<sup>2</sup> Whilst the Oxford Advanced Dictionary defined supranational as involving more than one country,<sup>3</sup> and court as the place where legal trials take place and where crimes, etcetera are judged.<sup>4</sup> Supranationality 'refers to a situation where an international institution is endowed with powers to take decisions binding on sovereign states either generally or in specific areas of state activity'.<sup>5</sup> Supranational courts are known by or associated with a variety of names. For example, in one instance it was referred to as 'Regional/supranational court/tribunal'<sup>6</sup> whilst in another instance it was referred to as supranational judicial institution.<sup>7</sup>

Another common name it is known by or associated with is international court.<sup>8</sup> It was referred to as international court of justice in the case of *Moussa Leo Keitav State of Mali*,<sup>9</sup> in this case the ECOWAS Community Court of Justice expressly stated as follows 'Unlike other international courts of justice, such as the European Court of Human Rights, the Community Court of Justice does not possess the competence to revise decisions made by the domestic courts...' However, it appears the name supranational court and international court are more widely used. Ngwakwe has identified the following supranational courts in Africa when he stated as follows: 'At least, for now, the following supranational courts are operational ACHPR (court), ACHPR (commission), ECOWAS CCJ, SADC tribunal, EAC CJ, and OHADA CCJA. The planned merger of AUCJ and ACHPR is waiting for the required number of signatories to come into force'.<sup>10</sup>

The National Courts in this work will refer to the courts of the nations or states that are parties to or members of the supranational courts being discussed. It has no precise definition, some writers in trying to define have tried from the point of the principles and practice in the practice of national courts *vis a vis* that of International Legal Powers and Principles.

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<sup>1</sup>Bryan, A. G., *Black's Law Dictionary*, Eight Edition, United States of America, West Publishing Company, 2004, 1481.

<sup>2</sup> *Ibid*, 378.

<sup>3</sup>Hornby, A.S. *Oxford Advanced Learner's Dictionary of Current English*, (7<sup>th</sup> Edition), Oxford University Press, 1487

<sup>4</sup>*Ibid*, 327.

<sup>5</sup>ECOWAS Review of the ECOWAS Treaty: Final Report of the Committee of Eminent persons, Paras 57-58 (1992).

<sup>6</sup>Alisigwe, H. C., 'Globalization and the Multiplication of International Courts/Tribunals-Whither the International Court of Justice' in Chukwumaeze U.U.; Olaoluwa, R. and Nnabue, A. (eds), *Law, Social Justice and Development*, A Festschrift for Professor U. Nnabue, Owerri, Imo State University Press, 2013, 125.

<sup>7</sup>Alisigwe, H.C., 'Globalization and the Multiplication of International Courts/Tribunals-Whither the International Court of Justice' Chukwumaeze, U.U., Olaoluwa, R. and Nnabue, A., *Law, Social Justice and Development*, A Festschrift for Professor U. Nnabue, 2013, 134.

<sup>8</sup>Nollkaemper, A. *National Courts and the International Rule of Law*, New York, Oxford University press, 2011, 27-31.

<sup>9</sup>(2009) CCJLR (pt.2)58.

<sup>10</sup>Ngwakwe, E.C. *Lawness of African Law, A Trajectory of Advances and Reverses in the Dialectics of African Law for African Development*, Uturu, Abia State University. 2017, 106.

Based on the above *Nollkaemper Andre* writing on National Courts and the international rule of law has thus outlined the principles and defined national court as follows:

As to the method this book seeks to identify the relevant principles and practices in the practice of national courts. It thus examines international legal powers and principles as these are perceived and applied by courts themselves. It is thus the practice of national courts that is the primary unit of analysis. In identifying relevant practice, the book adopts a broad definition of what is a 'Court'. The defining feature for our purposes is that a court is an institution established by law having authority to hear and determine disputes in accordance with rule of law. The question of whether or not an institution is sufficiently independent from the executive, and is otherwise enabled to give effect to international law, may cast doubt on its power to protect the rule of law, but does not determine whether that institution actually is a court.<sup>11</sup>

States as sovereign entities establish their own courts which in this context will be referred to as national courts and clothe them with jurisdiction to handle various aspects of causes or matters. They came into existence before the establishment or coming into being of the supranational courts as dispute settlement started at the national level. National courts are at times referred to as municipal courts.<sup>12</sup>

## 2. Historical Evolution of National Courts

The history of court system at the national levels in Africa can be traced to the coming of the Whiteman or colonialism. International or supranational courts cannot also be said to be an indigenous African jurisprudence. African countries are more in arbitration (customary), mediation, negotiation etc. There is therefore the need to trace the historical evolution from the international level before coming specifically to its historical evolution in Africa. The origin of supranational or international courts worldwide may not have been exhaustively treated by writers, as many in their treatment of the subject of settlement of international dispute glossed over the subject; merely going straight into the establishment of the international court of justice.<sup>13</sup>

Some writers made brief or very short statement on their origin or evolution. For example, *Umozurike Orji* merely stated as follows:

The history of international courts goes back to the Central American court of justice for the Central American Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, which were once administrative units under Spanish rule. There were unsuccessful attempts to confederate and the Court only lasted from 1908 – 1918.<sup>14</sup>

However, as may be seen later the jurisprudence of Supranational or international courts like other legal issues have evolved and changed over many centuries as can be seen later. The above observations of the brief treatment of their historical evolution by some legal writers show the inherent challenges in treating the subject or topic. In the early period of the existence of nations, the notion of sovereignty was highly cherished and regarded as immutable and untouchable. Each nation clung to its nationhood and the independence associated with it, with no interference whatsoever from each other. Nationalism thus reigned supreme that time. Each state as espoused by the nationalists is characterized by the principle of different legal method and government. The effect of this nationalism was not conducive to world peace, rule of law and order as evidenced by the observations of a writer, thus:

Nationalism has been throughout the modern era the most fruitful cause of wars, divided nations striving for unity, subject nations fighting for freedom, triumphant nations aspiring after domination. It has fostered national arrogance; each nation looks upon itself as the bearer of the one true civilization. It has almost obliterated the sense that civilization is a collective achievement and common responsibility. It becomes aggressive and regardless of the rights of other nations, and thus a menace to the peace of the world. This menace, it ought to be added has assumed alarming proportions in recent times with the increase in the destructiveness of modern warfare.<sup>15</sup>

The history of nationalism and international relations has been traced to the peace of Westphalia of 1648 where the modern state system was developed. Westphalia 'was said to have instituted the legal concept of sovereignty, which according to its proponents essentially means that rulers or the legitimate sovereigns, had no political power with any other authority within a defined territory and no external superiors as the ultimate authority within the territory's sovereign borders'.<sup>16</sup>

<sup>11</sup>Nollkaemper, A., *National Courts and the International Rule of Law*, New York, Oxford (2011), 16.

<sup>12</sup>See Ojukwu-Ogba, N' 'The Implication of the Jurisdiction of the International Criminal Court for African States' (2011) *NIALS Journal of Law and Development* (Vol. 1, No. 1), 109.

<sup>13</sup>See for example, Akehurst, M., *A Modern Introduction to International Law*, London, George Allen Unwin (4th Ed.), 1982, 205-206 and Brownlie, I. – *Principles of Public International Law*, London, Oxford University Press, (3rd Ed.), 1979, 709-712.

<sup>14</sup>Umozurike, U.O., *Introduction to International Law*, Ibadan, Spectrum Books Ltd, 2006, 189.

<sup>15</sup>Appadorai, A., *The substance of Politics*, New Delhi Oxford University Press, 2004, 147.

<sup>16</sup>Oke, Y., *The Law and Practice of International Institutions, (Simplified Ed.)*, Lagos, Princeton and Associates Publishing Co. Ltd. 2018, 2.

However, as shown above, nations having realized the evil effects of nationalism and clinging to sovereignty started to retrace their steps. One of the fruits or benefits of this realization was the summoning of the *Hague* conferences, which has been described as initiating the concert system that marked a significant development to the development of international organizations and institutions.<sup>17</sup>

The duration of the Hague conferences their nature, composition and contribution to the development of supranational legal order and settlement of international disputes was aptly captured thus:

The *Hague* conferences were summoned to meet (at the *Hague*) in 1899 and 1907 on the initiative of the *Tsar of Russia* to promote peace and disarmament. At the first conference twenty-two states were represented and at the second forty-four. The mutual suspicion of *Germany, Russia and Britain* led to the failure of these conferences; but they resulted in the ultimate establishment of an international tribunal at the *Hague* which contributed to the settlement of many international disputes by arbitration, and led the way to the greater efforts towards international organization made at the end of the Great war'.<sup>18</sup>

It was later discovered that these early attempts at international organization were inadequate and halfhearted as there was no permanent organization of a political character to bring the nations together to enable them to understand one another's point of view, avert war and settle disputes that may occur.<sup>19</sup>

It was at this point in history that the creation of a League of Nations or states, dedicated to the maintenance of peace was advocated by philosophers and jurists.<sup>20</sup> This call led to the formation of the League of Nations between 1919 and 1920, which was introduced at the peace conference of *Paris* in 1919. The essential conceptions of the League as is relevant to this work are:

- i. If a dispute arose between nations certain procedures were laid down to prevent its leading to war. Any threat of war was declared a common concern of the League; members agreed that any dispute likely to lead to rupture should be submitted to arbitration to judicial settlement or to inquiry by the League Council and they agreed never to resort to war until three months after the award by the arbitrators or the judicial decisions or the report by the council. They also agreed that, they would not go to war against any state which complied with the award, decision or the recommendations of the report.<sup>21</sup>
- ii. The causes of war must be removed. Members recognized that this demanded the reduction of national armaments, to the lowest point consistent with national safety and the enforcement by common action of international obligations. They also undertook to respect and preserve as against external aggression, the territorial integrity and political independence of members of the League. Treaties between states were also to be registered with the secretariat of the League, to be published by it as soon as possible, for secret treaties, it was found out had often encouraged wars.<sup>22</sup>
- iii. If a member state resorted to war in disregard of the obligations accepted, provision was made to help those member states who stood by their promise, and such covenant breaking members were to be subjected to sanctions ranging from trade, financial etc<sup>23</sup>.
- iv. Permanent institutions were to be created to carry out the objects of the League. Provision was therefore made to organize an assembly, a council, a secretariat and a court of international justice.<sup>24</sup>

Relevant to this study is that it led to the establishment of the first world supranational court, that is the permanent court of international justice which was set up in 1920-2 and sat at the *Hague*, which settled such disputes between states as were referred to it and were capable of judicial settlement and also gave opinion on matters referred to it by the Council or the Assembly.

Summarizing on the achievements of these first international or supranational court, a writer has this to say:

The permanent court of international justice delivered over sixty judgments and opinions. Its reputation for impartiality was so great that more than once a dispute which arose between a powerful state and one far less powerful was settled in the latter's favour; where upon the powerful state invariably yielded with a good grace.<sup>25</sup>

The failure and demise of the league was partly attributed to its inability to stop the aggression of Germany, Italy and Japan in the 1930s, the Russian invasion of *Finland* and then principally its failure to avert the outbreak of the Second World War<sup>26</sup>. Consequently, the League was formally dissolved in April 1946.

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<sup>17</sup>Philippe Saws and Pierre Klein, *Bowelt's Law of International Institutions* (South Asian Edition, 6<sup>th</sup> Edition) Sweet & Maxwell, London, 2011, 3, cited by Oke, Y., *Ibid*, 3.

<sup>18</sup>Appadorai, A., *The substance of politics, op cit*, 150.

<sup>19</sup>Appadorai, A. *Ibid*, 150.

<sup>20</sup>Oke, Y., *The law and practice of International Institutions, Op Cit*, 5.

<sup>21</sup>Articles 11-15 of the Covenant.

<sup>22</sup>Articles 8, 10 and 18 of the Covenant.

<sup>23</sup>Article 16 *Ibid*.

<sup>24</sup>Articles 2-7.

<sup>25</sup>Appadorai, A., *The Substance of Politics, Op Cit*, 153.

<sup>26</sup>Oke, Y., *The Law and Practice of International Institutions, Op Cit*, 5.

Despite the failure of the League of Nations, peace and justice, continued to be a cardinal requirement for the proper functioning and administration of nations, men and their affairs. It is trite that law, justice and maintenance of peace and security are prerequisites for every organization, nation, entity and men living in the world. It is against this background that the United Nations came to the rescue. The history and political structure of the United Nations may not be so relevant for this work. However, the observation as made below by a writer is relevant:

The United Nations (UN) arose as an attempt to cure the defects of the League of Nations. The failure of the League of Nations to avert a Second World War did not destroy the conviction shared by many. Rather it strengthened the conviction that a collective security system must be achieved, which would protect the international community from the scourge of war. The failure of the League of Nations thus created the gap and the necessity of establishing a stronger, general international organization based upon the principles of sovereign equality of all peace loving states, large and small, for the maintenance of international peace and security.<sup>27</sup>

The main role of the United Nations is to maintain international peace and security. To this end the charter provides for the settlement of disputes, through the intervention of the Security Council by means such as negotiation, mediation arbitration and judicial decisions<sup>28</sup>. In other words, its purpose includes the adjustment, or settlement of international disputes in conformity with the principle of justice and international law. This gave birth to the international court of justice which is the principal judicial organ of the United Nations which succeeded or replaced the permanent court of international justice.

The above is the historical evolution or genesis of the early supranational courts generally. There is the need to examine in details that of Africa which may have sprang up latter.

### 3. Historical Evolution of Africa's Supranational Courts

The formation of the United Nations acted as a catalyst for the formation of other regional bodies dedicated to the maintenance of peace and security in the world. For as already noted *article 1* of the UN. Charter provides as follows; 'The purposes of the United Nations are':

To maintain international peace and security, and to this end to take effective collective measures for the prevention and removal of threats to the peace and for the suppression of acts of aggression or other breaches of the peace, and to bring out by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of settlement of international disputes or situations which might lead to a breach of the peace.

However, African leaders did not grab the opportunity of an Africa wide body initially; may be because of nationalism which favoured protection of state laws based on the principles of sovereignty was more dominant then as opposed to collective state security which helped the formation of the United Nations. This point was aptly captured by Ngwakwe thus:

During the colonial period, nationalism in most African states was largely confined to the territorial boundaries of each colonized state. The independence of the states that came through those nationalistic movements was therefore essentially state based with national laws as the only laws in each state. At independence therefore, African states initially directed their attention mainly to the development of their individual states and its laws. However, the African states soon realized the necessity for interaction, co-operation and collaborative efforts among themselves but had initial difficulties like: - How to surrender or otherwise subordinate their recently won independence and sovereignty to another external authority whether based in or outside Africa in such cooperation different colonial masters left different social economic and political systems/experiences such that reconciling and harmonizing those differences posed an uphill task, varied sizes and strengths (in terms of factors like economy, education workforce, national resources foreign exchange, carrying capacity etc) generated fears of domination, discrimination, weakness and stood as stumbling blocks etc.<sup>29</sup>

Nevertheless, with time African leaders seized the opportunity to organize themselves into regional blocks in order to create a formidable force to agitate for total eradication of all forms of colonialism in the continent.<sup>30</sup> The historical journey of the then OAU dated back to the days of *Pan Africanism* which can be said to be a reaction against slavery, racism, oppression, exploitation, colonialism, imperialism among others.<sup>31</sup>

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<sup>27</sup>Oke, Y., *Ibid*, 5.

<sup>28</sup>Article 33 of the U.N Charter

<sup>29</sup>Ngwakwe, E.C., 'Legal Instruments of Integration in Africa: An Examination of Convergences and Divergencies' (2011), *Imo State University, Journal of Commercial and Contemporary Law*, (Vol. 1, Maiden Edition), 100.

<sup>30</sup>Armstrong, M. Adejo, *from O.A.U. to A.U. New Wine in old Bottles* (2001) AJIA vol. 4 Nos 1 and 2, 2001 at p. 2 cited in Oke, Yemi, *The Law and practice of International Institutions*, Op Cit, p 181

<sup>31</sup>Oke, Y. *Ibid*, 181.

The attainment of independence by many African countries in the 1960's increased the desire for continental unity and consequently led to several attempts at establishing a *Pan African* organization.<sup>32</sup> Through the efforts of Emperor *Haile Selassie of Ethiopia*, representing the Monrovia group of African states and president *Sekou Toure* of Guinea, acting on behalf of the *casablanca* group, the leaders of 32 independent African states were brought together at *Addis Ababa*, in May 1963 and therein signed the charter which established the organization of African Union OAU, now African Union.<sup>33</sup> The African Union is relevant as far as Human Rights system in the continent is concerned as well as the history of evolution of the supranational courts are concerned. This is because the African Human Rights System is organized under the African Union.<sup>34</sup>

Later developments or events, the decline of colonialism and the imminent collapse of apartheid created the impetus to seriously consider developing an African human rights system.<sup>35</sup> The result was the creation of the African charter on Human and people rights. The charter was adopted by the member states of OAU.<sup>36</sup> The African charter on Human and Peoples Rights (also known as the Banjul charter) is an international Human Rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent. It sprang up under the aegis of the organization of African unity now replaced by the African union), which at its 1979 assembly of Heads of state and government meeting adopted a resolution calling for the creation of a committee of experts to draft a continent wide human right instruments,<sup>37</sup> similar to those that already existed in Europe (European convention on Human Rights) and the Americas (American Convention on Human Rights). The committee which was set up produced a draft that was unanimously approved at the OAU's 1981 Assembly pursuant to its *Article 63* (whereby it was to come into force three months after the reception by the Secretary General of the instruments of ratification or adherence of a simple majority of the OAU's member states). The African charter on Human and Peoples Rights came into effect on the 21<sup>st</sup> of October 1986. However as rightly observed unlike the European convention (before the adoption of the eleventh protocol) and the Inter American convention, that provide for the establishment of Human Rights Court and Humans Rights Commission the African charter established only the African commission on Human Rights (African commission or commission).<sup>38</sup> Many jurists and human rights advocates expected the adoption of an African Human Rights court immediately but were surprised at only the establishment of a human right commission. For example, Yerima notes: 'The history of Human Rights violation prior to the adoption of African charter, therefore, had called for the establishment of an independent African Human Rights courts. Surprisingly, this important club of dictators and Heads of state and Government, who were responsible for massive violations of human rights in Africa, adopted the African charter in *Nairobi Kenya* in 1981'<sup>39</sup>. Thus, one of the reasons as can be seen is that those African dictators did not adopt an African court for fear of their despotism and Human Rights violations being exposed or ventilated in public. The same writer has blamed it on the fact that most African leaders having only recently emerged from the yoke of colonial oppression tend to jealously guard their newly found sovereign state against any perceived encroachment even at the expense of Human Rights protection.<sup>40</sup>

It has also been traced to the traditions, the customs and habits of the African person on their non-likeness for litigation. Hence, it was stated that:

One other strong reason pondered by scholars for the choice of establishing a commission and not a court is predicated on African norms and value or African societies' predilection towards amicable settlement of disputes in lieu of judicial process decree. African leaders favoured negotiations, conciliations and other amicable forms as the appropriate methods for dispute settlement, and opposed the confrontational judicial settlement in the west.<sup>41</sup>

However, those in support of the court of human rights believed such a court to be a necessity as it will champion the development of African Human Rights system jurisprudence and will also implement in concrete terms the protective mandate of the commission under the charter.<sup>42</sup>

The agitation for the court continued as members of the civil society agitated for the establishment of the court. Non-governmental organizations (NGOs) were quite forceful on this. They believed in the first place that times have changed. They contended that we could no longer think solely and strictly in terms of an African concept of justice. Contemporary African has moved a long way. Courts are now an indispensable organ of government and part of the political order. It is

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<sup>32</sup>Jackie, C., 'From Acronym to Action: The Seminal Assembly of the African Union' in African Union Security Review, Vol. 11, No. 1, 2002, 97-102 cited in Oke, Y, The Law and Practice of International Institutions, *Ibid*, 183.

<sup>33</sup>*Ibid*, 127.

<sup>34</sup>Preamble to the African Charter on Human and Peoples Rights.

<sup>35</sup>Umzurike, U.O, *The African Charter on Human and Peoples Rights*, London, Martins Nijhoff Publishers, 1997, 25-27.

<sup>36</sup>Unegbu, M.O. 'Resolving the Dilemma of Hierarchy between the African Charter and the Nigerian Constitution' (1999). *Abia State University Law Journal* (Vol. 6, No. 1), 13.

<sup>37</sup>Umzurike, *The African Charter on Human and Peoples Rights Op cit*, 26-27.

<sup>38</sup>Umzurike, U. O., *The African Charter on Human and Peoples Rights, Ibid*, 27.

<sup>39</sup>Yerima, T. F., 'In the African Court of Human and Peoples Rights, some Emerging Issues' (2010), *Ebonyi State University Journal of International Law & Journal Review*, (Vol. 1), 60.

<sup>40</sup>Yerima, T. F., *Ibid*, 59.

<sup>41</sup>Yerima, T. F., 'Trends and Prospects of African Continental Human Rights System', (2010), Obafemi Awolowo, Ife Juris Review, (Vol. 1 and 2), 4.

<sup>42</sup>Yerima, T. F., *Ibid*, 6.

not even true that courts did not exist in traditional African societies. There were traditional native chiefs' courts. Even at this moment, *Malawi* operates traditional court at the traditional level.<sup>43</sup>

It appears the commission did very well at inception but with time some problems, challenges and lapses were noticed, which added to the pressure for the establishment of the African court of justice. For example, Rehman's observations on this are apt:

A survey of the Commission work tends to suggest that in recent years some improvement has been made. Nevertheless, they do not make references, to jurisprudence from national and international tribunals nor do they fire the imagination. They are non-binding and attract little if any attention from governments and the Human Rights community. Although the commission has adopted a quasi legal approach as indicated above, its decisions are non-binding.

Furthermore, the Commission's decisions do not provide for any legally enforceable remedies nor have any procedures that have been established to obtain these remedies'.<sup>44</sup> It must have been as a result of the aforementioned Lacuna, limitations and weaknesses in the performances of the commission that necessitated the call for the establishment of the African court of justice and Human Rights even though the existence and successes of the European and Inter-American courts also provided strong precedent for a Regional Human Rights court for Africa.<sup>45</sup> Although Orji Umozurike foresaw the emergence of the court when he stated as follows:<sup>46</sup> 'The inclusion of a court in the system will necessitate a demarcation between the two and lead to a revision of the whole charter a development that is inevitable but perhaps premature in 1995. The potentialities of the charter in its present form should first be maximized and fully tested'.

The emergence or creation of the African Court on Human and Peoples Rights may therefore not be a surprise to many jurists. In 1998, at the 34<sup>th</sup> ordinary session of the assembly of heads of states and government of the organization of African Unity (now the African Union) meeting in *Ougadougou, Barkina Faso* adopted the courts protocol. This protocol entered into force on 25<sup>th</sup> January 2004, paving the way for the operationalization of the court. The establishment of an African court on Human Rights from the above is not far judging from history. However, the point made by Yerima on its historical evolution is important:

Although the establishment of an African Human Rights Courts is a recent development in Africa, the idea of establishing the Court in Africa is not a new development. It was mooted in 1961 at the conference of African jurists in Lagos, Nigeria; the conference was convened to discuss enforcement mechanisms for the protection of human rights in the newly independent states of Africa. The law of Lagos which was the outcome of the revolution of the conference, called for the establishment of African convention and Africa Human Rights Court to enforce the right in the convention...In 1963, with the formation of the OAU, the organization rejected the draft charter that provides for the establishment of a court of mediation, conciliation and arbitration...Another attempt was made at the ministerial meeting in Banjul in 1981, when the proposal forwarded by Guinea on the establishment of an African, court to judge crimes against humanity and to protect Human Rights was turned down.<sup>47</sup>

As for the other regional courts in Africa, opinion differs over their historical evolution or origin. While some writers trace it to the precedence of the African commission on Human and Peoples Rights, others trace it to economic regional integration. For example, writing on regional courts in Africa, *Chidi Anselm Odinkalu* averred as follows:

The precedent of the African commission on Human and Peoples Rights inspired the establishment of other regional and some regional judicial mechanisms of remedy and governmental accountability...These are the courts of justice of the various regional economic communities in Africa. These include the court of justice of the economic community of West African States (ECOWAS) based in Abuja of Nigeria, the court of justice of the West African Economic and Monetary Union in *Ouagadougou, Burkinafaso*, the court of justice of the common market of East and Southern Africa in Lusaka, Zambia, and the tribunal of the Southern African development community in *Windhock, Namibia*. Although normally created by treaty the courts of justice of both the *Arab Maghreb* Union and the Economic and Monetary Union of Central Africa do not yet exist.<sup>48</sup>

Whilst some writers trace their origin or history mainly to economic factors such as globalization, regional integration' in pursuit of accelerated and higher levels of sustainable economic growth in Africa.<sup>49</sup>

<sup>43</sup>Udombana, N.J in *Towards the African Court of Human and People Rights: Better Late than Never*, op cit, 34.

<sup>44</sup>Rehman, J., *International Human Rights Law, Second Edition*, Pearson Education Limited, 2010, 330-331.

<sup>45</sup>Rehman, J., *Ibid*, 331.

<sup>46</sup>Umozurike, U. O., *The African Charter on Human and Peoples Rights Op Cit*, 104.

<sup>47</sup>Yerima, T. F., 'Trends and Prospects of African Continental Human Rights System' *Op Cit*. 1.

<sup>48</sup>Odinkalu, C.A., 'Regional Courts in Africa: A promise in search of Fulfillment', (2005), *Justice Initiatives*, A Publication of the Open Society Justice initiative, New York, 46.

<sup>49</sup>See for example Ngwakwe, E.C, 'Legal Instruments of Integration in Africa an Examination of Convergences and Divergences' op cit, 108-111 and Alisigwe, H.C. Globalization and the Multiplication of International Courts/Tribunals- Whither the International Court of Justice'. Chukwumeze, U.U., Olaoluwa, R, and Nnabue, A. (eds), *Law, Social Justice and Development*, op cit, 128-130.

The latter views which anchor their historical evolution mainly to regional integration based on economic factors, globalization, higher levels of economic growth in Africa it is hereby submitted with respect is more acceptable or credible since a look at the aims, objectives and principles of the entities or institutions from which they emanated from are largely anchored on enhancement of economic stability, eradication of poverty and raising of the living standard of the people in those regions.

#### **4. Historical Evolution of the Supranational Courts with Criminal Jurisdiction**

It is necessary at this juncture to trace the historical evolution of the supranational/international courts with criminal jurisdiction as their historical evolution, background and circumstances differs from others as can be seen later here. They are mainly known as international criminal tribunals or war crimes tribunals established to try persons who commit war crimes in times of war or armed conflicts.<sup>50</sup>

As to the nature of these courts and the applicability of law of war, that is the time and place in which international humanitarian law or rather the law of war can be applied the findings of the appeal chambers of the international criminal tribunal for former *Yugoslavia* is normally referred to thus;

International humanitarian law applies from the initiation of such armed conflict and extends beyond the cessation of hostilities until a general conclusion of peace is reached or in the case of internal conflicts until a peaceful settlement is achieved. Until that moment, international humanitarian law continues to apply in the whole territory of the warring, states or in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat has taken place there.<sup>51</sup>

In other words, the crimes, these courts deal with need not be committed only at the time of and during actual fighting, their temporal and geographical scope must be determined on the scene and with references to the pertinent norm of international humanitarian law.<sup>52</sup> On the historical evolution of these courts, jurists and writers appear not unanimous as to their time or stage of appearance in world history or scene. However, it has been stated that the idea of establishing such specialised international criminal courts represent a radical departure from the norm whereby the international community responds to war crimes and other atrocities through a specialized but *ad hoc* international criminal tribunal to try persons accused of committing the said atrocities in that particular region.<sup>53</sup> However, the earliest trials have been mentioned by Unegbu, thus:

The idea of prosecuting persons involved in perpetrating war atrocities is not entirely a new one. History has it that one *Peter Von Hegenbach of Germany* was tried by Judges of the Holy Roman Empire in 1474 and convicted inter alia for perjury, murder, sexual offences etc considered then as crimes, against the law of God and man. In 1268, one *Convadin Von Holenstafin* was also prosecuted for war crimes. Nothing more happened for centuries until the 1919 treaty of Versailles tried unsuccessfully to fill the gap.<sup>54</sup>

It has however been stated or suggested by *Ndifon* that the above account by Unegbu is not clear as to whether those trials are of international or non-international nature.<sup>55</sup> Elaborating or adumbrating further on the 1919 treaty of Versailles Nditom went on to state as follows:

Several centuries elapsed before another attempt was made by the international community to punish violations of humanitarian law. At the close of the First World War in 1918, the Allies attempted through treaty of Versailles of 28 June 1919, to create a special tribunal to prosecute war criminals. In its Articles 228 and 229 the treaty of Versailles established the right of Allied Powers to try and punish individuals responsible for violations of the laws and customs of war... By the treaty of Versailles, specifically, Article 227, *Kaiser Willehur of Hohenzouern* was accused of 'crimes against international morality and the sanctity of treaties' and he has to be brought before a tribunal (composed of five judges appointed by the United States, Great Britain, France, Italy and Japan which would be guided by the highest motives of international policy with a view of indicating the solemn obligation of international undertakings and the validity of international morality. There were however no references to international law and the tribunal was to impose such punishment as it considers fit. The Ex-Kaiser had sought asylum in the *Netherlands* which refused to surrender him. He eventually died, there in 1941.<sup>56</sup>

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<sup>50</sup>Unegbu M.O, '*International Criminal Court takes off with African Cases*' in Unegbu, M.O. and Okoronye, I. (eds), *Legal Developments in the New World Order*, op cit, 213.

<sup>51</sup>*Prosecutor V Tadic* (Appeal Chamber), Decision of 2 October, 1995, Para 70 cited in Abubakar, S.R.M., 'An appraisal of the Elements of War Crimes', Chukwumaeze. U.U and others (eds), *Law, Social Justice and Development, Op Cit*, 159.

<sup>52</sup>Abubakar, S.R.M; 'An Appraisal of the Elements of War Crimes', Chukwumaeze, U.U and others (eds), *Ibid*, 159.

<sup>53</sup>Ojukwu – Ogba, W.; 'Implication of the International Criminal Court for African States', (2011). *Nigerian Institute of Advanced Legal Studies Journals of Law and Development (Maiden Edition, No. 1)*, 105.

<sup>54</sup>Unegbu, M.O., '*International Criminal Courts takes off with African Cases*', in Unegbu, M.O. and Okoronye, I. (eds), *Op Cit*, 213.

<sup>55</sup>Ota, E.N., '*The State of International Humanitarian Law in African's armed Conflicts 1989-2002*' Unegbu M.O and Okoronye, I. (eds), *Ibid*, 257.

<sup>56</sup>Unegbu M.O. *Ibid*, 258-259.

A major event took place in the world which marked a very important moment or stage in the history of criminal prosecution in the world and its effects on supranational courts with jurisdiction to try same.

These were the periods of 1945-1946, when modern international criminal prosecution was said to have begun, during the *Nuremberg* and *Tokyo trials of the German and Japanese* leaders and organizations by the allied forces who were victorious after the war.<sup>57</sup>

The international military tribunal at Nuremberg, (known as the *Nuremberg Tribunal*) was established by the Allies in 1945. Pursuant to a treaty to try senior *Nazis* for crimes against peace, war crimes and crimes against humanity<sup>58</sup>. Whilst the international military tribunal for the Far East (*Tokyo Tribunal*) was established by the supreme commander for the Allied power to try senior Japanese officials for these crimes.<sup>59</sup> The *Nuremberg* and *Tokyo* Trials were said to have recorded major successes but may have suffered some international credibility setbacks as it was widely viewed as the victors court, more so when this tribunal vehemently rejected or refused to take into consideration the defence of *tu quoque* put up by some of the accused persons, as a defence wherein they sought to prove or show that combatants of the victorious allied powers also committed similar offences for which they were being tried or prosecuted.<sup>60</sup> It appears this credibility crisis and the cold war between capitalistic west and the socialist communist Soviet Union may have slowed down the tempo of formation of *ad hoc* tribunals for the trial of war crimes. During the world war the two blocks were bent on protecting not only their economic interest but their allies in the world scene. The above assertion is evidenced by the fact that when the cold war ended eventually, the world witnessed more criminal trials. For example, Iwu and Iwu have identified the establishment of many tribunals with criminal jurisdictions in these words.

In more recent times *ad hoc* tribunals were established for the former Yugoslavia and Rwanda. There has also been the adoption of the statute of the special court for Sierra Leone, the special tribunal for Lebanon and the Rules of the Extraordinary chambers in the courts of Cambodia and the special panels for *Timo-Leste* not forgetting the Iraq supreme tribunal that convicted *Sadam Hussein* and his brother Chemical Ali'.<sup>61</sup> This point was collaborated by Unegbu when he stated as follow: 'It was the demise of the U.S.S.R. towards the end of last century that made it possible for the world to resume the search for a permanent global criminal court to check acts of impurity, which have the capacity to threaten the survival of mankind.'<sup>62</sup>

It is also necessary to mention the experiment which was undertaken in the establishment of the special court for Sierra Leone (SCSL) by an agreement between the United Nations and the governments of Sierra Leone, which was established in 2002<sup>63</sup>. Many reasons have been given for the consideration by the international community as well as the United Nations for the establishment of a Permanent International Criminal Court.

First is the reason given by Ojukwu-Ogba as follows; After the Second World War and following the final conclusion of proceedings at the war crimes tribunals at Nuremberg and Tokyo, the United Nations General Assembly, in 1948 recognized the need for a permanent international court to handle matters related to the kind of atrocities that had been witnessed in the course of the war. Although the general assembly did not pass any immediate resolution to that effect at the material time. The magnitude, scope and hateful nature of atrocities that have been committed within the past decade may have given considerable impetus to the urgent need for the creation of an international judicial mechanism that is permanent in nature, to bring to justice persons involved in the perpetration of such heinous crimes as genocide, ethnic cleansing, sexual slavery and maiming, which includes amputation of limbs of men, women and children who in most cases are non-combatants.'<sup>64</sup>

It should be noted however that despite the above circumstances and reasons which necessitated the establishment of a permanent international criminal court, the United States of American, a super power known for its good conscience on issues touching humanity, opposed the establishment of such court, as it prefers to support *ad hoc* arrangements for trials in the countries where atrocities are committed.<sup>65</sup>

<sup>57</sup>Unegbu M.O Ibid, 259.

<sup>58</sup>The Charter of the International Military Tribunal (Nuremberg Charter) was annexed to the Agreement for the Prosecution and Punishment of Major War Criminals of the European Axis (London Agreement), 8 August 1945, 8 U.N.T.S 279, 59 State. 1544 cited in Ibid, 259.

<sup>59</sup>Charter of the International Criminal Tribunal for the Far East (Tokyo Charter) 19<sup>th</sup> January 1948, TIAS 1589 cited, Ibid, 259.

<sup>60</sup>Unegbu, M.O., 'International Criminal Court takes off with African Cases' Ibid, 214.

<sup>61</sup>Iwu, N and Iwu, N; 'Ending Impurity for International Crimes and Individual Responsibility: Lessons from the International Criminal Court' Chukwumaeze, U.U. and others, *Op Cit*, 176.

<sup>62</sup>Unegbu, M.O., '*International Criminal Court and Africa: The Problem of Head State Immunity*, EnuguSnapp Press Ltd, 2015,7.

<sup>63</sup>See Unegbu, M.O '*Understanding the United Nations Special Court for Sierra Leone*', 2007, Vol. 2, Legal Papers, a Publication of the Law Centre, Faculty of Law, Abia State University, cited in Unegbu, M.O; '*International Criminal Courts takes off with African Cases*', Unegbu, M.O. and Okoronye, I. (eds), *op cit*, 216.

<sup>64</sup>Ojukwu-Ogba, N. 'Implication of the Jurisdiction of the International Criminal Court for African States', *op Cit*, 100-101, see also Chukwumaeze, U.U and Obodo, O.A., 'Future of International Crimes in Africa: Relationship Between Africa and the International Criminal Court' *Op Cit*, 125.

<sup>65</sup>Unegbu, M.O., *From Nuremberg Charter to Rome Statute, Judicial Enforcement of International Humanitarian Law*, Enugu, Snapp Publisher, 2015, 175.

However, Unegbu attributed the successes of the *ad hoc* tribunals as providing the setting for the actualization of the long awaited permanent court for the trial and punishment of war criminals.<sup>66</sup> It may have been therefore rightly asserted that the Rome statute of the International Criminal Court treaty is the result of multiple attempts for the creation of a supranational and international tribunal to try individuals who committed offences within its jurisdiction.<sup>67</sup> The result of the above efforts, factors or attempts led to the establishment of the international criminal court which was established by the Rome treaty of July 1998 and which entered into force on the 1<sup>st</sup> of July 2002,

### **5. Advantages or relevance of Africa's supranational courts in the settlement of International Disputes compared to the National Courts**

When disputes arise at the municipal or national level, citizens or individuals will no doubt take their actions or grievances to the national courts for resolution of settlement. However, when there is international dispute, some still advocate that the national or municipal courts in Africa should be the form to resolve some. Disputes are bound to arise at least from this important objective on globalization, hence a writer commented that NEPAD does not maintain a separate dispute resolution mechanism as it is a part of AU.<sup>68</sup> Other areas of international disputes apart from globalization have been identified thus;

In Africa the philosophy of African nationalism has often come in conflict with the philosophy of universal globalization. This considerable dissension surrounded the philosophies of nationalism and globalization (between subregional interests and African general interests and between African interest, and global interests) strict African nationalism will always tend to exclude or sometimes undermine globalization and vice versa.<sup>69</sup>

Another area that has assumed an international dispute dimension in recent times apart from globalization is in the area of human rights. This area, even though involving mainly nations' and states' affairs, affects individuals or citizens of the states as a result of the internationalization of human rights by the international community and the United Nations. The Universal Declaration of Human Rights and the adoption of the African Charter on Human and People's Rights played a great role in this regard.<sup>70</sup> These international disputes noted herein whether arising from political, economic, traditional or human rights, when they occur, the important question is where does the party ie states, countries, nations, multinationals or even individuals have recourse to. The first forum that may come to one's mind is the national courts of the states. However, the national courts have been said not to be the appropriate forum for resolving international disputes for the following reasons;

A national court handling a dispute that is of international nature may easily be influenced by the executive organ of that state to protect what they may consider their national interest particularly African countries where their judiciary is not fully or truly independent. This important point is graphically captured by a Learned Professor as follows:

Several factors undermine the role of national courts. These include the courts perception of the need to speak with one voice, their association with the national interest of the state, and the power of political branches over the courts. Such factors make any assumption that national courts can be expected and trusted properly to hold their state to the requirements of international law shaky.<sup>71</sup>

For example, after the September 11, 2001 attack on America by foreign terrorists sponsored by Al-Qaeda led by Osama Bin Laden, America opted to try the suspects in its national court instead of the International Criminal Court, at Hague. The statement credited to the then Attorney General of America, John Ashcroft showed clearly the need for such trials to be done at the International or Supranational Courts instead of the National courts. The American Attorney General, John Ashcroft observed that 'foreign terrorists who commit war crimes against the United States, in my judgment, are not entitled to and do not deserve the protection of the American constitution'.<sup>72</sup>

In other words, by the above statement, it was made clear that the suspected foreign terrorists will not benefit from the presumption of innocence<sup>73</sup>, which presumption is available in international courts.

Despite the criticisms and outcries by American Civil Liberties Union and order human rights defenders, the Bush administration still went on to sign the order setting up the tribunal to try those terrorists under the terms spelt out by the Attorney General, John Ashcroft as spelt out in his speech noted herein.<sup>74</sup> The above clearly illustrates the likely influence of the Executive organ when a national court or tribunal is left to handle such matters instead of a supranational court.

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<sup>66</sup>Unegbu, M.O., 'International Criminal Court takes off with African Cases', Unegbu, M.O. and Okoronye, I. (eds), *Legal Developments in the New World Order*, Op Cit, 217.

<sup>67</sup>Iwu, N. and Iwu, N; 'Ending Impurity for International Crimes and Individuals Criminal Responsibility: Lessons from the International Criminal Court' Chukwumaeze, U.U and others, *Law, Social Justice and Development*, Op Cit, 173.

<sup>68</sup>Ngwakwe E.C, 'Legal instruments of integration in Africa an Examination of Convergences and Divergences' (2011). *Journal of Commercial and Contemporary Law* (Vol. 1, Maiden Edition), 110.

<sup>69</sup>*Ibid*, 113

<sup>70</sup>Umozurike, U.O, *Introduction to International Law*, Ibadan Spectrum Ltd, 2006,139-149.

<sup>71</sup>W. Friedmann, *The Changing Structure of International Law*, London, Stevens & Sons, 1964, 146-7 Cited by Nollkaemper A., *National Courts and the International Rule of Law*, New York, Oxford University Press, 2011, 47

<sup>72</sup>*Time*, vol. 156, No. 22, Washington, Time Inc, International, November 26, 2001, 63.

<sup>73</sup> *Ibid*, 63

<sup>74</sup>*TIME*, *Ibid*, 63

It is doubtful if the issue of natural justice embodied in the Latin maxim *nemo iudex in sua causa* will be observed when national courts will decide an international dispute between its country of origin or establishment and another state. This is because the national courts are agents of the very entities whose acts or omissions they are called upon to decide as regards another state, party, individuals or corporate bodies. As aptly put:

Perhaps the most significant theoretical as well as practical barrier against considering national court as a systemic force in the protection of the International Rule of Law is that national courts are organs of the very states whose acts and omissions they are to control. As a matter of principle, the rule of the law cannot allow the very party whose compliance is in question to determine whether it is in transgression. Given the essentially dualistic nature of the traditional relationship between international and national and its corollary of the unity of the state, the rule of law itself thus creates a presumption against entrusting national courts with the task of sitting in judgment on the state of which they are a part.<sup>75</sup>

Apart from the above factors that may pose an obstacle to national courts from handling international disputes, Articles 1(1) and 2 (3) of the United Nations Charter dealing with the principles of the United Nations both of which enjoin member states to settle their disputes by peaceful means in a such way that international peace and security and justice are not endangered. The United Nations Charter in another breath prohibits threat or use of force by members in any manner inconsistent with the purposes of the United Nations. The national courts appear to have been excluded from settling such international disputes when article 33 (1) of the UNN Charter provides as follows:

The parties to any dispute the continuance of which is likely to endanger the maintenance of international peace and security shall first of all seek solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangement or other peaceful means of their own choice.

Thus, the United Nations Charter by the above provisions recognized both adjudicatory and non-adjudicatory method of resolving international disputes at the international sphere. The supranational courts set up as its principal judicial organ is the international court of justice which has decided dozens of cases since it began its operations in 1946, and which is a successor to the permanent court of international justice PCIJ.<sup>76</sup>

However, the United Nations recognizes other organizational methods of dispute resolution apart from its own organs involved in judicial settlement of the international disputes, which in this case is the International Court of justice (ICJ). As rightly noted by Alisigwe:

Thus, many regional organizations have created machinery for the peaceful settlement of disputes. In Africa we have the African Union (AU) Court of justice and Human and Peoples Rights which is one of the organs that serves as the judicial organ of the union and interprets the AU Act as well as settle disputes brought before it. It is created in the similitude of the ICJ. It also has a criminal jurisdiction.....Note too that other regional organizations like the organization of the American States, the Arab League and the European Union all made similar provisions in their respective treaties for the peaceful settlement of disputes among members. Where a matter is simultaneously before the UN and a regional organization and such is not endangering international peace and security the UN may defer to the appropriate regional mechanism to be exhausted first pursuant to Article 52(2) and (3).<sup>77</sup>

As noted earlier, *globalization* as a new phenomenon brought new impetus in the economic and commercial drive and interest of states or nations and this widened and increased international disputes. Since *globalization* is more of regional integration for many international bodies, institutions and entities with their legal mechanism for settlement of international disputes sprang up to reap from such economic and commercial wind of change. This addition to international law and regionalism and international dispute and international judicial settlement of settlement disputes mechanisms was aptly captured thus;

The breakdown of the old structures inexorably led to the multiplication of international judicial institutions. In contradiction to the periods 1922-1960 when the permanent court of international justice and later the international court of justice stood alone as the sole judicial forum for the resolution of international disputes, there now exists a plethora of well developed judicial or quasi judicial bodies operating the treaty regimes of the United Nations as well as the regional organizations. Whilst some of these courts predate globalization, their accessibility to none state parties is consonant with it.<sup>78</sup>

Examples of these supranational courts have been said to include the ICC, the committee on Human Rights under the ICCPR, the EU court of Human Rights, the inter-American court and commission on Human Rights, the AU. Court of Justice, the African Court on Human and People's Rights, the Law of the Sea Tribunal the W.T.O dispute settlement system.<sup>79</sup>

<sup>75</sup>Paulson J, *Denial of Justice in International Law*, Cambridge, Cambridge University Press, 2005, 4. Cited in Nollkaemper A., *Ibid*, 297.

<sup>76</sup>Yemi, O, *The Law of International Institutions* (Simplified Edition), Lagos, Princeton and Associated publishing Co, 2018, 573.

<sup>77</sup>Alisigwe, H.C, *Op Cit*, 53.

<sup>78</sup>Alisigwe, H.C, 'Globalization and the multiplication of International Courts/Tribunals –whither the International Courts of Justice?' In Chukwumaeze, U.U., et.al. (eds), *Law, Social Justice and Development*, op cit, 130.

<sup>79</sup>*Ibid*, 130

Many other regional bodies established in Africa were mainly for the purposes of economic integration principally to reap the fruits or advantages of globalization. For example, according to the Revised Treaty of the Economic Community of West African States (ECOWAS), the aims of ECOWAS are;

To promote co-operation and integration leading to establishment of an economic Union in West Africa in order to raise the living standards of its peoples and to maintain and enhance economic stability, foster relations among member states and contribute to the progress and development of the African continent.<sup>80</sup>

Anticipating that disputes may arise from their interactions and dealings in the realization of these objectives, these regional bodies when formed, set up legal institutions that will adjudicate and determine such disputes. For example, the same ECOWAS set up the ECOWAS Community Court of Justice.

However, to the above should be included the African Commission on Human and People's Rights, the South African Development Community Tribunal, the OHADA common court of Justice and Arbitration etc. These supranational courts were thus properly and duly positioned to handle international disputes as opposed to the national courts and the following are the advantages:

The handling of international disputes by supranational courts have helped to remove the hurdle of supremacy of the National Constitutions which national courts stick to, but instead the supranational courts hold that provided the right violated or alleged to be violated is enshrined in an international instrument that binds a member state, the domestic legislation of that state cannot prevail over the international treaty, even if it is the constitution of the state concerned. For example, in the case of *SERAP V Nigeria and Universal Basic Education Commission*<sup>81</sup>, the ECOWAS Court held that Nigeria was bound to provide free and compulsory education by virtue of ACHPR provision, notwithstanding the provision of the 1999 constitution of Nigeria (as amended) making such Right non justiciable.

The supranational courts make it possible to eliminate immunity clauses which poses a hurdle to the handling or determination of cases involving Heads of states, Governors and other Government officials. For example, the international criminal court made it possible for many despotic African leaders to be prosecuted or tried as immunity is practically waived by the ICC.<sup>82</sup>

Foreign investors are more interested in having their disputes or matters being handled by supranational courts as opposed to National Courts because of the impartiality and dispassionate considerations that may not be applied in the National courts.<sup>83</sup>

Moreover, as already noted many of these supranational courts were formed to advance economic integration of some of their founding bodies or entities with a view to reap the fruits of globalization. They therefore stand in a better position to advance this important economic and commercial objectives.

Finally, the independence of the supranational courts is more guaranteed than that of the national courts. It has already been noted that the national courts are easily influenced by the executive organs of the nations or states.

These supranational courts are self-accounting and judges of the courts are required to carry out the functions assigned to them independently of the member states and institutions of the bodies that set them up.<sup>84</sup>

However, these advantages the supranational courts have in resolving international disputes over the national courts, one point is clear, the supranational courts in Africa are still relatively young compared to those of Europe and America and as well lack the publicity and books or literature that are necessary to create awareness of their existence. For example, with regard to the ECOWAS Community Court of Justice a Learned Senior Advocate of Nigeria has stated: 'Nevertheless, community citizens are still largely ignorant of the existence of the court. Even judges and lawyers in the member states of ECOWAS are not familiar with the legal instruments which established the court and the Rules of procedure applicable in the court.'<sup>85</sup> That is why this study is necessary and apt at this period and time. There is also the need to know the origin, legal instruments, rules of procedure, case laws and continued relevance of these courts.

## **6. Conclusion**

However, these advantages the supranational courts have in resolving international disputes over the national courts, one point is clear, the supranational courts in Africa are still relatively young compared to those of Europe and America and as well lack the publicity and books or literature that are necessary to create awareness of their existence. For example, with regard to the ECOWAS Community Court of Justice, Falana has stated: Nevertheless, community citizens are still largely ignorant of the existence of the court. Even judges and lawyers in the member states of ECOWAS are not familiar with the legal instruments which established the court and the Rules of procedure applicable in the court.<sup>86</sup>

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<sup>80</sup> Article 3(1) of the Revised Treaty

<sup>81</sup> Suit No ECW/CCJ/APP/0808

<sup>82</sup> Chukwumaeze, U.U. and Obodo, A.R. 'Future of International crimes in Africa: relationships between Africa and international Criminal Courts', (2017), *Abia State University Law Journal*, (Vol. 15), 123 and 130.

<sup>83</sup> Nollkaemper A., *National Courts and the International Rule of Law*, op cit, 47.

<sup>84</sup> See for example Article 3(1) of the community court of ECOWAS protocol, 1991.

<sup>85</sup> Falana, F, *ECOWAS Court, Law and Practice*, Lagos, Legal Text Publishing Company Ltd, 2010, ii.

<sup>86</sup> *ibid*