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Arms restraint and regional international law making: The case of the Economic Community of West African States

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Former President Alpha Oumar Konaré of Mali asked the UN Secretary-General to send a mission to Mali in 1993 to assess the situation caused by the widespread availability of weapons in that country. This historic visit gave rise to a series of national, regional and international efforts to contain arms proliferation. In parallel, there were other initiatives taking place especially in the United States through the work of two scholars who first called attention to the ‘real weapons of mass destruction’.² By the same time, a few articles were published about the impacts of the widespread availability of arms in some regions in the world.³ The Timbuktu Flame of Peace, a symbolic act that took place in Mali in March 1996, and where approximately 3 000 arms were burned, was the decisive event that spurred awareness within the international community regarding the necessity of destroying post-conflict weapons.⁴ This served as an impetus for the Economic Community of West African States (ECOWAS) to approve the declaration

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of the Moratorium on Importation, Exportation and Manufacture of Light Weapons in West Africa (ECOWAS Moratorium) on 31 October 1998.⁵ The initiatives taken by Mali resulted in a series of UN resolutions that, among other things, requested the Secretary-General to seek the views of member states on effective ways and means of collecting weapons illicitly transferred in affected countries. In Resolution A/50/70 of 12 December 1995, introduced by Japan, the UN General Assembly established the Panel of Governmental Experts on Small Arms, which was instrumental in elevating the issue of small arms restraint onto the international agenda.

Mali continued to play a leading role within the UN General Assembly, building on the momentum created by the Flame of Peace, by furthering its sponsorship of many resolutions.⁶ The underlying rationale for these resolutions was that the illicit circulation of massive quantities of small arms through the world hinders development and contributes to insecurity. These resolutions were instrumental in not only instigating the arms control efforts of the countries in the sub-Saharan region, but also generally raising awareness at the international level regarding small arms proliferation. The actions by Mali prompted meetings of the states of the sub-region to establish regional cooperation. Ultimately these efforts culminated in the Bamako Declaration of 1 December 2000, which defined a common African position vis-à-vis curbing arms.

The West African Action Network on Small Arms (WAANSA) estimates that the conflicts in the region have resulted in over two million deaths over the past decade.⁷ In particular, '[t]he outbreak of violent civil conflict in Liberia in December 1989 and in Sierra Leone in March 1991 marked the beginning of a change to the political and security configuration of the sub-region'.⁸ Sierra Leone, Liberia, Guinea and Côte d'Ivoire became part of a network of illegal small arms trafficking routes, with these arms being supplied in exchange for natural resources such as rubber, timber and diamonds.⁹ These countries experienced over a decade of violent cross-border illegal activity. It is estimated that there are approximately eight to ten million illicit weapons concentrated in West Africa.¹⁰ Even peaceful countries like Ghana have experienced an 'upsurge in gun-related crimes, believed to be perpetrated by refugees from the Mano River conflict triangle'.¹¹

Precedent soft law

In response to the major human security threat posed by the proliferation of small arms in the region, ECOWAS contracting parties adopted the politically binding ECOWAS Moratorium in 1998. In international law, it is considered a soft law agreement. At the time, the moratorium was a landmark for several reasons. It was the first attempt by any regional organisation in Africa to establish measures to halt illicit weapons proliferation. Second, it set the precedent for the AU to adopt a similar position for the entire continent relating to the proliferation of small arms and light weapons, that is, in the

Bamako Declaration, as mentioned. The ECOWAS Moratorium, even though it is soft international law, served as a stepping stone for the consolidation of a legally binding regional instrument, thus serving as a precedent.

The ECOWAS Moratorium allowed governments to create national commissions, 'which gives each government the ability to implement and monitor its own initiatives as set forth by the Moratorium, with the help of state police, the government, and civil society organizations'.¹² In cooperation with several UN programmes and agencies, member states were able to initiate several successful arms collection and destruction programmes. For instance, the Arms for Development initiative in Sierra Leone, in partnership with the UN Development Programme (UNDP), awarded communities US\$20 000 towards the implementation of a development initiative in exchange for the implementation of a voluntary arms collection programme.¹³ Similarly, the Sierra Leone police force granted limited amnesty to civilians owning licensed or unlicensed weapons in order to encourage them to hand them in.¹⁴ In less than two years, the programme collected 9 327 arms, 34 035 rounds of ammunition and explosives of all types.¹⁵

Despite its importance as a model for responsible subregional action in the small arms debate, there are several criticisms of the ECOWAS Moratorium. Human Rights Watch claims that violators of the moratorium have made it irrelevant and thereby its potential impact has been reduced. In 2003, during conflict in Liberia, despite the moratorium being in place, the government of Guinea allegedly imported mortar rounds and ammunition from Iran and re-exported them to Liberia. On cargo documents, these were described as 'technical equipment'.¹⁶ This ammunition was later sent to the Liberians United for Reconciliation and Democracy (LURD) rebels, who used it in civilian areas of Monrovia. Human Rights Watch notes that LURD used child soldiers as young as 11 to fire these mortar rounds, which, if the ECOWAS Moratorium had been obeyed, should not have been in circulation in the first place.¹⁷ Liberia, once under the control of Charles Taylor, has been under a UN arms embargo since its civil war began in 1989. Human Rights Watch notes that the governments of Sierra Leone, Burkina Faso and Côte d'Ivoire were also frequent violators over this period, at one point supplying Taylor with arms and ammunition despite the ECOWAS Moratorium.¹⁸

Despite its shortcomings, the ECOWAS Moratorium paved the way for the creation of the ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Material later on and the related ECOWAS Code of Conduct, adopted on 10 December 1999. The Code of Conduct anticipated the establishment of national commissions, the preparation of reports, the development of a regional arms register, a system of arms destruction, the harmonisation of legislation, the training of security personnel, and the declaration of weapons and ammunition used for peacekeeping. Article 9 of the Code of Conduct states that any member state or individual may seek an exemption to the ECOWAS Moratorium, deposited at the ECOWAS secretariat, to allow

it to import arms to meet legitimate national security needs or participate in international peace operations. It also allows exemption for individual hunting or sporting purposes. An application for an exemption must be made to the ECOWAS secretariat, which transmits the application to all other member states or to the national commissions in cases of individual applications.¹⁹

The ECOWAS Convention, signed in 2006, makes it legally binding for all states to adopt and implement measures on arms trafficking and proliferation reduction. It will come into force upon ratification by nine member states and was made possible by the financial contribution of the European Union, Canada and Switzerland.²⁰ According to Sola Ogunbanwo, international consultant for the convention, ‘the preceding moratorium had “no teeth” because it was not legally binding. The new Convention has a monitoring and implementation mechanism set in place.’²¹ The document states in its preamble that the proliferation of small arms and light weapons constitutes a major destabilising factor in ECOWAS member states and poses a serious threat to the peace and stability of their peoples. States are aware of the disastrous consequences that the proliferation of small arms and light weapons has for the prolongation of armed conflicts and the illegal exploitation of natural resources.

Main elements and legal structure of the ECOWAS Convention

The ECOWAS Convention’s enforcement strategy is overseen by the ECOWAS executive secretary, who is tasked with developing plan of action strategies to implement the convention, which are then subject to the approval of the member states for adoption. Subsequently, the convention created an independent group of experts who assist in monitoring implementation of the plan of action strategies. According to Ogunbanwo, the convention has great potential to reduce armed violence because of its legally binding nature. It can ‘create a ban on international small arms transfers to non-state actors, impose sanctions on violating member states, regulate local arms manufacturers, create procedures to share information through national databases, regulate small arms possession through more rigorous licensing and registration schemes, and more effectively manage current and existing government stock piles’.²²

The ECOWAS Convention is housed at a long-standing institution, ECOWAS. This is beneficial for the implementation of the convention, as an established structure is already in place.²³ ECOWAS is a collective regional integration and security instrument, and it serves to drive the region towards tackling its multiple security problems.²⁴ It also functions as an important norm-setting mechanism that, combined with activism within the non-governmental sector across the region, is making the region gradually progress towards improved governance, especially in the security sector. It is apparent that the

tenets of good governance are actually moving faster at the ECOWAS level than at the national level. At the latter level, there is a pressing requirement to promote security sector governance.²⁵

The many long civil wars in the region have spurred the need for establishing links between security and governance, and ECOWAS has been instrumental especially in focusing a larger understanding of security centred on communities and people. Given that the problem of arms goes beyond borders and that the borders in this region are so porous, the role of ECOWAS in security building is essential.²⁶ ECOWAS also plays a role in the regulation of the illicit trade in natural resources in the context of armed conflicts in the region. As these conflicts were usually initiated and perpetuated by competition over these resources, it is essential that tackling arms and regulating the wealth of natural resources in the region are done under the same umbrella.²⁷

The ECOWAS Convention breaks new ground as it is based on human security, international humanitarian law, sustainable development and human rights principles (as spelt out in the preamble). Under the convention, arms transfers should not be authorised if they will violate the obligations imposed by universally accepted principles of international humanitarian law. Such transfers should be prohibited if they will infringe upon human rights norms or be used to perpetrate oppression, violations of international humanitarian law, genocide or crimes against humanity. In addition, arms transfers must be restrained if they will jeopardise sustainable development and unjustifiably divert human and economic resources to arms procurement (article 6).

Article 20 aims to regulate brokering activities by requiring the registration of brokers, financial agents and agents transporting arms; the establishment of a system for obtaining authorisation for each individual transaction and supplying information on transit points and routes, as well as the brokers and transporters involved in the transaction; and the criminalisation of illicit arms brokering. Berkol says that this is a pioneering requirement in the region, because most states have hitherto considered that no arms brokers were operating in their territories and that arms transfers were largely the prerogative of the state. Certain government experts expressed concerns that the introduction of an article on brokering in the convention would accord a certain degree of legitimacy to private brokers who also dealt on the illicit arms market. Others considered that on the contrary, the lack of regulation of brokering activities would constitute a missed opportunity to tackle the issue of brokering.²⁸

Key legal tenets of the ECOWAS Convention

There are a few areas addressed by the convention that may lead to a reduction of the ease of access to arms in the region: control of arms production, circulation and transfer;

the criminalisation of illicit arms production, circulation and transfer; regulations on arms export authorisations; and cooperation towards maintaining the security of ports, borders, airspace and the continental shelf.²⁹ Regarding the first area – control of arms production, circulation and transfer – member states shall undertake to control the manufacture of small arms and light weapons within their national territories; shall regulate the activities of local small arms and light weapons manufacturers; and shall undertake to adopt strategies and policies regarding the reduction and/or limitation of the manufacture of small arms and light weapons so as to control their local manufacture, as well as their marketing in the ECOWAS region (articles 7 and 8).

Regarding the second area of the criminalisation of illicit arms production, circulation and transfer, in the convention's article 3, in a very comprehensive way that moves towards an almost total ban, states undertake to prohibit the transfer of small arms and light weapons and their manufacturing materials into their national territory or from and through their national territory. This is a breakthrough contribution by the convention in spurring efforts at the international level, as it inaugurates language not only prohibiting the transfer to non-state actors, but also requiring authorisation by the importing state when it says that member states shall ban, without exception, 'transfers of small arms and light weapons to non-state actors that are not explicitly authorized by the importing Member' (article 3[2]). This is important on several levels. First, the discussion on regulating the ban on the sale of arms to non-state actors is quite controversial and fraught with ethical and moral dilemmas. Second, it is an issue that faces open opposition from the United States, and veiled resistance from many other powerful states. Third, arms transfers to non-state actors usually occur from the major arms producers to Africa, and therefore the inclusion of the condition that authorisation by the importing state is required is key.

The convention also outlines the conditions for exemptions to this rule – in order for states to meet legitimate national defence and security needs, or to participate in peace support activities or other operations in accordance with the decisions of the UN, the AU, ECOWAS, or other regional or sub-regional bodies of which they are members. It goes further and outlines cases for the refusal of exemptions for transfers, which is a significant contribution, in general, to international law on controlling small arms. The convention states that a transfer shall not be authorised if it violates obligations under international law, including universally accepted principles of international humanitarian law and UN Charter obligations (article 6).

The most innovative part of this convention is when it spells out that arms transfers shall not be authorised if the arms are:

- To be used for the violation of international humanitarian law or infringement of human and peoples' rights and freedoms, or for the purposes of oppression

- To be used for the commission of serious violations of international humanitarian law, genocide or crimes against humanity
- To be used to worsen the internal situation in the country of final destination
- To be used to carry out terrorist acts or support or encourage terrorism
- To be used to facilitate the commission of violent or organised crime
- To be used to hinder or obstruct sustainable development and unduly divert human and economic resources to armaments of the states involved in the transfer, or
- Likely to be diverted within the transit or importing country or re-exported to unauthorised users or into the illicit trade (article 6)

This part grounds the convention on international humanitarian law, and this is a pioneer contribution in any of the legal and political documents on small arms. Importantly, the convention also enshrines sustainable development in causal connection to arms transfers, which is also groundbreaking. Therefore, states are required to move vigorously in adopting legislative measures to establish as criminal offences under their domestic law the illegal manufacture, transfer and possession of small arms and light weapons, which should be enshrined in national penal codes and should include requirements for the observance of international humanitarian and human rights law.

On the third area of regulations covering arms export authorisations, the most important elements are enshrined in article 6, which overviews the cases for refusal of exemptions for arms transfers. Such transfers shall be refused if the export, even if it is considered a donation, has not been approved by all states directly concerned with the transfer, which reiterates the notion that states in the region are moving towards banning transfers beyond the state-to-state realm. Article 6(5) states that arms transfer cannot be authorised if there is a likelihood that they will be diverted to unauthorised uses or fall into the illicit trade. In addition, article 20 provides ample consideration of the process of issuing brokering licence applications for import and export. Contracting parties are bound by the convention to observe their responsibilities under international law, taking into account in particular whether transfers will result in the diversion of resources from sustainable development (article 6[4]).

In the fourth area, cooperation towards maintaining the security of ports and borders, states commit themselves to strengthen sub-regional cooperation among defence and security forces, intelligence services, and customs and border control officials in combating the illicit circulation of small arms through enhancing the capacity of national defence and security forces and law enforcement and security agencies, including

appropriate training in investigative procedures and border control and law enforcement techniques, and the upgrading of equipment and resources (article 22).

The convention also establishes an innovative complaint procedure whereby all concerns relating to the violation of the convention shall be brought to the attention of the ECOWAS executive secretary, who would submit such complaints to the ECOWAS Mediation and Security Council, whereupon the secretariat decides on measures to be taken, such as sanctions, inquiry or study, or would refer the matter to the ECOWAS Court of Justice (article 27).

Black market feeder indicators

The black market is an important factor in the illicit trade in small arms. There are five areas that, if not addressed, will result in higher ease of access to small arms and may therefore constitute black market feeders that increase the circulation of small arms. These areas are:

- Whether a country has legislation on civilian gun ownership
- How pervasive the work of brokers is in the country's territory, and whether the country has enacted legislation on brokering³⁰
- Whether the country has enacted legislation regarding and has adopted the practice of destroying weapons that are deemed surplus in its inventories or that were seized in crime (related to this measure, the security of arsenals and warehouses is vital)
- Whether the country has established provisions vis-à-vis the transfer of weapons to non-state actors
- Whether the country has enacted parameters for arms imports

In this article, I will focus on the first three, which are the most problematic ones.

There are many reasons why these areas are responsible for feeding the black market. The majority of guns are in the possession of civilians worldwide. Therefore, the potential for misuse is enormous. By 2006, 133 states had laws and procedures criminalising the illicit possession of small arms, and 47 states have reviewed at least some of their laws and/or procedures governing civilian possession of small arms, the domestic small arms trade and small arms manufacturing since 2001.³¹

Three aspects are related in perceptions of the relationship between violence and unrestrained civilian gun possession held by most states.³² First, most problems caused

by the unrestricted availability of small arms are 'civilian' – that is, most guns are owned by civilians, and 60 per cent of the global stockpile of 640 million small arms is in the possession of civilians.³³ Second, most of the victims of gun violence are civilians: 200 000 – 270 000 people die each year from non-conflict-related gun violence. And third, there is now a general recognition that civilian-owned guns help fuel the illicit arms trade as a result of theft, unsafe storage or sale.

Since 2001, when for the first time states discussed small arms multilaterally at the UN, there has been a trend towards the adoption of rigorous new laws on civilian possession. Recently, more than a dozen states have passed stringent national civilian gun-ownership regulations. Therefore there seems to be a strong *de facto* emerging international norm deriving from a growing consensus on the practice of states worldwide, but not yet enshrined in any international convention. This emerging norm has gained currency at the sub-regional level in Africa. It was the US that pressed for the complete deletion of the clause on the norm on controlling gun civilian ownership at the UN conference that led to the adoption of the Programme of Action in 2001. In his statement after the adoption of the Programme of Action, the president of the conference, Camilo Reyes, underscored that the conference had provided an invaluable venue for addressing one of the most urgent problems of international peace and security: the illicit trade in small arms and light weapons. He stressed that the national delegations were able to overcome their differences and attain a consensus on all parts of the Programme of Action except for two of the most important, for which there was overwhelming support, despite the concerns of 'one state'. These two points of contention were controls over the private ownership of weapons and the need for the prevention of sales of arms to non-state groups. Reyes emphasised that the states of the region most afflicted by this global crisis, Africa, had agreed only with the most extreme unwillingness to the deletion of language addressing these critical issues. They did so in order to achieve a compromise that would allow all states to adopt the document. As Reyes' speech made clear, the illicit trafficking of arms is a problem that must be addressed (as the title of the conference demands) in all, and he repeated, 'all its aspects'. And as Reyes stressed, this position was supported by many states outside Africa.³⁴

The second area considered a black market feeder is arms brokering. The driving impetus eliciting response from the international community *vis-à-vis* illicit arms brokering came from reports published in mid-1995 by Human Rights Watch and Amnesty International on arms deliveries to Rwanda via airports in the Democratic Republic of Congo (DRC).³⁵ These reports described the secret transfer of weapons and ammunition from several countries, including Albania and Bulgaria, to the exiled Rwandese armed forces in eastern DRC by traders in the UK using aircraft registered in Ghana, Nigeria, Ukraine and the Russian Federation. In the DRC and other countries, commanders of these exiled forces, who were responsible for crimes against humanity and acts of genocide, purchased or negotiated transit facilities for these military supplies.

Commentators have pointed out that Amnesty International reported on arms brokers based in the UK delivering arms from Albania, Bulgaria and Israel, whereas Human Rights Watch focused particularly on the officially sanctioned Chinese and French arms deliveries and on supplies brokered from South Africa.³⁶

These disclosures prompted the establishment of an international commission of inquiry created pursuant to UN Security Council Resolution 1013 of 1995 to investigate, among other things, reports relating to the sale or supply of arms and related material to former Rwandan government forces in the Great Lakes region, in violation of Security Council Resolutions 918, 997 and 1911. The unprecedented atrocities committed in the Rwandan genocide helped raise awareness of the work of illicit arms traffickers operating internationally and taking advantage of the absence of laws regulating their activities. In this process, NGOs like Amnesty International and Human Rights Watch were instrumental in raising awareness about the problems associated with illicit arms brokering in perpetrating such crimes in the context of widespread violations of UN Security Council embargoes. Once the reports mentioned above were made public and widely circulated in an intense process of advocacy and teaching about this entirely new problem, while concomitantly trying to shame the arms suppliers, the next step was to define what constituted 'illicit brokering activities' and to define the dimensions and extent of this phenomenon of the post-Cold War world. The activities of arms brokers operating on the fringes of international law remained unabated throughout the 1990s, and have done so up to the present. The activities of arms brokers may flood a society with arms, not only imperiling fragile post-conflict situations, but also feeding the black market.

The last area considered as a black market feeder is whether a country consistently adopts the practice of destroying excess, surplus or confiscated weapons. Failure in this area has an enormous potential for feeding the black market. The most evident example of how weapons that are stored unsafely or are surplus in governmental arsenals can fall prey to insurgents and rebels is the case of Iraq and the present imbroglio that the situation in that country presents. Several arsenals were looted in the aftermath of the poorly planned US invasion, which did not anticipate that the arms arsenals dotted around the country had to be secured. The idea that weapons had to be managed through destruction, in certain situations, emerged in three tracks. The first track is associated with the realisation that in post-conflict situations dealt with by the UN, the processes of demobilisation and disarmament had to include a component of weapons destruction to galvanise the peace process. The second track corresponded to surplus weapons originating from excess arsenals across the world following the end of the Cold War; and, finally, the third track, which developed later, was the destruction of weapons seized in the context of violent crime in cities across the world. The idea that surplus, post-conflict or illicit weapons must be destroyed began as a practice adopted in an unsystematic fashion and with low degrees of success in some UN

peacekeeping operations, like those in Mozambique, Nicaragua and El Salvador. As will be demonstrated, this practice slowly started to be embedded as an international practice throughout the 1990s.

The first track took place through a gradual realisation, especially among workers involved in peacekeeping operations, that if arms were not collected and destroyed following a peace settlement, they might be used to restart the conflict or end up in another part of the world fuelling conflict and crime there. In addition, arms from conflicts taking place during the Cold War in many parts of the world were reused in other violence or conflict settings. From the mid-1980s, global levels of military expenditure started to decrease, and after the Cold War, much potential for conversion was created. The removal of surplus weapons from societies or from post-conflict situations is a central part of broader efforts to restrict the availability of small arms and light weapons.³⁷

Many initiatives were carried out across the world with the specific purpose of collecting small arms and light weapons, for example in Angola, Mozambique, Bosnia and Herzegovina, Croatia, and Somalia. Some of the UN peacekeeping operations in some of these countries, for instance Mozambique, included a component of destroying weapons.

Broadly, there are two types of weapons collection. The type that is conducted in peacetime with the objective of reducing and preventing crime is often, though not always, voluntary, with incentives (and sanctions) included for the purpose of recovering firearms from legal (and illegal) owners. A second major type of weapons collection programme is that carried out in peacekeeping settings and post-conflict societies. As many experiences across the world demonstrate (in Central America, South Africa and Albania, for example), in post-conflict or unstable situations, weapons are likely to be stolen, falling into the hands of criminals who contribute to the rise of rates of crime. Therefore, the appropriate disposal and destruction of weapons are crucial components of the stabilisation of post-conflict societies.³⁸ Key practitioners in the small arms debate have pointed to stockpile management and the destruction of excess arms as the simplest and most reliable ways of preventing the proliferation of illicit arms.³⁹

The starting point for the development of the second track galvanising the idea of weapons destruction and the debate on surplus weapons management and related issues relates closely to the end of the Cold War. The 1990 Conventional Armed Forces in Europe Treaty on force reductions made strict provisions for the management of surplus weapons. However, the treaty related only to major conventional weapons and there were no provisions in it for small arms. With the reduction of forces and the collapse of the Warsaw Treaty and the Soviet Union, large quantities of surplus small arms became available. Therefore, after the Cold War, two parallel processes started taking place: one was the general downsizing of armies across the globe; the other was the dissolution

of the Warsaw Pact, which released many weapons into the global arms market. Both processes resulted in millions of weapons being made surplus from inventories all over the world, which had to be somehow managed. Other analysts also point to additional reasons for the post-Cold War surplus weapons stockpiling: international disarmament agreements, the cessation of hostilities in many parts of the world, financial constraints on defence budgets, the modernisation of armed forces, and the replacement of their equipment.⁴⁰

In addition, the end of the Soviet era meant that arms from Eastern Europe and the former Soviet Union were sources feeding the black market. Needing to upgrade their forces, ex-Warsaw Pact members disposed of large numbers of outdated small arms and light weapons in the international (illicit) market. The sales of surplus arms, often to undesirable end users such as insurgent groups or warring governments under international embargo, has proved to be a ready source of revenue to countries in political transition that are experiencing harsh economic conditions. The area of conversion studies includes the reallocation of the financial resources of the military sector to non-military purposes, the reorientation of military research and development to non-military purposes, the downsizing of defence industry overcapacity and the reduction of dependencies on arms production, the demobilisation of armed forces, the closure of military bases, and dealing with surplus weapons systems.

Black market feeders and the ECOWAS Convention

How well does the ECOWAS Convention deal with black market feeders?

Civilian gun ownership

The ECOWAS Convention suggests that member states prohibit the possession, use and sale of light weapons by civilians. However, it then requires them to regulate civilian possession and qualifies the authorisations that may be granted to permit individual possession by a strict control regime for civilian possession of arms with the following criteria: the user should be of the required minimum age and have no criminal record; and he/she should provide proof of a legitimate reason to possess and (among others) that the weapon will be stored in a safe place and separately from its ammunition. This involves a waiting period of 21 days before the final authorisation, while any contraventions identified in reviews may result in the withdrawal of the authorisation and minimum penal sanctions (article 14). This provision could have been strengthened by a total ban on civilian possession, the requirement of a record-keeping system or more stringent criteria for the establishment of criminal offences or penalties, but the convention falls short of fully addressing this important area.⁴¹

Regulation of arms brokering

The convention also requires that member states register all citizens and all companies incorporated in their territory that are brokering arms, including financial agents and transportation agents, and that states should make registration a requirement for the licit operation of such people, who should provide full disclosure of all transactions, irrespective of where they take place. Member states also commit themselves to adopt legislative and other measures to punish and establish as a criminal offence illicit arms brokering (article 20). The convention does not require measures vis-à-vis curbing activity that violates a UN Security Council arms embargo in accordance with the UN Charter.

Weapons destruction

Member states shall undertake to collect and/or destroy arms that are surplus or obsolete, seized weapons, unmarked weapons, illicitly held weapons, and arms collected during the implementation of peace accords or during programmes for the voluntary handing in of weapons (article 17). The convention fails to establish a norm of destroying weapons when it suggests that states can either collect weapons or destroy them. It therefore falls short of the precedent set by the Programme of Action. Thus, the likelihood that improperly stored weapons may fall prey to corruption or theft and then enter the black market is high.

Conclusion

The ECOWAS Convention is groundbreaking in many respects. It is innovative especially vis-à-vis basing its text on international humanitarian law, international human rights law and development needs. In comparison with all other instruments of law on small arms, it is one of the most evolved.

In September 2007 the ECOWAS Advisory Board on Small Arms and Light Weapons was created with a mandate to provide advice to the contracting parties and develop strategic partnerships with donors, governments, intergovernmental organisations and specialised agencies. The distinguished board members are supposed to serve as ECOWAS goodwill ambassadors contributing to the advancement of the convention. This initiative should serve to give further impetus to the long road of implementing the convention and making it effective.

In terms of the making of international law, the evolution of arms control law for West Africa based principally on the ECOWAS Convention demonstrates first, that the road for the institution of a restraint regime on arms, especially in post-conflict

situations, is a long one. Also, the implementation of such a regime will be complex and will require initiatives with international clout, like the Advisory Board; concerted national and regional action; and capacity-building. Second, the convention has showed the importance of soft law agreements (the ECOWAS Moratorium and the Code of Conduct) in setting the legal stage and opening political space for the making of a legally binding commitment.

Notes

- 1 I wish to thank Esther Chou for her invaluable research assistance in the preparation of this paper, as well as my editor, Dr Alex Potter.
- 2 These scholars were Michael Klare and Edward Laurance.
- 3 Denise Garcia, *Small arms and security: new emerging international norms*, London: Routledge, 2009.
- 4 Robin-Edward Poulton and Ibrahim ag Youssouf, *A peace of Timbuktu: democratic governance, development and African peacemaking*, New York: United Nations (UNIDIR), 1998.
- 5 ECOWAS issued the Declaration of a Moratorium on Importation, Exportation and Manufacture of Light Weapons in West Africa at the Twenty-first Ordinary Session of the Authority of Heads of State and Government, held in Abuja, Nigeria, 30–31 October 1998.
- 6 UN General Assembly Resolutions 52/38, 53/77 B, 56/24U and A/57/510.
- 7 Though official numbers and estimates are uncertain, WAANSA estimates that some 2 000 000 people have died as a result of small arms use in West Africa over the course of the decade. Available at <http://www.iansa.org/regions/wafrica/documents/WAANSA-press-statement-14june06.pdf> (accessed April 2008).
- 8 Alhaji M S Bah, Micro-disarmament in West Africa: the ECOWAS Moratorium on Small Arms and Light Weapons, *African Security Review* 13(3) (2004), 1, <http://www.iss.co.za/pubs/ASR/13No3/FBah.htm> (accessed April 2008).
- 9 'The easy accessibility of natural resources such as rubber, timber and most importantly diamonds means that weapons can be bartered for these resources, thereby sustaining the decade long wars in Liberia and Sierra Leone' (Bah, Micro-disarmament in West Africa, 1).
- 10 Official numbers and estimates of the number of small arms circulating in West Africa range from eight to ten million. According to Reuters (2007), in 2007, the weapons 'concentrated' in West Africa numbered about ten million.
- 11 Bah, Micro-disarmament in West Africa, 1.
- 12 Ibid.
- 13 Ryan Nichols, BCPR Strategic Review, *Small Arms Survey*, February 2006.
- 14 Bah, Micro-disarmament in West Africa, 6.
- 15 Statistics collected by Arms for Development Initiative; see Bah, Micro-disarmament in West Africa, 6–7.
- 16 According to the testimony of Lisa Misol, Human Rights Watch researcher, before the Congressional Human Rights Watch caucus: Human Rights Watch, Small arms and conflict in West Africa (text only), 20 May 2004, <http://hrw.org/english/docs/2004/05/20/africa8680.htm> (accessed May 2008).
- 17 The use of child soldiers during Liberia's 11-year civil war is noted in several references, most notably in Misol's testimony: Human Rights Watch, Small arms and conflict in West Africa.
- 18 Ibid.
- 19 Alex Vines, Combating light weapons proliferation in West Africa, *International Affairs* 81(2) (2005), 341–360.
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- 21 IANSA, 2006.
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