

Political and institutional dynamics of the control of small arms and light weapons in West Africa

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Small arms control became a collective endeavour within the Economic Community of West African States (ECOWAS) with the adoption of the Declaration of a Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons in West Africa¹ by the Conference of Heads of State and Government in Abuja on 31 October 1998.

Implementing this political framework to combat small arms proliferation² very quickly proved to be impossible without adopting joint measures and institutional arrangements for its operationalization and monitoring. The Code of Conduct for the Implementation of the Moratorium³ and the decision establishing in each member state a national commission to combat the proliferation of small arms were thus adopted simultaneously in Lomé, Togo, on 10 December 1999. In addition, the Programme for Coordination and Assistance for Security and Development (PCASED) was developed and carried out between 1999 and 2004 to back up implementation of the moratorium.

The adoption of the Code of Conduct confirms the ECOWAS Commission's role in carrying out, coordinating and monitoring implementation of the subregional small arms control policy. The legal framework reflecting this policy, which is rooted in the "spirit of the moratorium"⁴ dating back to the adoption of the ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials,⁵ will enshrine a number of principles and issues at the heart of the current international debate on an arms trade treaty⁶ and arms transfer control initiative.

Gradual institutionalization

The establishment of national and subregional institutions to combat the proliferation of small arms has been gradual, and 10 December 1999 may be considered a milestone in that respect. With the adoption on that date of the Code of Conduct for the Implementation of the Moratorium and Decision A/DEC.13/12/99 establishing national commissions to combat the proliferation and illicit circulation of small arms, the ECOWAS Conference of Heads of State and Government prepared the ground for a process of institutionalization that has been consolidated over time.

At the national level, national commissions have been established in member states under article 4 of the Code of Conduct to "promote and ensure coordination of concrete measures for effective implementation of the Moratorium at national level". The functions of these commissions are explained in detail in the 1999 decision, article 3(1) of which provides that national commissions must

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assist the competent national authorities in devising, developing and implementing national policies to combat the proliferation and illicit circulation of small arms.

The composition of the national commissions is spelled out more precisely in the 1999 decision than in the Code of Conduct. Whereas the Code of Conduct stipulates that national commissions must be made up of representatives of the relevant authorities and civil society, the 1999 decision limits membership to representatives of the ministries of defence, internal affairs and security, justice, foreign affairs and civil society.

While a few national commissions as yet have no representatives of civil society as members, it is nevertheless acknowledged by all that civil society and non-governmental organizations, which have made small arms a central issue in the political and security debate in the subregion, have a crucial role to play if this scourge is to be addressed efficiently and effectively. On this basis, and in accordance with the recommendations of the ECOWAS Commission, national commissions include representatives of civil society organizations or, in cases where the law has not yet been updated, cooperate closely with them.

Civil society and non-governmental organizations, for their part, are gradually organizing themselves so as to have a greater impact on the national implementation of subregional policy to combat the proliferation of small arms. National coalitions of civil society organizations working in this field have thus been established in various countries under the umbrella of the West Africa Network on Small Arms (WAANSA).⁷

The institutionalization process was slower at the subregional level than at the national level. While civil society and non-governmental organizations quickly established WAANSA in May 2002, the ECOWAS Commission had no organizational unit exclusively for small arms until 2005. Before then, implementation of the moratorium had been monitored by the Legal Department and, to a lesser extent, the Zonal Observation Bureaux (in accordance with article 5 of the Code of Conduct) established within the framework of the early warning system instituted by the Protocol relating to the Mechanism for Conflict Prevention, Management, Resolution, Peace-Keeping and Security.⁸

In accordance with the decision of the Council of Ministers adopted in 2003 in Accra, Ghana, the Small Arms Unit was established in September 2005 within the ECOWAS Commission to implement, monitor and coordinate ECOWAS policy on the non-proliferation of small arms.

The major concern of ECOWAS was not merely to establish new regional and subregional institutions but rather to ensure that they were functional and had the necessary capacity. Thus, at the same time as the ECOWAS Commission was endeavouring to ensure that members honoured their political commitment to establish operational national commissions, it also launched, with the support of its partners, the ECOWAS Small Arms Control Programme (ECOSAP)⁹ in June 2006. This five-year programme, which is based in Bamako, Mali, is intended to build the capacities of national commissions, civil society and the Small Arms Unit to enable these institutions to implement the moratorium effectively and to ensure that they are better equipped to assume their responsibilities and carry out the activities set out in the Convention once it enters into force.

The central role of the ECOWAS Commission

The political will to control small arms and light weapons within the territory of ECOWAS has been forcefully expressed on many occasions by the Heads of State and Government, as shown by the various aforementioned political and legal decisions that have been adopted. The major challenge remains translating this will into practical action, primary responsibility for which now lies, as in

many areas of community policy, with the ECOWAS Commission, which has replaced the Executive Secretariat.

Under article 5 of the Code of Conduct, the structures, staff and procedures for the implementation of the moratorium must be established within what was then the Executive Secretariat in order to “assist Member States’ implementation of the Moratorium; monitor compliance; and report progress to the Authority of ECOWAS Heads of State and Government at regular intervals”.

The transition from the moratorium to the Convention established the ECOWAS Commission as the key body in the implementation of the Community’s policy to combat the proliferation of small arms and light weapons. The ECOWAS Commission’s responsibilities are very clearly set out in articles 25 and 28, while its decisive role in the management and monitoring of the procedures for exemption is set out in article 5.

Analysis of the legal texts and practice to date shows that the ECOWAS Commission plays a number of key roles, which are summed up below.

SUPPORT AND SUPERVISORY ROLE

Member states have given the ECOWAS Commission responsibility for defining and implementing a policy to gather the resources needed to implement community policy in this area. Within this framework, a strengthened partnership is being developed with a number of countries, institutions and organizations on the specific issue of small arms and light weapons. This technical and financial partnership has made it possible to strengthen the Commission’s institutional framework, with the establishment and operationalization of the Small Arms Unit; to launch ECOSAP, which is intended first and foremost to build the capacities of the national commissions; to negotiate and adopt in record time the ECOWAS Convention on Small Arms; and to make progress in the ratification process and the development and adoption of the action plan for the implementation of the Convention.

MONITORING AND EVALUATION ROLE

The ECOWAS Commission has an important role to play in ensuring the effective and efficient implementation of the provisions in force, whether this involves implementing the current moratorium or the future Convention. This makes it possible to verify whether the political will expressed by the Heads of State and Government is truly translated into action for the benefit of citizens of the Community. Meetings with the national commissions to combat the proliferation of small arms are therefore organized on a regular basis. The first and second conferences of the national commissions were held under the auspices of ECOSAP in Accra, Ghana, in February 2007 and Cotonou, Benin, in July 2008, in order to take stock of the progress made in carrying out specific activities and to discuss the challenges in carrying them out.

These monitoring and evaluation activities also served as a basis for the evaluation of the implementation of the moratorium in 2002–2003. The evaluation contained a recommendation that a small arms unit should be established and prompted the decision by the Heads of State and Government to transform the moratorium into a convention.

The ECOWAS Commission also evaluated the implementation of the 1999 decision of the Heads of State and Government on the establishment of national commissions by member states, looking into the institutional and functional aspects among other things.

In light of the increasingly important responsibilities given to the national commissions, the evaluation aims to assess the level of institutionalization of these commissions, their performance in

terms of carrying out their activities and the challenges they face, so that better solutions can be found that will enable them to operate more effectively and efficiently.¹⁰

Under the Convention, the monitoring and evaluation responsibilities of the Commission are increased, and the President of the Commission is required to submit an annual report to the Conference of Heads of State and Government on the implementation of the Convention and to appoint a group of independent experts to assist him in monitoring and evaluation activities.¹¹

COORDINATION ROLE

Numerous actors are increasingly active in the field of small arms in the territory of ECOWAS. While this can be seen as a sign of increased mobilization in combating the scourge of small arms, it is important to ensure not only that this activity is in the interest of the subregion but also that there is no duplication of effort or waste of financial and technical resources.

Against this background, the ECOWAS Commission is increasingly engaged in dialogue with the various actors to ensure that their activities are coordinated. Action by the United Nations system is also being better coordinated, with some programmes and activities being carried out jointly. Similar efforts are being made to coordinate the work of research institutes and training centres in the field of small arms. The gradual institutionalization of relations between the ECOWAS Commission and civil society organizations working on this issue, including their regional networks, is justified by the indispensable role they are known to play, as well as by the concern for coordination to avoid duplication of work.

In addition, the ECOWAS Commission is entrusted with coordinating the implementation of inter-State or subregional activities. This is the case, for example, with the promotion of inter-State cooperation and strengthening of cross-border cooperation in combating the illicit circulation of small arms and light weapons. The ECOWAS Commission also coordinates the work under way to harmonize the legislative and regulatory frameworks governing small arms and light weapons within the territory of ECOWAS.

IMPLEMENTATION ROLE

The handling of procedures for exemption remains the cornerstone of ECOWAS policy and of the entire system put in place to strengthen control of small arms and light weapons in the subregion.

The responsibility for handling exemption procedures was entrusted to the former Executive Secretariat under article 9 of the Code of Conduct for the Implementation of the Moratorium and is now entrusted to the ECOWAS Commission under article 5 of the ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials.

Drawing on the lessons of a decade of handling exemptions to the moratorium, in June 2008 the ECOWAS Commission initiated and submitted for approval by member states in Lomé, Togo, an exemption request form that standardizes the content and form of requests for exemption submitted by states to the Commission. In addition, a computerized database was set up by the ECOWAS Commission to handle the exemption procedure and consideration is being given to improving security in relation to the exemption certificate issued to member states.

A political vision bolstered by recent international initiatives

The usual interpretation of the moratorium reduces it to a political commitment to straightforward disarmament in a region affected by recurring armed conflicts. However, while this interpretation is accurate, it is incomplete.

The declaratory nature and excessive duration of the moratorium are better understood if the moratorium is seen as part of a balanced and comprehensive approach to development, aimed at promoting security in order to bring sustainable development to the subregion. This implies applying strict controls to the purchase, possession and use of weapons by authorized institutions while aggressively combating the illicit circulation of those arms.

It thus becomes apparent that the relation between security and development, and the need to control legal use and combat illicit use, constitute the foundation of ECOWAS policy on small arms and light weapons.

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The basic principle of the moratorium and the Convention with respect to arms transfers is prohibition, with possibilities for exemptions for legitimate security needs, for maintaining order or for conducting peacekeeping operations.

Chapter II of the ECOWAS Convention deals with the transfer of small arms and light weapons, and is sufficiently explicit concerning the will of member states in this area. It clearly sets forth the principle of the prohibition of transfers (article 3) along with conditions of exemption (article 4), and it sets out the procedures for obtaining an exemption certificate (article 5) and the criteria to be used in examining requests for exemption submitted by member states.

More specifically, member states are subject to a ban on transfers of small arms and light weapons, though they may obtain an exemption in certain circumstances if their request for exemption meets a number of criteria, while non-state actors may not benefit from the transfer of arms without the authorization of the importing state. Authorized transfers of arms must be carried out in all transparency and be recorded in the various registers designed for that purpose: the national register; the subregional register maintained by the ECOWAS Commission; and peacekeeping operations registers.

It is clear from the foregoing that ECOWAS leaders believe that efforts to control small arms will not be complete without laying down and enforcing clear principles governing the transfer of arms. The efforts to conclude an arms trade treaty and the initiative to control the transfer of arms are thus international actions liable to strengthen the control of small arms and light weapons in the territory of ECOWAS, provided that the debate under way on these initiatives takes into account certain realities in the subregion.

All ECOWAS members are recipient states, while some are occasionally sellers or suppliers. Any instrument or initiative that focuses on suppliers (exports or subsidies) rather than recipients (imports) would exclude ECOWAS states. Any future obligations and possible control mechanisms must cover export as well as import activities.

The nature of the actor carrying out or benefiting from a transfer is an important consideration in any international initiative on arms transfers if it is not to make a subregion (such as West Africa) even more vulnerable. The experience drawn from the various armed conflicts throughout West Africa shows the decisive role of non-state actors (rebel movements, mercenaries, private security firms and others), which have such easy access to arms.¹² It has become clear that reducing non-state actors' access to arms is an effective means of avoiding armed conflict and instability in the subregion. As the ECOWAS Convention prohibits arms transfers to non-state actors "that are not explicitly authorized

by the importing Member”, any international initiative that contradicts this will not only fail to gain the support of ECOWAS member states but will, moreover, be perceived as a means of making the subregion even more vulnerable.

It is equally important to note that, while the principle of prior authorization for international transfers in the form of a licence, as championed by some countries, may be considered a significant step towards the international control of transfers, it reverses the logic and principles of the moratorium and the ECOWAS Convention.

The content of the moratorium and the Convention itself is based on the principle of banning the import and export of small arms in the territory of ECOWAS while permitting exemptions. The application of the criteria for reviewing requests for exemption submitted by member states may lead to the rejection of a request for transfer, whereas prior authorization in the form of a licence risks making transfers automatic, as exporting states are little concerned with the risks of diversion or the negative impact of their exports on the security and stability of destination areas. At the very least, the principle of prior authorization undermines the ban adopted by ECOWAS member states in light of the security situation in the subregion. If this principle is to be a point of consensus in an arms trade treaty, it must be qualified by review criteria that take into account the situation of the country of destination and, in the case in point, the vulnerability of ECOWAS states and their security situation.

Such criteria could be incorporated in the dialogue between West African recipient countries and potential suppliers, within the framework of support measures aimed at helping West African states to meet their obligations. A dialogue on the implementation of the moratorium was started with manufacturers and suppliers meeting within the framework of the Wassenaar Arrangement.¹³ Perhaps any criteria and limitations set out in an arms trade treaty could incorporate elements of the dialogue within the framework of the implementation of the ECOWAS Convention.

Conclusion

The adoption on 14 June 2006 of the ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials translates the political vision of ECOWAS Heads of State and Government concerning small arms control into a legal instrument. This particular, and indeed original, political vision, as contained in the Declaration of a Moratorium, is now justified by the current international initiatives on the control of arms transfers and the proposed principles that should govern such transfers. However, if this policy is to be implemented effectively and efficiently, there will need to be—in addition to the necessary technical and financial resources—adequate and functioning institutional arrangements in place at the national and subregional levels with the capacity to play their role in full. In this respect, the ECOWAS Commission, the cornerstone of this arrangement, must strengthen its own institutional capacities while strongly supporting the institutionalization and operation of the national commissions of member states and the restructuring of civil society organizations working in this field.

Notes

1. Declaration of a Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons in West Africa, in United Nations document A/53/763-S/1998/1194, 18 December 1998.
2. At the time of writing, pending the entry into force of the ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials, the moratorium still remains the foundation of ECOWAS policy in this area after being renewed for a third time in October 2007.
3. The text of the code is reproduced in J. Seck, 2000, *West Africa Small Arms Moratorium: High-Level Consultations on the Modalities for the Implementation of PCASED*, Geneva and Lomé, UNIDIR and United Nations Regional Centre for Peace and Disarmament in Africa, <www.unidir.org/pdf/ouvrages/pdf-1-92-9045-000-1-en.pdf>.

4. That being the prohibition of the manufacture and transfer of arms within a specific time frame with exemptions under specific circumstances.
5. Available on line at the following address: <www.ecosap.ecowas.int/en/ecosap/strategic_docs/convention/convention_small_arms.pdf>.
6. See <www.controlarms.org> and <disarmament.un.org/cab/ATT/index.html>.
7. To date, national coalitions have been formed in all member states except Cape Verde, Ghana, Guinea and Mali.
8. Within the framework of the early warning system, ECOWAS territory is divided into four observation and monitoring zones, the offices of which are responsible for gathering information for the Observation and Monitoring Centre located in Abuja, Nigeria.
9. ECOSAP took over from PCASED, the United Nations programme which had supported ECOWAS in the implementation of the moratorium between 1999 and 2004.
10. The report on this evaluation, jointly conducted by the Small Arms Unit and ECOSAP, will be available toward the end of 2008.
11. See article 28 of the ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials.
12. See N. Florquin and E. Berman (eds), 2005, *Armed and Aimless: Armed Groups, Guns and Human Security in the ECOWAS Region*, Small Arms Survey, Geneva.
13. See <www.wassenaar.org>.

