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THE ROLE OF AFRICAN REGIONAL ORGANISATIONS IN MONITORING COMPLIANCE WITH IHL STANDARDS: A CASE STUDY OF ECOWAS

**By
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INTRODUCTION

Regional organizations are international organizations, as they incorporate international membership and encompass geopolitical entities that operationally transcend a single nation state. However, their membership is characterized by boundaries and demarcations characteristic to a defined and unique geography, such as continents, or geopolitics, such as economic blocks. They are established to foster cooperation and political and economic integration.

Before touching on African regional organizations, it should be stated, as a background fact, that African countries have ratified the primary international humanitarian law (IHL) treaties. The latest, South Sudan, did so in July 2012.⁶²³ What this means is that African States have consented to respect and ensure respect for IHL during peace times and in or after armed conflict. It is, however, not enough for states to give their consent to respect and ensure respect for IHL on paper; such consent is only a first step. The consent must be translated to reality. This can be better done by groups of countries coming together. This is where the role of African regional organisations comes into focus.

AFRICAN REGIONAL ORGANIZATIONS

Eight Regional Economic Communities are recognized by the African Union as officially representing regional organisations of African countries.⁶²⁴ There are actually more regional cooperation frameworks, but only these eight are recognised by the African Union's Assembly of Heads of State and Government. These are:

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⁶²³. <http://www.icrc.org/eng/resources/documents/news-release/2012/south-sudan-news-2012-07-09.htm>.

⁶²⁴. Regional Economic Communities in Africa, at http://www.claiminghumanrights.org/african_recs.htm, accessed on 24/05/2013.

- i. Arab Maghreb Union (AMU)
- ii. Common Market for Eastern and Southern Africa (COMESA);
- iii. Community of Sahel-Saharan States (CEN-SAD);
- iv. East African Community (EAC);
- v. Economic Community of Central African States (ECCAS);
- vi. Economic Community of West African States (ECOWAS);
- vii. Intergovernmental Authority for Development (IGAD); and
- viii. Southern African Development Community (SADC)

ECOWAS is instrumental in promoting compliance with IHL standards in many ways. As its full name suggests, ECOWAS comprises West African States, namely: Nigeria, Benin Republic, the Gambia, Mauritania, Guinea, Guinea Bissau, Ghana, Ivory Coast, Senegal, Togo, Burkina Faso, Cape Verde, Liberia, Mali, Niger, and Sierra Leone. The initial aims and objectives of the organization were basically economic. However, subsequent Protocols enabled the body to monitor compliance with IHL standards. The Protocols include the following:

- i. ECOWAS Revised Treaty (1993)
- ii. Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security (1999)
- iii. Supplementary Protocol on Democracy and Good Governance (2001)
- iv. Protocol on Non-Aggression (1978)
- v. Protocol on Mutual Assistance on Defence (1982)

Drawing power from chapter IV of the Protocol Relating to the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security, a sub-regional body known as ECOWAS Warning and Response Network (ECOWARN) has been formed within ECOWAS. It is a peace and security observation body whose objectives include monitoring compliance with IHL standards even before the outbreak of war. Another very relevant objective of the body is the monitoring of small arms trafficking in the West African sub-region.

Before going into specifics on ECOWAS' role in monitoring compliance, it should first be made clear what the IHL standards are, the compliance with which is being examined.

THE IHL STANDARDS

The first point to stress is that the central objectives of IHL are two-fold: firstly, to limit or prohibit the use of certain means and methods of warfare and secondly, to establish the protection of victims of war.

IHL is to a large extent codified in treaties, particularly the four Geneva Conventions of 1949 and the two Additional Protocols of 1977. Article 3 is common to all the four conventions.

Generally, all parties to a conflict must comply with principles of IHL as a matter of obligation. These include: the principle of distinction between civilian and military targets; the protection of civilians; avoidance of direct attacks on civilians or non-military objects; prohibition of indiscriminate attacks which do not attempt to distinguish between military and non-military targets or which use inherently indiscriminate weapons; disproportionate attacks which, while aimed at a legitimate military target, have a disproportionate impact on civilians relative to the military objective.

Also, parties must take measures to protect the civilian population from the dangers arising from military operations – this includes not locating military objectives among civilian concentrations; civilians must have access to humanitarian assistance, and humanitarian agencies must be allowed access to the civilian population; all prisoners, the wounded and those seeking to surrender must be treated humanely – prisoners must never be killed or held as hostages; anyone responsible for grave breaches of international humanitarian law should be brought to justice in a fair trial, and reparations should be provided to victims of such violations.

Much of the armed conflicts in West Africa are “not of an international character” and the Common Article 3 has provided for the minimum IHL standards in such cases, namely:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- i. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- ii. Taking hostages;
- iii. Outrages upon personal dignity, in particular humiliating and degrading treatment;
- iv. The passing of sentence and the carrying out of executions without previous judgment pronounced by a regularly constituted court,

affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

HOW HAS ECOWAS MONITORED COMPLIANCE?

“Monitoring” here has to do with overseeing, so as to ensure compliance with IHL standards. As is characteristic of all international law, there is no central body that enforces IHL. This is therefore left to the “High Contracting Parties”, i.e. the States, who undertake to respect and to ensure respect for the IHL standards (as embodied in the Geneva Conventions) in all circumstances. Thus, as a first step, the Common Article 3 stipulates that “the parties to the conflict should endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention”.

Over the years, ECOWAS has striven to monitor compliance with IHL standards by a range of mechanisms from judicial to non-judicial, and even punishing violators of IHL rules. There are different stages in the monitoring process and these are: pre-armed-conflict stage, the actual conflict stage, and the post-conflict stage.

i. Pre-armed-conflict stage

During peace time, or before the outbreak of armed conflict, ECOWAS has been active in monitoring and ensuring compliance with IHL by continuous enlightenment of the military formations of the different countries on the rules of IHL. This is in recognition of the fact that rules of war are better learnt, imbibed, inculcated and internalized in times of peace. If IHL must be disseminated as widely as possible as required by Protocol II, such dissemination must be in peacetime. Indeed, ECOWAS States are under an international legal obligation to disseminate and incorporate IHL into their domestic legislation. More specifically, Common Articles 49, 50, 129 and 146 of the four Geneva Conventions provide respectively:

The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

In peacetime, both the military and civilians are made to know the circumstances which would justify the outbreak of war (*jus ad bellum*) and the laws that come into effect and regulate how the war should be fought (*jus in bello*), without prejudice to the reasons of how or why the war had begun.

ECOWAS as a regional organization has been involved in the education and enlightenment of the military and other armed combatants. Training manuals have been produced for the military and in Africa as a whole, which indeed includes West Africa where ECOWAS holds sway, IHL Committees have been set up which advise the Government in discharging its international obligation⁶²⁵. A further peacetime implementation measure in the ECOWAS states is the teaching of IHL in many universities, military schools and colleges, and the periodic workshop of IHL teachers organized by the ICRC. IHL is now in the curricula of many universities in the ECOWAS and its member States try to curb the procurement and proliferation of small arms and light weapons which have admittedly raised significant international humanitarian law concerns in the West Africa sub-region. ECOWAS is involved in regional meetings aimed at integrating national and regional contributions into the Arms Trade Treaty (ATT) implementation. The ATT aims amongst others, at preventing uncontrolled and destabilizing transfers of small arms and light weapons and improve human security. ATT is a legally binding instrument on the highest possible common international standards for the responsible transfer and brokering of all conventional weapons. ECOWAS puts in much effort to ensure compliance with these common international standards for the responsible transfer and brokering of all conventional weapons and their ammunition in order to ensure the blockage of transfer of arms or ammunitions whose nature are of such that can be used to commit serious violations of IHL. Also relevant in this regard is the ECOWAS Convention on Small Arms and Light Weapons, which came into force on June 14, 2006.⁶²⁶ Despite all these, however, small arms and light weapons still abound in the ECOWAS States and are freely used by militants and terrorists to wreck havoc and cause IHL problems. It has truly been asserted that 60 to 90 percent of deaths associated with conflicts in West Africa are linked to the illegal sale and proliferation of small arms and light weapons.⁶²⁷

The breach of IHL rules is heightened in such armed conflicts because, in most cases, the armed combatants do not have prior knowledge of IHL

⁶²⁵. <http://www.icrc.org/eng/resources/documents/news-release/2012/south-sudan-news-2012-07-09.htm>

⁶²⁶. Available at http://www.iagi.org/bdf/docs/ecowas_convention_small_arms.pdf, accessed on 19th May, 2013

⁶²⁷. W. Ahmed, "Armed Conflicts Cost Africa \$18 Billion Annually, available at http://www.dailytrust.com.ng/index.php?option=com_content&view=articles&id=160370:armed-conflicts-cost-africa-18bn-annually&catid=1:news&Itemid=2, accessed on 19th May, 2013.

requirement during **combat** as such people quite often have little or no formal education.

- ❖ ECOWAS has over the years played a role in Pacific Dispute Resolution, in a bid to remove what would otherwise constitute acceptable justifications to engage in war (*jus ad bellum*). It is a notorious fact that the ECOWAS States have often been bedeviled by one armed conflict after another. ECOWAS has tried to peacefully settle the disputes so that they do not degenerate to war. The search for pre-emptive action which would nib any war in the bud, led to the adoption of ECOWAS Conflict Prevention Framework (ECPF) by ECOWAS in the year 2008, which is mandated to act as strategic framework for improving conflict prevention and human security. Over time, ECOWAS has contributed significantly to peace and security in Ivory Coast (Cote d'Ivoire), Guinea Bissau, Liberia, and Sierra Leone where violent conflicts erupted. It is plausible that if the military junta in Cote d'Ivoire had accepted the schedule for restoration of peace as proposed by ECOWAS, it would have averted the bloody armed conflict which left many dead and many more terribly wounded or injured. The international humanitarian law crises would have been avoided.

- ❖ ECOWAS ensures compliances of its member States with IHL standards by joint training with reputable international organizations such as the United Nations and the International Committee of Red Cross (ICRC). Such collaboration ensures that the participants from ECOWAS States know about, see the need of, and actually do comply with IHL standards when the need arises. In the recent armed conflict in Mali, both the Islamic insurgents and Malian forces were reportedly accused of human rights abuses and total disregard for IHL. The ECOWAS force (collaborating with African Union, known as AFISMA) collaborated with the European Union training mission to respond to these concerns and ensure that there was compliance with respect for human rights and IHL.⁶²⁸

⁶²⁸. C. Mills et al, "The Crisis in Mali: Current Military Action and Upholding Humanitarian Law", available at <http://www.google.com/url?q=http://www.parliament.uk/briefing-paper>, accessed on 23rd May, 2013.

ii. **During Actual Armed Conflict**

❖ During actual conflict, it is part of ECOWAS' mandate to visit Prisoners of War (POW) and other detained persons, and also supply medical care and protection for civilians who are caught in the armed conflict. This is in the discharge of its duty to monitor compliance with IHL standards. In prosecuting the war, ECOWAS troops are expected to comply with IHL and also ensure compliance by the combatants. It is however not uncommon to hear of ECOWAS troop members being themselves accused of gross violations and non-compliance with IHL.⁶²⁹

❖ As a way of monitoring compliance while the war goes on, ECOWAS is required to submit regular reports on its implementation of IHL obligations. This periodic self-reporting to an international monitoring body, of IHL compliance is traditionally required of States Parties.⁶³⁰ ECOWAS is said to have been doing this self-reporting although irregularly.⁶³¹ The view has been advanced that since armed groups have obligations under IHL, they could also be formally or informally encouraged to also periodically report on their compliance with IHL. The mere responsibility for writing such reports and collecting the necessary data, it is thought, could increase the awareness of IHL among some segments of the group and add to their sense of ownership of these laws.⁶³² This is a welcome suggestion though it is doubtful that the armed groups would comply with such reporting obligation.

❖ ECOWAS acts as a "Protecting Power" during the armed conflict, whose duty it is to safeguard the interest of the Parties to the conflict. This is provided for in the four Geneva Convention⁶³³ and in Additional Protocol I.⁶³⁴ The Protecting Power is to ensure that IHL is protected, and that the interest of the wounded, prisoners and civilians are protected. A Protecting Power is normally a third neutral state. Protecting Powers have been rarely used. This is due to the difficulty on the part of the parties in conflict to agree on the two countries to appoint as neutrals. In the 2011 Libyan Crisis, the

⁶²⁹. Comfort Ero, "ECOWAS and the Sub-regional Peacekeeping in Liberia", available at <http://sites.tufts.edu/jha/archives/category/comfort-ero>, accessed on 23rd May, 2013.

⁶³⁰. E. Komblum, "A Comparison of Self-evaluating State Reporting Mechanism", 77 *IRRC* (1995) p. 128.

⁶³¹. *Ibid.*

⁶³². *Ibid.* (i.e. E. Komblum).

⁶³³. See Article 8 of Geneva Conventions I – III, and Article 9 of Geneva Convention IV.

⁶³⁴. Article 10 of Geneva Convention IV and Article 1 of Protocol I.

United States appointed Turkey to safeguard its interests, but otherwise the protecting power measure is rarely used in African conflicts. Apart from the Libyan example, the only other occasion when a protecting power was appointed in an African armed conflict was during the Suez Canal Crisis of 1956. However, ECOWAS can come in as a protecting power if the Parties are not able to agree on neutral states and if they are agreed on ECOWAS playing that role. This is in line with Article 5 (4) of Additional Protocol I which:

If... there is no Protecting Power, the Parties to the conflict shall accept without delay an offer which may be made by the International Committee of the Red Cross **or by any other organization which offers all guarantees of impartiality and efficacy**,⁶³⁵ after due consultations with the said Parties and taking into account the result of these consultations, to act as a substitute...

❖ ECOWAS has over the years been providing safe passage to people who are running away from armed conflict areas or war zones, to refugee camps or some relatively safe haven. In situations of armed conflict displacement rarely remain confined within borders. They spill over into neighbouring countries and can upset regional stability, and therefore compels a regional response – and ECOWAS has been up to the task. ECOWAS does not only ensure safe passage to those fleeing from war zones but it also affords protection of the rights of refugees. Article 59 of the ECOWAS Treaty 1975 and Article 3 of the 1979 Protocol relate to Free Movement of Persons, Residence and Establishment, and refugees from ECOWAS States are covered by these treaty provisions, quite apart from, or additional to their rights under other refugee protection regime. Despite treaty obligations, however, a few instances exist where some ECOWAS member States have reneged in their obligation to allow refugees. For instance, in 1997 Ghana denied entry to refugees who were fleeing from Liberia during the Liberian civil war. ECOWAS appeared incapacitated in the face of this clear non-compliance with IHL. There was no sanction against Ghana.

❖ ECOWAS sometime work in partnership with third parties such as ICRC and the United Nations in the enforcement of compliance with

⁶³⁵. Emphasis mine.

IHL. For example, the United Nations authorised ECOWAS' intervention in Liberia.

ii. Post Armed Conflict State

- ❖ ECOWAS member States do not just stop at contributing troops to fight to stop gross breaches of IHL, they do more even the war would have been lost and won. The first task for ECOWAS is the rebuilding of structures and consolidation of peace. ECOWAS members States normally contribute in cash and kind for this purpose. Such donations and consolidation of peace are to the benefit of the injured, the wounded, the displaced and other casualties of the armed conflict in the State concerned.
- ❖ Concomitant with funding, ECOWAS tries to uncover those who had committed IHL violations when the war lasted. This is done by setting up of fact-finding commissions. Such fact-finding may engender reconciliation, reparation, and retribution.
- ❖ On the judicial side ECOWAS member States have the Community Court of Justice of the Economic Community of West African States (ECCJ). The court has so far been very active in adjudicating on human rights cases. Not much has been done in the case of violations of IHL rules, much action in this regard has come from the International Criminal Court.

CONCLUSION

The monitoring of compliance with IHL standards is the responsibility of all. This requires that everyone must be enlightened enough as to what the principles or standards are. IHL cannot be taught in isolation, but as part of a wider formal education. This requires that the governments of ECOWAS member States should place a high premium on education in their annual budgetary allocation and actually ensure that the budgeted sum is utilized for the purpose. On the whole, it is clear that there are instances of violation of IHL standard even by ECOWAS, but there are equally clear evidence that ECOWAS has played a significant role in monitoring compliance with IHL.