Analysis of the ECOWAS Convention on Small Arms and Light Weapons and recommendations for the development of an Action Plan

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1. Introduction

The ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials, adopted on 14 June 2006 resulted from the transformation of the ECOWAS Moratorium on the Importation, Exportation and Manufacture of Light Weapons into a legally-binding convention. The Moratorium is limited in time and represents a political engagement. Moreover, the fact that it lacked a detailed text made it difficult to implement in practice. An evaluation report carried out in 2002 by independent experts revealed a number of weaknesses that led to the breach by certain States of the Moratorium, and in certain cases to grave negligence on the part of some. The voluntary nature of the Moratorium was the principal reason for the lack of sanctions and measures attached to it, not to mention capacity to implement it effectively. Furthermore, the lack of an effective strategy for ensuring communication between ECOWAS member states and harmonisation of verification mechanisms also led to the poor implication of governmental actors and civil society in implementing the Moratorium. Indeed, many people ignore the existence of the Moratorium to this day.

The devastating consequences of small arms and light weapons (SALW) proliferation continue to pose a threat to stability and security in the sub-region. With a view to consolidate and further promote peace building and reconciliation, ECOWAS Heads of State and Government decided at their Summit in Dakar on 30 January 2003 to transform the Moratorium into a legally-binding Convention.

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1 Economic Community of West African States.
2 The full text of the Convention is available at: http://www.grip.org/research/ECOWAS_convention_ENG.pdf
3 See: http://www.grip.org/bdg/g1649.html; the Moratorium was adopted in 1998 and renewed in 2001.
4 While the Moratorium’s Code of Conduct, adopted on 10 December 1999 set out to tackle for the first time several aspects of the small arms problem, it quickly proved to be ineffective in practice.
The Moratorium's transformation into a legally-binding Convention was the result of an integrated process that depended on the contribution of several actors, in particular the European Union (EU), Canada and Switzerland. West African civil society also played an active role in the process, submitting a proposal for a protocol in Bamako in March 2005.

The latter served as a basis, along with a draft convention drawn up by the Programme for Coordination and Assistance for Security and Development (PCASED), for the development of a draft convention text by two consultants selected by the ECOWAS Secretariat in December 2005 for this purpose. The project drawn up by the consultants was examined at two meetings of independent experts and government officials in March and May 2006, respectively, before being submitted for approval by Heads of State and Government at their Summit in Abuja, in June 2006.

2. Analysis of the Convention

The Convention consists of a preamble and seven chapters, which contain a total of 32 Articles.

PREAMBLE

The preamble refers to a series of fundamental texts and stresses a number of key principles, in particular States' rights to self-defence, non-interference in the internal affairs of another State, and the prohibition to use or threaten to use force against another State.

It also points to certain legal instruments within ECOWAS, in particular the ECOWAS Protocol relating to Conflict Prevention, Management and Resolution, Peace-keeping and Security, which provides the basis for ECOWAS policy in the fields of defence, security and peace building.

In this section, ECOWAS member states also express their concern regarding the effects of SALW proliferation, which is perceived as a direct threat to human security, a universal concept which extends beyond the concepts of state security or commercial safety.

They also underscore their determination to consolidate the gains of the Moratorium through a legally-binding convention, and to increase the capacity of the Executive Secretariat to combat illicit SALW. The latter point is very important because practically all the chapters of the Convention refer to the tasks incumbent on the ECOWAS Secretariat in order to ensure the effective implementation of the Convention.

CHAPTER I – DEFINITIONS AND OBJECTIVES

In order to ensure the uniform interpretation of the Convention, this chapter defines a number of key terms according to internationally agreed/validated definitions. Among these are:

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6 The project of drafting a Convention was made possible through EUR 515,000 in financial support from the EU.

7 The PCASED was established in March 1999 for a 5-year period in order to support the Moratorium.

8 The experts appointed to draft the Convention project were Dr. Sola Ogunbanwo (Nigeria), international consultant, and the author of this note, Mr. Ilhan Berkol (Belgium), researcher at GRIP.

9 Examples include the principles set out in the UN Charter and under international humanitarian law and human rights law, the ECOWAS Revised Treaty (notably Articles 58 and 77 relating to regional security and sanctions, respectively), UN Security Council Resolution 1325 on women, peace and security, as well as a series of initiatives such as the UN Programme of Action, the Firearms Protocol, the UN Instrument on small arms traceability, the Bamako Declaration, and the African Common Position of 2006 for the UN SALW Review Conference.
- **Small arms and light weapons**, with a distinction\(^{10}\) being made between the former which are designed for individual use, and the latter which are designed to be used by group of persons;
- **Ammunition**, which are excluded from all existing international instruments. Their inclusion here is a novelty as the Convention considers them as a weapon as such and therefore subject to all its provisions. ECOWAS member states understood the importance of ammunition since, on the one hand weapons cannot function without them, and on the other their surveillance can lead to illicit weapons;
- **Other related material**, such as necessary components and spare parts should also be subject to controls, which is also a novelty;
- **Transfers**, which are defined for the first time in an international instrument. The definition takes into account any movement of arms and not only exports, as is usually the case. Other transfers, such as transport, transit, import and use of arms are also included.
- **Non-state actors**, who are also considered for the first time in an instrument of this kind. As such, the sub-Saharan region has taken an important and innovative initiative that has still not been defined at the international level.

This section of the Convention also lays down the **objectives**, which are to consolidate, improve and adapt the gains of the Moratorium. The Convention is proactive, and the concept of prevention permeates the text. This is another novel aspect of the Convention, because in general the existing instruments target weapons that are seized in illegal situation, which means that it is necessary to wait before a tracing operation can begin. Under the ECOWAS Convention, weapons are checked from the beginning of the transfer and any suspicion of deviation will quickly give rise to tracing. The proactive controls that ECOWAS member states have accepted under this Convention have already been refused on political-commercial grounds by several states during debates in the United Nations.

**CHAPTER II – TRANSFERS OF SALW**

While retaining the spirit of the Moratorium, the Convention integrates the principle of the ban while allowing for possible exemptions, which operate through the broader concept of arms transfers and includes equipment needed for their manufacture.

A clause banning unconditionally all SALW transfers to non state actors that have not been explicitly authorised by an importing member state is included.

Finally, as SALW are merchandise unlike regular merchandise, they are not subject to Article 45 of the ECOWAS Revised Treaty, which aims at the free movement of goods in the region.

Articles 4, 5 and 6 of the Convention stipulate the conditions, procedures and criteria for exemptions. The objective is to offer member states the possibility to be granted exemption from the ban principle under certain specific conditions, by granting the Executive Secretary the capacity to analyse exemption requests.

Moreover, member states are required to develop strict systems to regulate transfers, while the Secretariat is obliged to justify any notified exemption refusals and publish a detailed annual report on authorisations granted.

\(^{10}\) This is in keeping with the definition provided by the UN Group of Experts on Small Arms of 1997.
Decision-making

The Executive Secretariat provides a first reasoned opinion on the request and transmits it to the Member States, which must decide by consensus. This form of collegial decision-making will build mutual confidence between the states by eliminating any arbitrary behaviour. Indeed, any unjustified refusal on the part of one State would risk putting in the opposite situation come its turn to request an exemption. In the absence of consensus, the ECOWAS Mediation and Security Council must decide.

Article 6 sets out the exemption criteria that authorise the transfer. These criteria were inspired by the various existing documents at the international level, such as the European Code of Conduct and the draft Arms Transfers Treaty (ATT). All the conditions to ensure respect for human rights, application of international humanitarian law, embargoes, the UN Charter and all other treaties or decisions to which member states are bound are all brought together under this Article.

CHAPTER III – MANUFACTURE OF SALW

Articles 7 and 8 set out the principle of strict controls on the manufacture of SALW:

- By regulating the activities of local manufacturers in light of an overall policy of arms reduction and limitation
- By compiling information on industrial manufacture where it exists
- By subjecting arms manufacturing activities to certain requirements related to the provision of precise information to the ECOWAS Executive Secretariat

The Moratorium prohibits local manufacture. However, it became evident that in practice this prohibition was impossible to check, especially in certain States where local manufacture is anchored in the culture of the country. The interdiction therefore risked pushing local manufacturers in total clandestinity. By subjecting the activity to State control, a number of manufacturers would become known and it would be possible to follow their activities in accordance with the requirements stipulated in the Convention (Article 8). Data is to be collected at the national level and transmitted to the ECOWAS Executive Secretariat.

CHAPTER IV – TRANSPARENCY AND EXCHANGE OF INFORMATION

The convention sets out a number of means and instruments likely to promote transparency and build confidence between member states by:

- institutionalising databases and arms registries\(^\dagger\) (Articles 9-11);
- establishing a dialogue with manufacturers and suppliers of SALW (Article 12) to promote their support for the Convention;
- combating corruption through preventive and effective measures (Article 13).

Databases and registries are computerised and centralised both at the national level and at regional level within the ECOWAS Executive Secretariat, and contain all the details about arms transfers. The data is preserved indefinitely. These measures to ensure transparency between states will further build mutual confidence by eliminating the scope for suspicion and mistrust, which often lie at the root of conflicts.

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\(^\dagger\) Registration, along with marking, is indispensable for tracing arms with a view to discovering a possible diversion. In the absence of proper registration it is impossible to determine responsibility for a diversion and thus to sanction the action, resulting in a situation of chronic impunity.
Article 11 foresees for the first time an arms registry for peacekeeping operations, rendering compulsory the registration of any weapon introduced into the sub-region for this purpose. This raised an important problem relating to the management of these weapons, as no country taking part in peacekeeping operations in the sub-region had hitherto wanted to agree to an inventory of the weapons held by their soldiers. As a result, a number of these weapons remained in the ECOWAS territory even after the departure of the peacekeepers, resulting in an important source of proliferation that was particularly difficult to control. With the new measures introduced under the Convention, weapons held by peacekeeping forces can be traced from the time of their entry into the region until their effective withdrawal at the end of the peacekeeping operation.

This chapter demonstrates the important role played by the Executive Secretariat, since it will be responsible for taking the appropriate measures concerning arms registration and for following up with member states. The Secretariat will also have responsibility for providing information and for ensuring follow-up at the international level in order to make the requirements of the Convention known.

CHAPTER V – OPERATIONAL MECHANISM

This chapter sets out the various activities required to ensure that the fight against SALW proliferation is effective.

Civilian possession

Article 14 imposes controls on the possession of SALW by civilians:

- Prohibition on the possession of light weapons by civilians;
- Member state responsibility for the regulation of possession, use and sale of small arms by civilians;
- The ECOWAS Executive Secretary develops the authorisation procedures and communicates them to the competent national authorities;
- Licenses are granted only when there is proof of a legitimate reason for possession, and this following a ‘cooling off’ period of at least 21 days;
- The incorporation into legislation of criminal sanctions for illicit SALW possession and use.

Management and security of stockpiles

This article foresees for the first time in an international, legally-binding instrument the control of military weapons. To this end, member states undertake to:

- Define effective standards and procedures for the management and storage of national stockpiles, including those of manufacturers and sellers as well as private individuals;
- States undertake to regularly review their facilities and the conditions of storage of SALW held by their armed forces and security personnel, and other authorised organisations with a view to identifying surplus and obsolete stocks for destruction;
- Identical measures will be taken for the management of weapons collected in the scope of peacekeeping operations, under the supervision of the Executive Secretariat.
Marking

Article 18 envisages the appropriate marking of all SALW, including their ammunition and other related equipment:

- A "classic marking" that includes a unique serial number, the manufacturer’s identification and identification of the country of manufacture;
- A "security marking" applied to every weapon manufactured after the entry into force of the Convention;
- Marking upon import;
- Marking of ammunition with batch numbers, which must also be applied to their smallest packaging.

Tracing

Article 19 envisages a tracing mechanism based on the obligatory exchange of data on SALW between member states. It was inspired by the best practices of the existing international instruments, and in particular the UN instrument on SALW traceability. However, the latter is a politically binding instrument that envisages a voluntary system in which States reserve the right to refuse to cooperate in tracing requests, under certain conditions. Under the ECOWAS Convention such cooperation is compulsory. Moreover, the Executive Secretariat coordinates the exchange of data between member states as well as the tracing requests themselves.

A member state can therefore initiate a tracing request to the Executive Secretariat if it considers weapons to be illicit, and provides it with the necessary information. Member states subject to a tracing request must respond in a reliable way within one month of receiving the request.

Brokering

Article 20 aims to regulate brokering activities by imposing:

- The registration of brokers, financial agents and agents transporting arms;
- The obtaining of an authorisation for each individual transaction;
- Information on transit points and routes, as well as the brokers and transporters involved in the transaction;
- The criminalisation of illicit broking of SALW.

This constitutes a novelty in the region in the sense that the majority of member states 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 could also deal on the illicit arms market. Others considered that on the contrary, the lack of regulation of brokering activities would constitute a missed opportunity to

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12 The importance of this Article is underlined by the fact that without adequate markings it is impossible to index arms and ammunition in a register.
13 This Article was largely inspired by the draft Convention on the marking, registration and tracing of SALW developed by GRIP: http://www.grip.org/pub/rapports/gg04-4_convmarquage-en.pdf
14 This is a novelty that seeks to enable original markings to be identified in the event that the classic marking has been erased or falsified.
15 See GRIP analytical note on the marking of SALW ammunition, by Holger Anders, "Scope for international minimum standards on tracing illicit SALW ammunition": http://www.grip.org/bdg/pdf/g4575.html
oversee transfers via brokers and, if necessary, sanction illicit activities. Indeed, majority of arms suppliers work through representatives, even if they are not established in the importing country. It was finally decided by the majority of experts to include brokering in the Convention.

Other measures

States commit to update and harmonise their legislation and strengthen cross-border controls. Any activity that constitutes a violation of the Convention will be sanctioned as a criminal infringement. The ECOWAS Executive Secretariat will play an active role in the establishment and implementation of these measures with a view to strengthening sub-regional cooperation. Public awareness-raising programmes will be developed in collaboration with civil society.

CHAPTER VI – INSTITUTIONAL AND IMPLEMENTATION ARRANGEMENTS

This chapter sets out a number of institutional procedures and implementation and evaluation mechanisms required under the Convention. Some of these provisions directly concern member states and attribute to them the principal responsibility for the implementation of the Convention. This includes the establishment of National Commissions and National Action Plans, the reinforcement of state security forces, and promotion of sub-regional cooperation and partnership with civil society.

National Commissions

- Where they do not already exist, National Commissions must be established in accordance with the guidelines contained in the ECOWAS Manual of operational procedures for National Commissions;
- Existing National Commissions must be reinforced in accordance with the requirements of the Convention;
- National Commissions must be granted an independent budget line to guarantee their effective operation;
- National SALW Action Plans must be developed with the participation of all stakeholders, including in particular civil society.

The National Commissions have a leading role in the implementation of the Convention.

ECOWAS Executive Secretary

Article 25 underscores the vital role of the ECOWAS Executive Secretariat in the implementation of the Convention. The Executive Secretariat must:

- Develop a Plan of Action for the implementation of the Convention and submitting it to the member states for adoption;
- Secure the resources needed to carry out its tasks;
- Assist member states and ensure effective cooperation between and within them;
- Supervise the proper implementation of the Convention;
- Draw up an annual report on the implementation of the Convention and collaborate with the ECOWAS Mediation and Security Council on specific questions.

Member states must take necessary measures to endow the Secretariat with the institutional and operational capacity required to carry out its tasks. This is a particularly sensitive yet crucial issue.
Monitoring and implementation of the Convention

The provisions involving the ECOWAS Executive Secretariat in the monitoring and evaluation of compliance with the Convention envisage the establishment of a Group of independent experts appointed by the ECOWAS Executive Secretary. This is yet another innovative feature of the Convention: to carry out its tasks, the group of independent experts will have access to sources of credible information, including member states and arms suppliers, and will submit an annual evaluation report to the Executive Secretariat.

Each State must submit an annual report to the Executive Secretary on its activities related to SALW, and a Review Conference is to be convened as soon as possible after the entry into force of this Convention.

CHAPTER VII – GENERAL AND FINAL PROVISIONS

Complaints and sanctions

In the event of a violation of the Convention, disputes may be lodged with the Executive Secretary, who in turn brings the case before the ECOWAS Mediation and Security Council, which takes the necessary measures. As a last resort, a case may be brought before the ECOWAS Court of Justice (in application of article 77 of the Revised ECOWAS Treaty, which provides for the possibility of imposing sanctions in case of violation of the rules laid down in the Treaty).

Final provisions

The Convention enters into force following the deposit of the 9th instrument of ratification. The depository is the ECOWAS Executive Secretary.

3. Conclusions

West Africa has the particularity of having a long-standing institution, ECOWAS, at its disposal, which is endowed with a structure that will allow the coordination of an instrument such as the SALW Convention. This constitutes a major advantage compared to other regions of Africa, which suffer from the lack of such an organisation\(^\text{17}\). With the transformation of the ECOWAS Executive Secretariat into a Commission in January 2007, it is possible to proceed immediately with the implementation of the Convention.

However, the Small Arms Unit established recently within the ECOWAS Department of Political Affairs and Defence and charged with overseeing the implementation of the Convention is a new entity that must have at its disposal the means necessary to carry out the tasks conferred on it by the Convention. Indeed, the Secretariat plays an active role in almost every Article of the Convention, including coordination, evaluation, and monitoring, none of which can be achieved with the means currently at its disposal. The problems in implementing the Moratorium did not arise solely from the fact that the instrument was not legally binding, but also from the lack of a specialised cell within ECOWAS responsible exclusively for the implementation of the Moratorium and endowed with

\(^{17}\) Such as SADC (South African Development Community), which is lagging behind in the implementation of its SALW Protocol, adopted in 2001. Within the scope of the Nairobi Protocol, signatory States established the RECSA (Regional Centre on Small Arms). The RECSA lacks the support of an organisation such as ECOWAS, however, and must instead assist signatory states without however acting as coordinator in the implementation of the Protocol (in which it is not even mentioned).
sufficient means to do so. One of the first actions of the ECOWAS member states should therefore be to strengthen the Small Arms Unit.

**The European Union and its support to the process**

Donors such as the EU who supported the process of transforming the Moratorium into a Convention are ready to provide the resources necessary to ensure its effective implementation. The EU Council decision of 2004 granting EUR 515,000 for the transformation process\(^\text{18}\), the EU-ECOWAS joint statements since 2005\(^\text{19}\) and the budgetary support granted to ECOWAS in 2006 by the EU demonstrate its determination in this regard. The 2007 German presidency agenda envisages the holding of a Troika meeting with ECOWAS on 24 April and identifies SALW among the priorities\(^\text{20}\).

The statement resulting from the 24 April meeting should note the adoption of the Convention by ECOWAS, establish implementation modalities and envisage EU support for this process within the framework of regional integration. The statement could also refer to the European Commission Communication on governance at the heart of development cooperation\(^\text{21}\), with a view to strengthening implementation of the Convention within the framework of good governance and in line with the European Consensus on Development. Thus, by referring to good governance in security sector reform, respect for the rule of law and human rights — one of the fundamental objectives of the EU —, EU action in the region and in wider Africa would be strengthened. This could be accompanied by an EU joint action to ensure the implementation of the ECOWAS Convention on SALW\(^\text{22}\). This would aim at taking proactive action to prevent problems from arise on the ground and thereby avoid ending up in a situation similar to the Moratorium where after more than 5 years it was finally concluded that the system did not function as planned. For donors it is very important to support the ECOWAS Secretariat from the start of the process.

It should be noted that the EU is a privileged partner not only because of the financial support and development assistance it provides — not to mention its conflict prevention policy — but also because of its role as a supplier of SALW. Indeed, Article 12 of the Convention envisages cooperation and dialogue with manufacturers and international suppliers, and regional and international organisations in order to enlist their support and respect for the spirit and letter of the Convention. The same Article underlines that one of the tasks of the Executive Secretariat is to take necessary measures to access information available within these organisations. Article 28 also envisages the cooperation of suppliers with the Group of independent experts that will begin evaluating the implementation of the Convention.

**Recommendations**

The Executive Secretariat via its Small Arms Unit has begun elaborating an Action Plan to comply with the requirements of the Convention in order to ensure its effective implementation right from its entry into force. It is already possible to list the key actions that need to be taken under the Convention:

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\(^{19}\) Final communiqué of the 8th EU-ECOWAS Ministerial Troika meeting, Niamey (Niger), 4 November 2005, and Final communiqué of the 9th EU-ECOWAS Ministerial Troika meeting, Vienna, 22 May 2006.

\(^{20}\) Council of the European Union, German Presidency – Provisional agenda, Document 16944/06 of 22 December 2006.


\(^{22}\) For example the establishment of a joint EU-ECOWAS monitoring commission for the implementation of the Convention and/or the designation of a EU special representative (or advisor) within the scope of the Convention, who would be assisted by SALW experts.
1) Promoting the ratification of the Convention to member states to ensure its early entry into force. The Executive Secretariat will have main responsibility for promoting ratification, but each member state, civil society and donors that supported the transformation of the Moratorium should also promote the Convention.

2) Evaluate the operation of the National Commissions where they already exist, and prepare their establishment where they do not with the aim of carrying out an assessment of each country's conformity with the Convention. The Executive Secretariat should present an internal report for this purpose along with recommendations, for submission to the member states.

3) The Executive Secretariat must draw up a Plan of Action for the implementation of the Convention, which should be examined first internally, then by independent experts, and finally by government experts (the same process used for the development of the Convention). The Plan of Action should clearly define the role of each actor in the process (National Commissions, various services of the member states, civil society, partner states and organisations, suppliers...)

4) The Executive Secretariat should find the financial and technical resources required for the elaboration and implementation of the Plan of Action, and collaborate with its privileged partners within the scope of the process. The Secretariat should notably have total independence of action as regards finances, expertise and administration.

5) The National Commissions should have permanent staff and budgetary independence, and should work closely with the Executive Secretary as well as relevant State services and civil society. Parliamentary observers could also accompany the work of the Commissions.

6) The National Commissions should elaborate a National Plan of Action in order to implement the Convention in their countries. The Plan of Action should notably foresee the carrying out of a census and registration of local manufacturers, salesmen, brokers and intermediaries.

7) The Executive Secretariat should ensure the establishment of registers and the operational mechanisms set out in Chapters III and IV. To this end, it must be endowed with sufficient technical expertise and must work in co-operation with the national services responsible for surveillance and safety, and to lay down the necessary norms and procedures for this purpose.

8) The Executive Secretariat should also obtain sufficient technical and political knowledge at the international and regional levels in order to establish an effective mechanism to examine exemption requests quickly and agree a maximum period in which member states must decide such requests.

9) The Executive Secretariat's Plan of Action should envisage the exchange of information and a mechanism of cooperation at the international and regional levels in order to carry out permanent monitoring, with a view to ensuring the effective and efficient application of the Convention. The Executive Secretariat acts as interlocutor in relations with international partners. Member states should work with their neighbours in full transparency so that the mechanisms of the Convention serve to building mutual confidence between States.

10) Member states should already begin to take stock of their national legislation with a view to reinforcing this legislation in conformity with the Convention. The Executive Secretary should oversee this task.

11) The Executive Secretariat will have to establish an initial survey of the situation as regards SALW proliferation in the ECOWAS sub-region, in interaction with other neighbouring sub-regions. The survey should be accompanied by public awareness-raising programmes, in collaboration with the media.

12) The Executive Secretariat and member states should already begin to carry out technical and administrative trainings on the various aspects envisaged in the Convention in order to be ready when the Convention will enter into force.
Lastly, one can hope that within the next five years the process will function correctly on the ground, and thus provide an example for action at the global level where initiatives have arrived at saturation point, particularly within the United Nations, while awaiting their practical application at regional level. This will require the active contribution of all the actors involved (ECOWAS, its member states, civil society, the technical and financial partners) and voluntary and effective collaboration between them.

BERKOL ilhan, Analysis of the ECOWAS Convention on Small Arms and Light Weapons and recommendations for the development of a Plan of Action, Note d’Analyse du GRIP, April 1, 2007, Brussels.

URL: http://www.grip.org/bdg/g1071en.pdf