



TRANSIT AND TRANS-SHIPMENT CONTROLS IN AN ARMS TRADE TREATY

PAUL HOLTOM AND MARK BROMLEY

I. Introduction

The drafting of a legally binding international arms trade treaty (ATT) represents a unique opportunity to define common state responsibilities for exercising control over the different stages of the arms transfer process and, as a result, prevent illicit and destabilizing arms transfers.¹ To date, discussions towards an ATT have largely focused on the responsibilities of states that export arms and little attention has been paid to responsibilities for controlling transit and trans-shipment.² However, a large proportion of arms transfers transit through third countries. Transit controls provide opportunities to strengthen state control at a stage when arms shipments are particularly vulnerable to diversion to illicit markets.

Existing international transfer control guidelines generally define requirements for licensing, risk assessments, record keeping and reporting on transit less clearly than those for import or export controls, leaving the precise form of the controls to national discretion. This lack of common standards for controlling transit and trans-shipment deters states from imposing rigorous controls for fear of negatively impacting on legitimate trade flows. By clearly outlining at least the key elements of transit and trans-shipment controls that countries must have in place, the ATT or accompanying official guidance could help to level the playing field between potential transit countries, thus removing this deterrent factor. This would also help to demonstrate that the ATT is relevant for all states interested in preventing illicit and destabilizing arms transfers, not just for major arms exporters.

This paper provides an overview of existing international and regional agreements and best practices for controls on transit and trans-shipment. It discusses national implementation and enforcement of transit controls, illustrated with current practices, and highlights areas where an ATT could contribute to enhancing transit controls and their enforcement. A case study

¹ Negotiations and studies on a possible United Nations arms trade treaty began in 2006 with the adoption of General Assembly Resolution 61/89, 18 Dec. 2006. It is hoped that the UN Conference on the Arms Trade Treaty in 2012 will lead to the finalization and adoption of a treaty text. For more information see the Arms Trade Treaty Preparatory Committee website, <<http://www.un.org/disarmament/convarms/ATTPrepCom/index.htm>>. It is not yet clear what range of arms, ammunition and other materiel would be covered by an ATT. 'Arms' is used here to refer to all items covered by an ATT. See also Holtom, P. and Bromley, M., 'Import controls and an arms trade treaty', SIPRI Background Paper, July 2011, <http://books.sipri.org/product_info?c_product_id=428>.

² On definitions of transit and trans-shipment see box 1. Although there are differences between them, for brevity the term 'transit' is used here to cover both types of transfer.

SUMMARY

● The drafting of the Arms Trade Treaty (ATT) represents a unique opportunity to define common state responsibilities for exercising control over the different stages of the arms transfer process and, as a result, prevent illicit and destabilizing arms transfers. A large proportion of arms transfers transit through third countries. Therefore transit controls provide opportunities to strengthen state control at a stage when arms shipments are particularly vulnerable to diversion to illicit markets.

This paper provides an overview of existing international and regional agreements and best practices for controls on transit and trans-shipment. It discusses national implementation and enforcement of transit controls, paying particular attention to licensing and authorization, record keeping and information sharing as areas where an ATT could contribute to enhancing transit controls and their enforcement. A case study from the United Arab Emirates shows how 16 000 handguns and related ammunition worth more than \$4 million were mislabelled to evade transfer controls when travelling through several states. The case study also shows how arms transfer control legislation can be effectively utilized to pursue a criminal case against those involved, but that more international cooperation is needed to ensure that all of the parties involved in such activities are held accountable for their actions.



from the United Arab Emirates (UAE) shows how mislabelled arms evade transfer controls when travelling through several states and how arms transfer control legislation can be effectively utilized to pursue a criminal case against those involved (see box 1).

Why control arms transit and trans-shipment?

Transit controls allow a state to monitor, verify, permit, deny or seize shipments of arms passing through their territory. This is potentially valuable to governments for several reasons. From the perspective of an ATT, probably the most important reason is the prevention of destabilizing arms transfers. In particular, transit controls reinforce state control over arms being transferred at points where they are vulnerable to diversion to undesirable end-users or illicit arms markets.

International law gives states the right to exercise controls over shipments of arms on their territories. For example, the Convention on International Civil Aviation (Chicago Convention) allows states to deny over-flight or landing rights to flights carrying ‘munitions of war or implements of war’.³ The UN Convention on Transit Trade of Land-locked States grants landlocked states the right of ‘free and unrestricted transit’ of goods across the territory of neighbouring states but makes an exception for measures taken by transit states to fulfil international obligations relating to the import, export and transit of arms (which could include compliance with UN arms embargoes) or to protect their ‘essential security interests’.⁴

More generally, it should be in the national interest to have information on the proposed movement of arms and military equipment across national borders and in the interests of international peace and security for states to ensure that neither their territories nor their citizens and registered companies are involved in illicit or destabilizing arms transfers.

Some states, particularly those seeking to establish themselves as trade-friendly transit hubs, are concerned that the benefits of transit controls would be offset by the additional bureaucratic burden and the resulting possible loss of business to hubs with lighter or no controls. Despite this, two of the world’s largest transit hubs, Hong Kong and Singapore, enforce transit controls. Both issue transit and trans-shipment licences and devote resources to controlling transfers of strategic goods through their territories, including experienced personnel to interdict diversions.⁵ Nevertheless, both have been able to retain their status as trading hubs.

Transit controls reinforce state control over arms being transferred at points where they are vulnerable to diversion

³ Convention on International Civil Aviation, signed 7 Dec. 1944, entered into force 4 Apr. 1947, <http://www.icao.int/icaonet/dcs/7300_cons.pdf>, Article 35.

⁴ UN Convention on Transit Trade of Land-locked States, 8 July 1965, entered into force 9 June 1967, *United Nations, Treaty Series*, vol. 597, p. 3. The exceptions are made in Article 11.

⁵ The transit control systems in Hong Kong and Singapore probably owe more to efforts to prevent the diversion of dual-use goods and materials related to weapons of mass destruction and their delivery systems rather than of conventional weapons. See ‘Emerging issue: transit and transshipment controls’, *NIS Export Control Observer*, no. 4 (Apr. 2003), pp. 18–19.



II. International obligations and guidelines

Transit controls have received little attention in international multilateral regimes and agreements for controlling international arms transfers and in related international best practice guidelines. None of the existing instruments for controlling international transfers of all conventional weapons includes an explicit requirement for states to establish transit controls. However, several instruments that seek to put in place robust systems for controlling international transfers of small arms and light weapons (SALW) do include requirements for transit controls.

The 1996 UN Guidelines for International Arms Transfers, which offer a set of recommended global norms for national transfer controls, call on states to establish import and export licensing but do not explicitly refer to transit controls.⁶ However, complying with UN arms embargoes arguably requires transit controls, as the Security Council resolutions imposing them routinely require states to ‘take the necessary measures to prevent the direct or indirect supply, sale or transfer’ of arms and military equipment ‘through their territories’.⁷ The 2008 European Union (EU) Common Position defining common rules governing control of exports of military technology and equipment (the EU Common Position) does not require states to establish and maintain systems for issuing transit licences. However, it does require states that maintain such systems to assess transit licence applications as stringently as they assess export licence applications.⁸

A number of existing instruments related to SALW transfer controls call on states to implement measures to control transit and trans-shipment of SALW but usually distinguish these measures from controls on exports and imports. For example, the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects simply calls on states to have in place legislation and regulation sufficient to allow for the control of the transit and trans-shipment of SALW.⁹ The 2000 Organization for Security and Co-operation in Europe (OSCE) SALW Document and export control best practice guidelines leave it for participating states to decide whether and how to control SALW in transit through their territories but recommend that, if there is a licensing requirement, the same authorities and assessment criteria be used as for export licences.¹⁰

⁶ United Nations, General Assembly, Guidelines for international arms transfers in the context of General Assembly Resolution 46/36 H of 6 Dec. 1991, Annex to Review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session: report of the Disarmament Commission, A/51/182, 1 July 1996.

⁷ See e.g. UN Security Council Resolution 1970, 26 Feb. 2011, Article 9.

⁸ Council Common Position 2008/944/CFSP of 8 Dec. 2008 defining common rules governing control of exports of military technology and equipment, *Official Journal of the European Union*, L335, 13 Dec. 2008, Article 1(2).

⁹ UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects, A/CONF.192/15, adopted 20 July 2006, para. II(2).

¹⁰ Organization for Security and Co-operation in Europe (OSCE), Forum for Security Co-operation, Document on Small Arms and Light Weapons, 24 Nov. 2000, <<http://www.osce.org/fsc/20783>>, Section IV; and OSCE, Forum for Security Co-operation, *Best Practice Guide on Export Control of Small Arms and Light Weapons, Handbook of Best Practices on Small Arms and Light Weapons, Chapter 5* (OSCE: Vienna, 2003), pp. 2, 5.

**Box 1. An illicit trans-shipment case**

A recent case from the United Arab Emirates (UAE) illustrates how arms can be mislabelled and routed via several states in order to evade transfer controls. It demonstrates how arms transfer control legislation can be effectively utilized to pursue a criminal case against those involved. Unfortunately, it also shows that there is not always sufficient international cooperation, in particular legal assistance, to ensure that all of the parties involved in such activities are held accountable before a court for their part in the transfer control violations.

On 9 March 2011 police seized a container of 16 000 handguns and ammunition worth more than \$4 million in a warehouse in Dubai.^a The handguns were hidden in boxes of furniture. The guns were shipped from Turkey to Port Said, Egypt, before being re-routed through a Gulf state to Dubai, where they were to be shipped to their final destination, Sa'dah, Yemen. Authorities in the UAE charged 11 men with importing and transporting weapons without a licence, with 6 arrested in Dubai. The accused included citizens from Egypt, India, Oman, Qatar, Turkey and the UAE.^b In June 2011, the State Security Court acquitted five of the accused. A cargo clearance officer from Turkey, who was in the UAE for the trial, was sentenced to three years in prison and a \$4000 fine. Two Omanis and three Egyptians were given five year prison sentences and \$4000 fines in absentia. It is unknown if these men will be extradited to the UAE.

^a Issa, W., '16,000 pistols bound for Yemen seized in Dubai', *The National*, 24 Mar. 2011, <<http://www.thenational.ae/news/uae-news/16-000-pistols-bound-for-yemen-seized-in-dubai>>.

^b Dajani, H., 'Six handed jail sentences over 16,000 guns bound for Yemen', *The National*, 28 June 2011, <<http://www.thenational.ae/news/uae-news/six-handed-jail-sentences-over-16-000-guns-bound-for-yemen>>.

Several legally binding instruments for controlling SALW transfers provide more detailed guidance for transit and trans-shipment controls. The 2001 UN Firearms Protocol calls for each state party to have 'measures on international transit' and this language is echoed in the 2006 Economic Community of West African States (ECOWAS) Convention and in the 2004 Nairobi Protocol.¹¹ Although none of these instruments calls explicitly for transit licences, all three require those applying for an export or import licence to receive written authorizations from the transit states permitting the transit. The 1997 Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA Convention) obliges states parties to establish or maintain international transit licensing or authorization systems for firearms, ammunition, explosives and other related materials. In addition, it states that transit should not be permitted before the country receiving the shipment has issued the necessary licence or authorization, and that states parties should not allow the export of controlled materiel to go ahead until authorizations and licences have been granted by all transit states and the importing state.¹²

The CIFTA Convention and the UN Firearms Protocol also require states to ensure that firearms in transit are securely conveyed to 'eliminate

¹¹ UN Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (UN Firearms Protocol), A/RES/255, adopted 8 June 2001, Article 10; Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials (ECOWAS Convention), adopted 14 June 2006, <http://www.unidir.org/bdd/fiche-article.php?ref_article=2836>, Article 4.2; and the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, signed 21 Apr. 2004, <<http://www.grip.org/bdg/g4552.html>> Article 10.

¹² Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA Convention), adopted 13 Nov. 1997, entered into force 1 July 1998, <<http://www.oas.org/juridico/english/treaties/a-63.html>>, Article IX.



loss or diversion' while in transit.¹³ Several of the states that have signed and acceded to the UN Firearms Protocol have legislated for firearms and ammunition in transit to be accompanied by armed escorts. In many cases it is unclear whether these requirements apply to the transit of other arms and military equipment.

An ATT could make a significant contribution to the development of comprehensive and coherent transfer control systems by including a clear requirement for states to ensure that they have legislation, procedures and sufficient resources for controlling transit and trans-shipment.

III. National implementation

Transit controls are implemented, enforced and designed at the national level. States use a variety of methods for controlling transit and trans-shipment, which can involve licensing authorities, customs, border, law enforcement and intelligence agencies, along with government ministries such as those tasked with defence or internal security. Control procedures tend to differ according to the types of arms, modes of transport used, final destinations and end-users. Differences between countries' transit controls, and in many cases the absence of such controls, are explained by national legal heritage and lack of resources and detailed common norms.

Licensing and authorization

Some states require entities seeking to move arms and military equipment through their territories to apply for a transit licence before the shipment enters the territory. The applicant must provide the same information and documentation as for an arms export licence, as well as a copy of the original export licence, and the application is assessed against the same criteria used for an export licence. This approach can lead to potential overlap between different national licensing systems. To avoid overlap, it seems appropriate for the export licence to be issued first based on an assessment of the risks of the transfer. This is because the actual route of the shipment(s) is not always known at the time of the application for the licence. It is for this reason that transit controls remain an important stage for control in the transfer cycle.

In some cases, states employ simplified procedures that only require the exporter to provide the national licensing authority of the transit state in advance with information and documentation on the shipment and points of entry and exit. Although a licence is not issued, this still permits the licensing authority to assess the transfer against its own criteria and decide whether to inspect or seize the shipment. A number of EU and North Atlantic Treaty Organization (NATO) states use this method to control arms in transit to or from another EU or NATO state.

Some states with transit controls require notification of an intention to transit or trans-ship arms only at the points of entry or exit; customs authorities in the transit state demand copies of licences, written authorizations and other documentation provided by the relevant authorities in the exporting and importing states, but only subject them to technical and documentary

¹³ CIFTA Convention (note 12), Article VII; and UN Firearms Protocol (note 11), Article 10.



checks and do not check the shipments themselves. While this approach minimizes the bureaucratic burden and delays to trade flows, it relies on risk assessments conducted by the exporting and importing states and does not afford the transit state an opportunity to make a considered assessment of the potential risks of the shipment using its own information, which might not have been available to the exporting and importing states. A licensing requirement allows such information to be used and provides transit states with specific information about each transfer, such as the transport company used and the volume and types of arms transiting its territory. Systematic recording and analysis of this information could help to inform subsequent transit licensing decisions.

However, this would not prevent situations under which a shipment is detained in transit because the transit state has a prohibition on the items being supplied to the stated end-user, even if the transfer is accompanied by the required documentation and legal in the eyes of the exporting state authorities. For example, a shipment might pass through the territory of an EU member state bound for a destination that is subject to an EU arms embargo, but which is not subject to a UN arms embargo and therefore regarded as legitimate by the non-EU supplying state.

States that issue transit licences require both the licensing authorities and the licence holder to keep accurate records of each case. Some states also require entities granted transit licences to provide their licensing authorities with a customs clearance certificate issued by the end-user's national customs authority to verify delivery. In such cases, licensing authorities have information on licences and deliveries that could usefully be exchanged with other states or reported on. Only a small number of European states currently make data on transit and trans-shipment publicly available. An ATT information exchange or reporting mechanism could provide an ideal means for sharing this information to assist all states parties in improving their assessments of diversion risks when considering transfer licence applications.

Enforcement

Similar to import and export controls, transit and trans-shipment controls tend to be enforced by customs, border, law enforcement and intelligence agencies. Enforcing transit controls includes routine tasks such as checking accompanying documentation and, in a limited number of cases, physically inspecting the goods to see that they correspond with the descriptions provided in licence applications. Ideally, licensing authorities and customs and law enforcement agencies cooperate and share relevant information such as authorizations or denials of transit applications and information collected when shipments arrive in and leave the transit country's territory. This could be done through a secure network. Effective customs checks and inter-agency cooperation can also help to prevent the transit and trans-shipment of arms shipments that are mislabelled. One of the ways in which states with limited resources try to make enforcing transit controls more efficient and secure is to only allow transiting arms to enter and exit the territory through a few designated customs and border posts. These can be the only customs



posts with scanners, access to information on licences and notifications, or personnel experienced in the identification of arms.

Another method for ensuring efficient and secure transit and trans-shipments is to require transport companies involved in the shipment of arms and military equipment to provide customs and border services with copies of export, import and transit licences, end-user certificates, the planned route, arrival and departure information in a timely manner. This is because exporting companies cannot always provide detailed information on the arrangements for transport of the arms shipment when they make their export or transit licence application. It could also help to prevent diversion and ensure the monitoring of arms shipments en route if the relevant authorities at each point of entry or exit immediately inform their counterparts at the next point that the shipment is on its way, including their counterparts on the other side of the border. This could build on existing initiatives for the prevention of illicit trafficking, such as the United Nations Office on Drugs and Crime (UNODC)–World Customs Organization (WCO) Container Control Programme. The programme helps developing countries ‘minimize the risk of maritime containers being exploited and used for illicit drug trafficking, transnational organized crime and other forms of fraudulent activity’.¹⁴ It promotes inter-agency cooperation, cooperation between state agencies and commercial entities, and provides training for ContainerCOMM, an ‘internet based, secure, multifunctional communication system developed by the WCO Secretariat to facilitate the encrypted exchange of sensitive information, particularly the movement of suspected high risk containers’.

States have yet to establish clear language detailing what form transit controls should take under an ATT

IV. Transit and trans-shipment controls in an ATT

Although transit and trans-shipment controls are not explicitly mentioned in the UN General Assembly resolutions on an ATT, they have been listed in the draft papers of the chair of the Arms Trade Treaty Preparatory Committee as activities that should be covered by national legislation and regulations. States have yet to establish clear language detailing what form transit controls should take under an ATT. Possible approaches to defining the responsibilities of states for controlling transit and trans-shipment of arms under an ATT range from outlining detailed prescriptive requirements to put in place transit controls to a general requirement for states to adopt legislation and procedures to control transit. Ideally, an ATT will help states and others to pool their knowledge, ideas and experiences in implementing transit controls by establishing effective systems for (a) the exchange of information between states parties on their transit controls; (b) public reporting on implementation of the controls; (c) the provision, by peers or experts, of guidance on methods to improve national practices once the treaty enters into force such as a user’s guide, best practice guidelines or model legislation; and (d) a system for arranging international assistance to design or implement transit controls.

¹⁴ ‘United Nations Office on Drugs and Crime–World Customs Organization Container Control Programme’, <http://www.wcoomd.org/home_epoverviewboxes_epunodcwcocontainercontrol-programme.htm>.



Effective enforcement of transit controls requires relevant non-state entities involved in the international arms trade, such as producers, export and import companies, and transport companies, to be made aware of the risks of diversion and the penalties for involvement in attempts to divert licit arms shipments to entities other than the declared end-user. An ATT should therefore also encourage state agencies and non-state entities to share information on arms subject to transit controls, on prohibited or suspect end-users, and on companies permitted to engage in, or prohibited from engaging in, international arms transactions.

ABBREVIATIONS

ATT	Arms trade treaty
CIFTA Convention	Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials
ECOWAS	Economic Community of West African States
EU	European Union
NATO	North Atlantic Treaty Organization
OSCE	Organization for Security and Co-operation in Europe
SALW	Small arms and light weapons
UNODC	United Nations Office on Drugs and Crime
WCO	World Customs Organization



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SIPRI BACKGROUND PAPER

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