



IMPORT CONTROLS AND AN ARMS TRADE TREATY

MARK BROMLEY AND PAUL HOLTOM

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 thereby help to prevent illicit and destabilizing arms transfers.¹ To date, discussions towards an ATT have largely focused on the responsibilities of states exporting conventional arms, and little attention has been paid to responsibilities for controlling imports. This is despite the fact that the relevant United Nations General Assembly resolutions state that the eventual goal of the ATT negotiating process is the establishment of a 'legally binding instrument establishing common international standards for the import, export and transfer of conventional arms'.²

International arms transfer control guidelines recommend that states establish and maintain effective systems for import licensing and authorization but, they vary with regard to requirements for licensing, risk assessment, record keeping and reporting. While many states appear to have import licensing systems, the practice is not universal. Furthermore, the application of these systems differs significantly and is largely dependent on the intended end-user and types of arms being imported. Poor import controls have been cited as a key factor in the diversion of arms from authorized to unauthorized end-users and from the licit to the illicit arms market, particularly when forged end-user certificates (EUCs) or EUCs containing false or incomplete information are involved. Developing language that clearly outlines the required elements of national import controls will help to enhance the effectiveness of arms transfer controls worldwide. It will also help to demonstrate that an ATT is relevant for all states interested in preventing illicit and destabilizing arms transfers, not only major arms exporters.

This paper provides an overview of existing international obligations and guidelines for controlling arms imports. It also discusses methods currently used by states to control arms imports, as well as areas where an ATT

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. Import controls represent a vital tool for helping to prevent cases of illicit diversion. They can also enable importer countries to play their part in preventing arms from being used to fuel conflicts or facilitate human rights abuses.

This paper provides an overview of existing international and regional agreements and best practices for controls on arms imports. It discusses national implementation and enforcement of import controls, paying particular attention to licensing procedures, customs controls and the production and issuing of end-user certificates and other similar documentation. Improved standards in all of these areas could play an important role in reducing illicit and destabilizing arms transfers. A case study of transfers of AK-47 rifles from Bosnia to the United Kingdom demonstrates how poor enforcement of import controls can facilitate the diversion of small arms and light weapons (SALW).

¹ Negotiations towards 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 weapons, ammunition and other materiel would be covered by an ATT. 'Arms' here to refer to all items covered by an ATT.

² UN General Assembly Resolution A/RES/61/89, 6 Dec. 2006; UN General Assembly Resolution A/RES/63/240, 24 Dec. 2008; and UN General Assembly Resolution A/RES/64/48, 2 Dec. 2009.



could help to enhance these controls and their enforcement. A case study of transfers of AK-47 rifles from Bosnia to the United Kingdom demonstrates how poor enforcement of import controls can facilitate the diversion of small arms and light weapons (SALW, see box 1).

Why control arms imports?

Import controls provide a government with information on proposed shipments of arms into its national territory. This prior notification enables state agencies to determine whether they want to allow the shipment to take place and whether to subject it to inspection—with the possibility of seizure—on arrival. Particularly important from the perspective of an ATT, effective import control systems can also help to inform decision making by national authorities in exporting states. They can help to assure export control authorities that the proposed shipment has been approved by the importing state and that the importing state is satisfied that the arms will not be diverted to illicit markets. Finally, a requirement to issue arms import authorizations can help to reinforce states' responsibility for ensuring that weapons imported into their territories are not diverted or used in violation of international humanitarian or human rights law.

Effective import control systems can help to inform decision making by national authorities in exporting states

Not all UN member states have provisions for controlling arms imports via licensing or prior authorization. Nonetheless, many states do have systems in place for controlling imports of SALW. In particular, a survey has indicated that more states have legislation and administrative procedures in place for the control of SALW imports than have controls for SALW exports.³ This is understandable given that, although only some states have arms production capabilities, potential arms recipients (both state and non-state recipients)—and particularly SALW recipients—are found in all states. To date, this situation has not been reflected in discussions towards an ATT, which have largely focused on the content of states' arms export controls.

II. International obligations and guidelines

The 1996 UN Guidelines for International Arms Transfers recommend that states 'should ensure that they have an adequate system of national laws and/or regulations and administrative procedures to exercise effective control over the . . . import of arms', and that they 'should establish and maintain an effective system of . . . import licences for international arms transfers with requirements for full supporting documentation'.⁴ The guidelines also stress that 'a requirement by the exporter for import licences or verifiable end-use/end-user certificates for international arms transfers is an important measure to prevent unauthorized diversion'.⁵ Furthermore, they call for recipient

³ A survey conducted in 2006 indicated that 135 states had SALW import controls of some sort and 111 states had SALW export controls. Bourne, M. et al., *Reviewing Action on Small Arms 2006: Assessing the First Five Years of the UN Programme of Action* (International Action Network on Small Arms (IANSA), International Alert, Saferworld and University of Bradford: London, 2006), p. 147.

⁴ United Nations, General Assembly, Guidelines for international arms transfers in the context of General Assembly Resolution 46/36 H of 6 Dec. 1991, A/51/182, 1 July 1996, paras 23, 26.

⁵ United Nations (note 4), para. 33.



states to exercise restraint in their arms imports, noting their ‘responsibility to seek to ensure that the quantity and the level of sophistication of their arms imports are commensurate with their legitimate self-defence and security requirements and that they do not contribute to instability and conflict in their regions or in other countries and regions or to illicit trafficking in arms’.⁶ The guidelines therefore recommend the licensing of arms imports to prevent diversion and also place an obligation on importing states to ensure that the imports are in line with national defence requirements and are not detrimental to regional stability and conflict prevention.

All multilateral instruments related to SALW transfer controls refer to the need for import controls as a means of minimizing the risk of diversion. However, the instruments differ with regard to the level of prescriptive detail they offer on the form that import controls should take. The 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects recommends that states ‘establish or maintain an effective national system of export and import licensing or authorization’.⁷ The 2000 Organization for Security and Co-operation in Europe (OSCE) SALW Document contains a similar recommendation and also states that ‘Before a participating State permits a shipment of small arms to another State, that participating State will ensure that it has received from the importing State the appropriate import licence or some other form of official authorization’.⁸ Importantly, this precludes exports to countries that have no system for providing import licences or authorizations.

The 1997 Inter-American Convention against the Illicit Manufacturing and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (CIFTA Convention) uses similar language but obliges states parties to establish or maintain an ‘effective system’ of import licences or authorizations for ‘firearms, ammunition, explosives, and other related materials’.⁹ Exporting states parties to the CIFTA Convention cannot release a shipment until they have received an import licence or authorization from the importing state, and importing states parties are obliged, on request, to provide confirmation of delivery. Article 10 of the 2001 UN Firearms Protocol places the same obligations on states parties and specifies that the minimum information to be contained in a licence ‘shall include the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a description and the quantity of the firearms, their parts and components and ammunition and, whenever there is transit, the countries of transit’. However, Article 4 of the protocol also states that it ‘shall not apply to state-to-state transactions or to state trans-

⁶ United Nations (note 4), pp. 66–67.

⁷ United Nations, General Assembly, 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).

⁸ 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 III(B), para. 2.

⁹ 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.



fers in cases where the application of the Protocol would prejudice the right of a State Party to take action in the interest of national security consistent with the Charter of the United Nations'. In other words, states can exempt all state-to-state transfers from the conditions set out in the protocol.¹⁰

The 2006 Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials (ECOWAS Convention) and the 2004 Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (the Nairobi Protocol) impose the same obligations for import licensing or authorization systems and confirmations of delivery as under the UN Firearms Protocol.¹¹

The ECOWAS Convention legally prohibits states parties from importing SALW unless they have applied for and received an exemption from the ECOWAS Secretariat. Such exemptions may be granted for the import of SALW for legitimate defence and security needs, law enforcement and

participation in peace-support operations. Non-state actors seeking to import SALW must have the express permission of the relevant state agency of the importing state. Article 6 of the ECOWAS Convention lists grounds for the refusal to grant exemptions. These include (a) failure to comply with procedural and technical requirements when applying for

an exemption but also criteria relating to obligations under international law, including humanitarian and human rights law; (b) provocation or prolongation of conflict or adversely affecting regional security and stability; (c) potential use in or encouragement of terrorism; (d) impact on sustainable development; (e) likelihood of the transfer involving corrupt practices; (f) likelihood of diversion; (g) and others. The ECOWAS Convention is a unique instrument with regards to the legal obligations that it places on states parties seeking to import SALW. It was designed to deal with the challenges posed by the proliferation of SALW in West Africa and is too limited in scope and regional specificity to offer a template for a global ATT. However, it could serve as a model for other regions where uncontrolled flows of SALW or other conventional weapons are a threat to security and stability.

By building on these existing international obligations and guidelines, an ATT could help to ensure that states have appropriate legislation and procedures in place for the effective control of arms imports. In so doing, an ATT could make a significant contribution to the development of comprehensive transfer control systems by all states. Furthermore, distinct from criteria for assessing exports, an ATT could clearly outline a set of criteria to be applied when assessing applications to import arms. This would help to ensure that, when contemplating imports of conventional weapons, states consider their obligations under the UN Charter to ensure 'the establishment and maintenance of international peace and security with the least diversion

¹⁰ 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.

¹¹ 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 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.

An ATT could help to ensure that states have appropriate legislation and procedures in place for the effective control of arms imports



for armaments of the world's human and economic resources'.¹² Importing states should also weigh the risk that proposed imports may involve corrupt practices, a particularly relevant criterion given the prevalence of corruption in the arms trade.¹³

III. National implementation

The methods that states currently use to control arms imports generally differ depending on the type and volume of arms to be imported, the entity for whom the arms are being imported (e.g. government or commercial) and the state agencies involved in the issuing of licences and authorizations. The approaches taken can be classified into four broad categories: (a) a licensing requirement for all imports of conventional arms, (b) a licensing requirement only for the import of particular types of conventional arms (e.g. SALW), (c) a licensing requirement only for the import of conventional arms by non-state entities and (d) control of conventional arms imports only by customs authorities at the point of entry.

Licensing

Many states in the Global South consider arms import licensing a key method for combating diversion and for ensuring state control over arms transfers and over who possesses arms on their territory. Most countries' arms import licensing requirements are not comprehensive. In many cases, import licences may only be required for certain categories of weapons, such as firearms or SALW. Imports of major conventional weapon systems may not be covered since such items can only be legally owned by the states' national security forces. A formal licensing requirement for such weapons could be considered an unnecessary bureaucratic burden. Arms producers might be required to apply for licenses to import parts and components for the manufacture of conventional weapons. In some countries, commercial enterprises involved solely in trade in conventional weapons can apply for licences to import conventional weapons that will be re-exported at some later stage or for certain categories of weapons, such as firearms or SALW, for sale to civilians that are permitted to be in possession of such weapons. There are also likely to be different sets of criteria used to assess applications and obligations placed on licence holders.

Most countries' arms import licensing requirements are not comprehensive

In the Global North, a number of states primarily control the entry of weapons into their territory by means of their national customs agencies and rely on controls on civilian or commercial possession and on exports to prevent the re-export of arms to unauthorized end-users. Whatever its effectiveness in controlling arms imports, such an approach can cause problems for potential exporting states whose export controls forbid the export of arms without the prior provision of an import licence. This is one reason why, in drafting

¹² Charter of the United Nations, 26 June 1945, <<http://www.un.org/en/documents/charter/>>, Article 26.

¹³ See e.g. Feinstein, A., Holden, P. and Pace, B., 'Corruption and the arms trade: sins of commission', *SIPRI Yearbook 2011: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2011), pp. 13–35.

an ATT, consideration should be given to options for obligating states to establish and maintain import licensing or prior authorization procedures, in particular for commercial entities, as part of their comprehensive transfer control systems.

End-user certificates

National authorities considering export licence applications also often require importers to provide EUCs in support of an export licence application. EUCs are documents issued by, or on behalf of, the intended end-user that, at a minimum, provide information on the items being transferred, the destination country and the end-user. They may also contain information on the exporter and assurances regarding the intended end-use and potential re-transfer of the goods.¹⁴ EUCs are regarded as an important tool for assessing diversion risk. The majority of existing best practice documents place the primary responsibility for the proper use of EUCs on the exporting state.¹⁵ However, EUCs are usually produced and authorized by a national authority or commercial entity based in the importing state and can differ in terms of the information that they include and the commitments that they make. The recirculation of poorly produced and easily forgeable EUCs has played a role in many cases of illicit diversion.¹⁶

A number of sanctions panels investigating violations of UN arms embargoes in the late 1990s and early 2000s proposed improving standards in the production and issuance of EUCs as a means of preventing diversion. Both the Rwanda and Liberia panels of experts recommended the creation of a UN-level process for developing standardized EUCs.¹⁷ The issue has been raised in the Organization of American States, the OSCE and the UN and by the states that signed the Nairobi Protocol on SALW. Both the OSCE

¹⁴ If the end-user is a state entity, the export licence applicant must usually provide an EUC issued by the government of the importing state. If the importer end-user of the goods is a non-state entity, other types of documentation may be required and accepted, such as an EUC issued by the non-state entity, an import licence or an import certificate. An import certificate is a guarantee issued by a trusted third party (e.g. the government of the importing country or a chamber of commerce) that the end-user intends to import a given item in a specific quantity. Some states use the standard international import certificate (IIC) developed in the 1950s by the Coordinating Committee for Multilateral Export Controls. For more information see Berkol, I. and Moreau, V., *Post-export Controls on Arms Transfers: Delivery Verification and End-use Monitoring* (Group for Research and Information on Peace and Security: Brussels, 2009).

¹⁵ For example, see Organization for Security and Co-operation in Europe (OSCE), 'Best practice guide on export control of small arms and light weapons', *Handbook on Best Practices on Small Arms and Light Weapons* (OSCE: Vienna, 2003), pp. 53–54; OSCE, Forum for Security Co-operation, 'Standard elements of end-user certificates and verification procedures for SALW exports', Decision no. 5/04, document FSC/DEC/5/04, 17 Nov. 2004, <<http://www.osce.org/item/1699.html?html=1>>; Wassenaar Arrangement, 'End-user assurances commonly used: consolidated indicative list', adopted in 1999, revised in 2005, <<http://www.wassenaar.org/publicdocuments/>>; and Council of the European Union, User's Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, document 9241/09, Brussels, 29 Apr. 2009.

¹⁶ See Bromley, M. and Griffiths, H., 'End-user certificates: improving standards to prevent diversion', SIPRI Insights on Peace and Security no. 2010/3, Mar. 2010, <http://books.sipri.org/product_info?c_product_id=398>.

¹⁷ United Nations, Security Council, Report of the panel of experts pursuant to Security Council Resolution 1343 (2001) concerning Liberia, S/2001/1015, 26 Oct. 2001, para. 27; and United Nations, Security Council, Final report of the international commission of inquiry (Rwanda), S/1998/1096, 18 Nov. 1998, para. 106.



Box 1. The dangers of poorly enforced import controls

A large number of non-state entities, including arms brokers and transport agents, are involved in global supply chains for arms shipments, particularly of SALW. Among their measures to control the activities of such non-state entities, states issue, monitor and assess a wide range of documents, including privately issued end-user certificates (EUCs), import licences and import certificates. Without close oversight, such documentation ultimately relies on the probity of the commercial entities in question to ensure that arms are actually shipped to the stated destination and not diverted elsewhere.

In February 2005 a British import licence and privately issued EUC were submitted to the Bosnian authorities and the European Union military operation in Bosnia and Herzegovina (EUFOR ALTHEA) as part of an export licence application. They were used to obtain permission for the import of more than 100 000 AK-47 assault rifle derivatives, rocket launchers and mortars into the United Kingdom. At least one of these shipments was diverted to Iraqi government forces.^a In total, the British Government issued import licences for more than 200 000 AK-47 assault rifles between 2003 and 2005. The British Parliamentary Committee on Arms Export Controls has recommended that the government should ‘improve the arrangements for monitoring and controlling large volumes of weapons that enter the UK for destruction or re-export’.^b

^a Doward, J. and McDevitt, J., ‘British firm under scrutiny for export of Bosnian guns to Iraq’, *The Observer*, 12 Aug. 2007; and Griffiths, H. and Wilkinson, A., *Guns, Planes and Ships: Identification and Disruption of Clandestine Arms Transfers* (South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons: Belgrade, Aug. 2007), pp. 93–97.

^b British House of Commons, Defence, Foreign Affairs, International Development, and Trade and Industry Committees (Quadripartite Committee), *Strategic Export Controls: 2007 Review: First Joint Report of Session 2006–07* (Stationery Office: London, 7 Aug. 2007), para. 310.

and the UN Office for Disarmament Affairs are currently in the process of developing templates and best practice guides covering the production of EUCs for international transfers of SALW, outlining responsibilities for authorities in importing and exporting states. These documents will offer useful guidance for the key elements of an EUC but will also contain far more detail than would be appropriate in the text of an ATT.

The ATT process represents an opportunity to draw on these various guidelines. Recommendations that could be explicitly referenced in an ATT include (a) limiting the number of officials authorized to issue and sign EUCs, (b) ensuring that all EUCs include information on name, address and telephone number of the signing authority and an expiration date and (c) creating effective systems to prevent the forgery of EUCs. States could also be required to exchange samples of their EUCs and information on the officials authorized to sign them as a means to prevent the forging and abuse of EUCs in cases of diversion.¹⁸

Record keeping and information sharing

Aside from preventing diversion, another core aim of import controls is maintaining accurate records of imports of conventional weapons into a state. The information can come from transfer licensing controls, customs controls and reporting by commercial entities, among others. Non-state entities are often obliged in national legislation to provide information on arms imports to national authorities on a regular basis. This can greatly assist national authorities in the collection of information on arms imports.

¹⁸ This recommendation was included in United Nations, Security Council, Report of the panel of experts on Somalia pursuant to Security Council Resolution 1425 (2002), S/2003/223, 25 Mar. 2003, para. 187.



Such information can also be of use for other states, for example when an exporting state's export controls require confirmation that an arms shipment has been received by the intended end-user. Record-keeping and reporting requirements can help to ensure that state authorities in the importing state receive and record the relevant information. In some cases, national authorities in the importing state in which the end-user is located can provide the authorities in the exporting state with delivery verification certificates (DVCs), confirming that an authorized shipment has been received and is in the possession of the intended end-user. A commitment to provide a DVC on request can be included in an EUC. An ATT could oblige states to provide a DVC or other proof of delivery on request, regardless of whether the commitment has been included in an EUC.

The 1996 UN Guidelines for International Arms Transfers say that 'States should cooperate at the bilateral and multilateral levels as appropriate to share relevant customs information on trafficking in and detection of illicit

arms and coordinate intelligence efforts'.¹⁹ An ATT could help to facilitate such information exchanges. Exporters could be required to provide information on licence applications to authorities in the intended state of import, and importing states could be required to make information available that could assist in exporting states' risk assessments. A number of states in the Global South have argued that an ATT could

include language stating that information they provide should be taken into account by exporting states when considering applications for export licence applications. Although this has mostly been in the context of debates over 'importer rights' and 'exporter responsibilities', it is a potential area of agreement between exporter and importer states.

Ideally, an ATT will help states and others to pool their knowledge, ideas and experiences in implementing import controls

IV. Import controls in an ATT

States have yet to establish clear language detailing what form import controls should take under an ATT. Possible approaches to defining states' responsibilities for controlling arms imports range from outlining detailed prescriptive requirements to a general requirement for states to adopt legislation and procedures to control imports. Ideally, an ATT will help states and others to pool their knowledge, ideas and experiences in implementing import controls by establishing effective systems for (a) the exchange of information between states parties on their import 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 (e.g. a user's guide, best practice guidelines or model legislation) and (d) a system for arranging international assistance to design or implement import controls.

Enforcement of import controls requires relevant non-state entities involved in the international arms trade (e.g. 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

¹⁹ United Nations (note 4), p. 68.



therefore also encourage state agencies and non-state entities to share information on arms subject to import controls, blacklisted or suspect end-users, and companies permitted to engage in and 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
DVC	Delivery verification certificate
ECOWAS	Economic Community of West African States
EUC	End-user certificates
IIC	International import certificate
OSCE	Organization for Security and Co-operation in Europe
SALW	Small arms and light weapons



ABOUT THE SIPRI ARMS TRANSFERS DATABASE

The SIPRI Arms Transfers Database contains information on all transfers of major conventional weapons from 1950 to 2010.

SIPRI data on transfers of major weapons is based on actual deliveries of major conventional weapons defined by SIPRI as: aircraft, armoured vehicles, ships over 100 tonnes, guided weapons, larger radars and other sensors, artillery over 100-mm calibre, missile and gun air-defence systems, and engines and turrets for selected larger platforms.

The information in the database is collected from a wide variety of sources: newspapers and other periodicals, annual reference books, monographs, official national and international documents, information from industry, and blogs and other Internet publications. The common criterion for all these sources is that they are open, that is, published and available to the public.

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SIPRI BACKGROUND PAPER

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