

Small Arms and Light Weapons Transfer Controls: Import, Transit & Trans-shipment

The objective of strengthening controls on the transfer of small arms and light weapons (SALW) is to ensure a more responsible trade, counter the illicit trade and prevent armed violence and conflict. To be effective SALW control is not limited to export control. Consignments of SALW as well as their ammunition, parts, and components, need to be controlled at all transfer points, including at the point of import, export, trans-shipment, and in transit.

Establishing effective transfer controls beyond the point of export is particularly relevant for import-dependent states. Such states are most often the least developed states¹. Nevertheless, each state engaged in importing, regardless of its level of import dependency, may also engage in exporting and, in addition, be used for transits and trans-shipments of SALW and related items. Consequently, any given State should operate an equally effective system to control all international transfers.

Under the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA) States have committed themselves to put in place, where they do not exist, adequate laws, regulations and administrative procedures to exercise effective control over the export, import, transit or retransfer of SALW, in order to prevent illicit trafficking in SALW, or their diversion to unauthorized recipients.² Equally, under the PoA, States undertook to assess applications for export authorizations according to strict national regulations and procedures that are consistent with the existing responsibilities of States under relevant international law, taking into account the risk of diversion of the weapons into the illegal trade.³

Prohibitions under relevant international law

The PoA reiterates that all states have obligations to fully comply with arms embargoes decided by the Security Council in accordance with the UN Charter.⁴ UN arms embargoes must be applied to imports, transits, and trans-shipments as well as to exports, and in practice the embargoes have covered states as well as armed groups.

In addition, the PoA recognizes that the UN Firearms Protocol⁵ establishes standards and measures that complement and reinforce the efforts under the PoA.⁶ States parties to the Protocol, of which there are now 126, must prohibit “the import, export, acquisition, sale, delivery, movement or transfer of firearms their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol or if the firearms are not marked in accordance with article 8 of this Protocol.”⁷

¹ UN list of least developed countries, UNCTAD, available [here](#).

² UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA), Section II, para. 2.

³ PoA, Section II, para. 11.

⁴ PoA, Section I, Preamble, para. 12.

⁵ Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime ([Firearms Protocol](#)), 2001.

⁶ PoA, Section I, Preamble, para. 20.

⁷ Article 3(e) of the UN Firearms Protocol.

In addition, many states have accepted relevant obligations regarding transfers of SALW under agreements they have entered in to with regional and sub-regional partners, as indicated in the PoA,⁸ as well as obligations arising under treaty and customary international humanitarian law (IHL).⁹

The PoA reference to the existing responsibilities of states under relevant international law includes the Arms Trade Treaty (ATT) to which 113 states are parties.¹⁰ The scope of the ATT includes SALW, and related ammunition, parts and components. Under ATT Article 6 States are obligated to prohibit the import, transit or trans-shipment of SALW and the related items that would violate UN Security Council Chapter VII measures. The implementation of UN arms embargoes by ATT states parties is reinforced because they are required, inter alia, to report on steps taken to implement the Treaty (Art. 13), to take measures to regulate brokering (Art. 10) and transit and trans-shipment (Art. 9), to facilitate international cooperation including information exchange (Art. 15) and to take enforcement measures (Art. 14).¹¹

The import, transit and trans-shipment of SALW and related items is also prohibited by ATT Article 6 in circumstances where a State has knowledge that the arms being considered for authorization would be used in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or any other war crime as defined by international agreements to which the State is a party.

Duty to regulate imports, transits and trans-shipments

ATT Article 8 sets out three provisions for regulating imports of SALW and related items. Upon request, an importing State Party is required to provide appropriate and relevant information to assist an exporting State Party in its export assessment under Article 7. Such measures may include end use or end user documentation. States are also required to take measures to regulate imports where necessary, which may include establishing 'import systems'. Further, where the importing State Party is the final destination of the SALW, it can request information from the exporting State Party on pending or actual export authorizations of those arms. Under Article 9 of the ATT, States Parties are specifically required to take 'appropriate' measures to control the transit and trans-shipment of SALW.¹²

Even though Article 7 of the ATT only requires States to carry out an *export* risk assessment, the Voluntary Guide to implementing Article 9 of the ATT on transit and trans-shipment suggests that the same assessment criteria under Article 7, and not only the prohibitions under Article 6, could be applied by State Parties to transit- and trans-shipment "with some exceptions".¹³ States would have to deny transit and trans-shipment authorizations if the transfer poses an "overriding risk" that the SALW could be used, inter alia, to commit or facilitate a serious violation of international humanitarian law or international human rights law. The same could apply to import authorizations.

⁸ PoA, Annex.

⁹ Common Article 1 of the four Geneva Conventions of 1949 and of their Additional Protocol I of 1977 requiring all Parties to respect and ensure respect for IHL "in all circumstances" includes an obligation to refrain from transfers of weapons that would be used for foreseeable IHL violations by other actors. See ICRC 'Understanding the Arms Trade Treaty from a Humanitarian Perspective, Geneva, 2020, pp 12 et seq.

¹⁰ Arms Trade Treaty adopted by the UN General Assembly in resolution 67/234B on 2 April 2013.

¹¹ C da Silva & P. Nevill: Article 6 – Prohibitions, in: C. da Silva & B. Wood (eds.): The Arms Trade Treaty. [Weapons and International Law](#). Intersentia, Cambridge, 2021, p. 111.

¹² P. Danssaert & P. Beijer: Article 9 – Transit or Trans-shipment, in: C. da Silva & B. Wood (eds.): The Arms Trade Treaty, op cit.; and D. Cops, K. Vanheuevswyn: Under the radar: Transit of military goods – from licensing to control. Report, Flemish Peace Institute, 2022.

¹³ Arms Trade Treaty Working Group on Effective Treaty Implementation: Voluntary Guide to Implementing Article 9 of the Arms Trade Treaty, 21 July 2023, para. 51.

Defining Import, Transit and Trans-shipment

Unfortunately, the ATT does not provide definitions for the various activities like import, transit, and trans-shipment or of the regulatory measures that States have to take to control these activities. Thus, in devising appropriate domestic legislation, States Parties must have recourse to existing State practice, the official negotiating records (*travaux préparatoires*) for the ATT as well as international agreements and standards.¹⁴ For instance, the Firearms Protocol establishes clearer requirements and guidance as to the regulatory measures to be adopted, such as an effective system of “import licensing or authorization”.¹⁵

The United Nations' Modular Small-arms-control Implementation Compendium (MOSAIC¹⁶) defines import as “the movement of goods or services into a State's customs jurisdiction”. But Article 2(3) of the ATT makes clear this Treaty only applies when both title and control over the SALW are transferred to the importing State. According to UN General Assembly Resolution A/RES/46/3 of 6 December 1991 this would include ‘all forms of arms transfers under terms of grant, credit, barter or cash’.

Transit is defined by MOSAIC as the “movement of goods across the territory of a State as part of a transfer between two other States, including the transloading of the goods at the points of entry into and exit from the transit State”.¹⁷ Trans-shipment is defined as the “transport of goods to an intermediate location outside the exporting and importing States, where they are loaded to a different transport vessel and transported to their final destination (or additional point of transshipment) without crossing the territory of the State in which the transloading takes place”.¹⁸ Trans-shipment of SALW makes the transport more complicated, thus enhancing the risk of diversion, and reducing the possibility of detection of illegal transactions.

Regulatory and enforcement practices

An effective import system is multi-layered, and its concrete design varies according to transactions and actors involved. For example, regulating SALW procurement from foreign suppliers for national defence and law enforcement usually requires an authorized contract whereas imports for businesses permitted to trade in SALW or for individuals importing firearms for authorized civilian use require import licenses and end use/user documents. Responsibility to authorize import applications might be vested in a central governmental body or be decentralized. Most often enforcement of import laws and regulations is left to customs authorities.¹⁹

Accordingly, customs authorities may perform tasks such as:

- examining goods,
- verifying declaration data and the existence and authenticity of electronic or written documents,
- examining the accounts of undertakings and other records,
- inspecting means of transport,
- carrying out official inquiries and other similar acts.²⁰

¹⁴ P. Danssaert & F. Southward: Article 8 – Import, in: C. da Silva & B. Wood (eds.): The Arms Trade Treaty op cit, p. 178.

¹⁵ Article 10 of the Firearms Protocol has a similar wording to the PoA, Section II, para 11.

¹⁶ [MOSAIC 01.20](#): Glossary of terms, definitions and abbreviations, Version 1.6, 2022-06-09, p. 16.

¹⁷ MOSAIC 01.20: op cit, p. 27.

¹⁸ *Ibid.*

¹⁹ P. Danssaert & F. Southward: Article 8 – Import, in: C. da Silva & B. Wood (eds.): The Arms Trade Treaty, op cit, pp. 185.

²⁰ P. Danssaert & P. Beijer: Article 9 – Transit or Trans-shipment, in: C. da Silva & B. Wood (eds.): The Arms Trade Treaty. op cit, p. 199.

A particular challenge is the practical difficulty of detecting and preventing shipments that are not properly declared or that use fraudulent documentation to hide the ultimate end-use or end-user.²¹

Red flags for possible diversion of SALW may include:

- the destination for a transfer is a prominent trans-shipment hub or Free Trade Zone,
- the number of transit and or trans-shipment points during the transportation of the goods,
- the transport company or freight forwarder is a new or unknown entity,
- parties to the transfer have been cited for previous arms trade violations or customs violations,
- parties to the transfer are on sanctions lists.²²

Recommendations

- States should meet their international legal obligations by establishing equally effective national control systems for *all* types of transfers of SALW and ammunition, including import, transit and trans-shipment.
- States should tailor SALW transfer controls to counter specific risks of diversion inherent to a given type of transfer, such as transit and trans-shipment.

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²¹ *Ibid.*, p. 198.

²² This red flag list is based on the following publication but is equally relevant for SALW control: C. Nelson: *Methods of Strategic Trade Analysis. Data-Driven Approaches to Detect Illicit Dual-Use Trade*. Springer, Cham, 2022, pp. 105 et seq.