

Regulating the Transportation of Small Arms and Light Weapons

June 2024

Introduction

The use of private transport contractors, including for the provision of transportation, freight forwarding and charter services to ship and deliver small arms, light weapons (SALW), and their parts, components and ammunition, is not adequately covered by national legal and regulatory frameworks. Inadequate regulation of SALW transport service providers, border posts and ports encourage unscrupulous trafficking networks to divert shipments.

Key Challenges

The shipment of arms can be easily obscured by a complex supply chain involving a multitude of actors, modes of transport, points of transit and/or trans-shipment, thereby making the monitoring of the cargo and thus its effective control difficult. Complexity raises the possibility of diversion.¹

For example, if regulations regarding trans-shipment, which is where the cargo is reloaded onto a different vessel or mode of transport, have gaps, or where administrative procedures are insufficiently resourced, items of SALW or their ammunition, parts and components, can be diverted with serious harmful consequences.² Another example of regulatory deficiency is where delivery arrangements are made by a person or company acting as an intermediary or broker of SALW transportation, freight forwarding, and charter services and where such transport brokering activity is not included in the law.³ Resources required to maintain effective customs and border controls is also a challenge, especially for the many States with limited financial capacity to employ, train and equip sufficient personnel and to develop appropriate infrastructure. This is doubly true for those States with long porous land or sea borders, and/or which have large territories with remote ports. The problem is further aggravated by corruption, inadequate management, organised crime and conflict.⁴

Relevant International Commitments and Obligations

In 2001 Member States recognised the need to regulate the transport of SALW but it was not until 2018 that they reconsidered the matter of transport security. Originally, in the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects (UNPoA) all States made a commitment “that the armed forces, police or any other body authorized to hold small arms and light weapons establish adequate standards and procedures relating to the management and security of their stocks of these weapons... (including) accounting and control of small arms and light weapons held or transported by operational units or authorized personnel”.⁵

In 2018 all participating States made a commitment in the outcome document of the Third Review Conference on the PoA (RevCon3) to explicitly take steps to secure the transport of SALW during import, export and transit:

¹ Amnesty International/Transarms (2006): *Dead on Time – arms transportation, brokering and the threat to human rights*. Amnesty International; Amnesty International/Transarms (2010): *Deadly Movements. Transportation Controls in the Arms Trade Treaty*.

² Amnesty International/Transarms (2006): *Dead on Time – arms transportation, brokering and the threat to human rights*.

³ OSCE (2003): *Handbook of Best Practices*: p.9

⁴ Brian Wood; Peter Danssaert (2021). “Africa Armed Violence and the Illicit Arms Trade”. In: David Pérez Esparza; Carlos A. Pérez Ricart; Eugenio Weigend Vargas (Editors). *Gun Trafficking and Violence: From The Global Network to The Local Security Challenge*. Palgrave, pp 189-238.

⁵ UN Programme of Action to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects (2001) Section II paragraph 17.

“To take all appropriate steps, in accordance with national legal frameworks, during export, import and transit of small arms and light weapons to secure their transport, including by air and sea, with a view to preventing their diversion.”⁶ [*emphasis added*]

Meanwhile, in parallel, Member States adopted the UN Firearms Protocol in 2001 which requires State Parties to the Protocol to regulate international deliveries and movements of firearms, as well as their ammunition, parts and components according to the provisions in the Protocol. The Protocol is a treaty supplementing the Convention Against Transnational Organised Crime and it requires, amongst other things, record keeping, marking and national authorization of exports, imports and transits. The Protocol defines Illicit trafficking as follows:

“‘Illicit trafficking’ shall mean 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 [*emphasis added*]

State Parties to the Firearms Protocol have also obligated themselves to exchange information on firearms carriers used during sale, import or export:

“... States Parties shall exchange ... relevant case-specific information on matters such as authorized producers, dealers, importers, exporters and whenever possible, carriers of firearms, their parts and components and ammunition.”⁸

Moreover, States Parties agreed to seek support and cooperation from, amongst others, commercial carriers of firearms, their parts and components and ammunition to prevent and detect illicit activities.⁹ In the simplest terms, a “carrier” is the entity legally entitled to carry, hold or transport goods by land, water, and air, from one location to another location.¹⁰ The UNODC Technical Guide to the Protocol stresses, amongst other things, that:

“...exporting States should verify that the company or companies being used to transport arms and ammunition are reliable and have a trustworthy record of ensuring that arms shipments reach their intended final destination,” and that “only an authorized transportation company may be used and the staff of that company must all have been approved to transport firearms and ammunition.”¹¹

The Technical Guide also recommends, for instance, that weapons and ammunition should be transported separately, and that transit State must determine the port of entry and exit, as well as the exact route through its territory as indicated on the export licence.

⁶ Outcome document of the Third Review Conference on the PoA (2018), Section A.2(b), para 24.

⁷ UN Firearms Protocol, Article 3 (e).

⁸ UN Firearms Protocol, Article 12 (1).

⁹ UN Firearms Protocol, Article 13.

¹⁰ The term “carrier” was previously defined as: “entities owning or operating ships, aircraft and other vehicles which are responsible for physically transporting goods across international borders” (Amnesty International/Transarms (2010): Deadly Movements. Transportation Controls in the Arms Trade Treaty. Amnesty International).

¹¹ UNODC (2011): Technical Guide to the Implementation of the 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, pp. 81-82.

Relevant Regional Commitments and Obligations

In addition to the UN instruments above, there are regional and sub-regional instruments on SALW that obligate and encourage the regulation of transport (and financial support) for SALW transfers. For example, in the ECOWAS Convention on West Africa the definition of “broker” includes “the provision of financial support and transportation”¹² and in the Kinshasa Convention on Central Africa the definition includes “dealers as well as financial and shipping agents” who facilitate international transfers of SALW and related materials.¹³ The Kinshasa Convention, which is the most recently established of the regional instruments, requires that “all brokers, including financial and shipping agents duly registered with the competent national authorities, shall obtain a license in their country of origin or in their country of residence for each individual transaction in which they are involved, regardless of where the arrangements concerning the transaction are to be made.”¹⁴

The Participating States of the OSCE are encouraged by the OSCE best practice guide for transfers of SALW to consider as a regulated brokering activity the arrangement by a person acting as an intermediary of SALW transportation, freight forwarding, and charter services, financial services, technical services, and insurance services.¹⁵ The best practice guidelines advises that States could consider establishing licensing systems for brokering the arrangement of transportation, financing, and technical services related to international transfers of SALW. The OSCE best practice guide advises participating States that, amongst other things, ‘the international criteria and commitments governing brokering should be similar to those governing licensing procedures for arms exports or could be applied analogously’.¹⁶

Recommendations

1. Regarding General Obligations:

A State should not authorize carriers, freight forwarders, charterers, shipping agents, shipping brokers involved in the transport of SALW, their ammunition and parts and components (hereafter “related items”) to carry or organise or facilitate the shipment of such items if the most likely result would be in contravention of the State’s international obligations, including a mandatory UN arms embargo, or any other obligations or commitments on non-proliferation, small arms and light weapons or other arms control and disarmament agreements to which the State is a party.¹⁷

2. Regarding national control systems:

States should ensure the establishment and maintenance of a national system to regulate the activities of transport service providers (carriers, freight forwarders, charterers, shipping agents, shipping brokers) involved in the transport of SALW, their ammunition and parts and components (hereafter “related items”). to include:

- a) a register of transport service providers operating within their territory and engaged in the transport of SALW and related items,
- b) licensing of each proposed transport activity that relates to a transfer of such items,
- c) a requirement that applications or authorisations for import and export licences disclose information on the transport (route(s), points of transit/trans-shipment...) as well as the

¹² ECOWAS Convention (2006) ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materials, adopted by the Economic Community of West African States in Abuja on 14 June 2006, Article 1.

¹³ Kinshasa Convention (2010) Central African Convention for the Control of Small Arms and Light Weapons, Their Ammunition, Parts and Components that Can Be Used for Their Manufacture, Repair or Assembly, adopted by the Economic Community of Central African States (ECCAS) in Kinshasa on 30 April 2010 and amended 20 June 2011, Article 2.

¹⁴ Kinshasa Convention (2011), *ibid*: Article 13(7).

¹⁵ OSCE (2003): Handbook of Best Practices: p.9

¹⁶ OSCE (2003): Handbook of Best Practices: pp. 10-14.

¹⁷ For example, obligations of States Parties to the UN Firearms Protocol, the Arms Trade Treaty, the Convention on Transnational Organized Crime and the Convention on Corruption.

registered transport service providers involved, and that the agreed number of stops be limited,

- d) an obligation that the firearms be packed separately from the ammunition, and that constant direct supervision be maintained by qualified personnel, including during loading and unloading,
- e) an obligation on transport service providers to maintain for inspection a comprehensive system of documentation (including manifests, airway bills, bills of lading and invoices),
- f) the investigation and prosecution of carriers suspected with credible evidence to be in breach of arms embargoes or other arms export laws and if proven guilty penalties to exclude them from obtaining authorisation to transport SALW and related items,
- g) steps to encourage transport service providers to use of radio frequency identification (RFID) technology, global navigation satellite systems, satellite communications, and cellular communications technology for real-time end-to-end visibility of shipments,
- h) encourage customs administrations to invest in and use customs-to-customs electronic data exchange systems to include details about the shipment (value, quantity, export licence and other relevant documents on the routes, carrier and other parties involved), and to notify the relevant custom control authorities of the shipment's progress on route and upon its arrival.¹⁸

3. Regarding international cooperation and assistance:

States should, where relevant, seek institutional capacity-building and technical assistance from the World Customs Organization (WCO) through its various assistance programmes. For instance:

- a) the WCO Security Programme aimed at bolstering the capabilities of Customs administrations to effectively address specific security-related risks like the trafficking of small arms and light weapons. The Programme includes, amongst other matters, the Fragile Borders Action Plan, aimed at bolstering the capacities of Member administrations specifically in fragile and conflict-affected situations through training courses and technical recommendations (WCO (2022): "Customs, Security and Fragility: Practices and Recommendations from the North Africa, Near and Middle East Region"); the SAFE Framework of Standards to Secure and Facilitate Global Trade, promotes the use of modern supply chain security standards, like the use of smart security devices to control and effectively monitor the movement of goods in a real-time basis;¹⁹
- b) the Australian Border Force (ABF) / WCO Supply Chain Integrity Project, which aims to tackle the problem of insider threats in the supply chain, also aims to enhance "collaboration with the private sector to promote greater security, transparency and accountability in international trade,"²⁰
- c) the United Nations Office on Drugs and Crime (UNODC) / WCO Container Control Programme, to assist Customs administrations in establishing effective container selections and controls to prevent SALW trafficking and other illicit cross-border activities.²¹

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Sponsored by:

United Nations Trust Facility Supporting Cooperation on Arms Regulation



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¹⁸ Further reading: Amnesty International/Transarms (2010): Deadly Movements. Transportation Controls in the Arms Trade Treaty. Amnesty International; Peter Danssaert (2019): Anti-Diversion Measures. Real-Time Locating System. IPIS vzw.

¹⁹ WCOOMD, [Security Programme](#); WCOOMD, [SAFE Framework of Standards](#) (2021); WCOOMD, [Highlights of the WCO Global Conference: "Enabling Customs in Fragile and Conflict-Affected Situations"](#) (2023).

²⁰ WCOOMD, [ABF/WCO Supply Chain Integrity Project](#).

²¹ [The UNODC-WCO Container Control Programme](#).