

Members of the Slovenian Army load cases with guns and ammunition destined for Afghanistan at Ljubljana Airport, November 2006. © Srdjan Zivulovic/Reuters



Controlling Air Transport

PRACTICE, OPTIONS, AND CHALLENGES

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INTRODUCTION

In early 2006, the French and Belgian governments launched a joint initiative to prevent illicit trafficking of small arms by air. Reflecting growing concerns over the inadequacy or lack of regulations governing transportation agents—especially in the air aviation sector, which is central to much of the illicit small arms trade—the initiative rested on the claim that transport was the ‘weak link’ in the arms transfer chain, as the physical movement of weapons leaves traces—such as flight records and cargo and customs documents—that can be used to detect and stem illicit transfers.¹

While the argument appears sound on paper, there is always a risk that new control frameworks ‘reinvent the wheel’ or are difficult to implement. This chapter steps back from the political debate to assess the strengths and weaknesses of current—and proposed—approaches to the regulation of arms and ammunition transport. It reviews existing laws, regulations, and procedures applicable to the transportation sector, focusing specifically on air transport. It is based on a study of control regimes in place at the international level and in 23 major small arms-exporting states.² The chapter covers three main bodies of law: arms export legislation, customs laws, and civil aviation regulations.³

Its main conclusions include the following:

- Concrete initiatives to control (air) transportation agents have been hampered by the debatable claim that the globalized nature of trade, the large number of economic actors, and the tendency to outsource arms transport-related services to third parties make this unfeasible.
- Arms transfer regimes in the majority of the world’s major exporting countries control transportation directly—through licensing—or indirectly—through the submission of transport information by exporters.
- Customs rules and procedures can be used to trace fully the transport segment of an arms transfer.
- Civil aviation rules are not specifically aimed at preventing arms trafficking. Many of their provisions, however, could be adapted to this goal, particularly those relating to aircraft registration and safety and security measures.
- Existing rules governing arms exports, customs, and civil aviation could be used to tackle illicit weapons transport. Major obstacles in this regard include weak coordination and communication among the different spheres of control and divergent priorities.
- The successful thwarting of small arms trafficking by air will require engaging a much wider spectrum of actors, including customs officials and civil aviation authorities, not only at the policy-making level, but also through monitoring and enforcement.

The chapter starts with a brief description of a legal arms transfer scheme, highlighting its typical processes and actors, including transportation agents. The second section provides an overview of the political debate on transportation

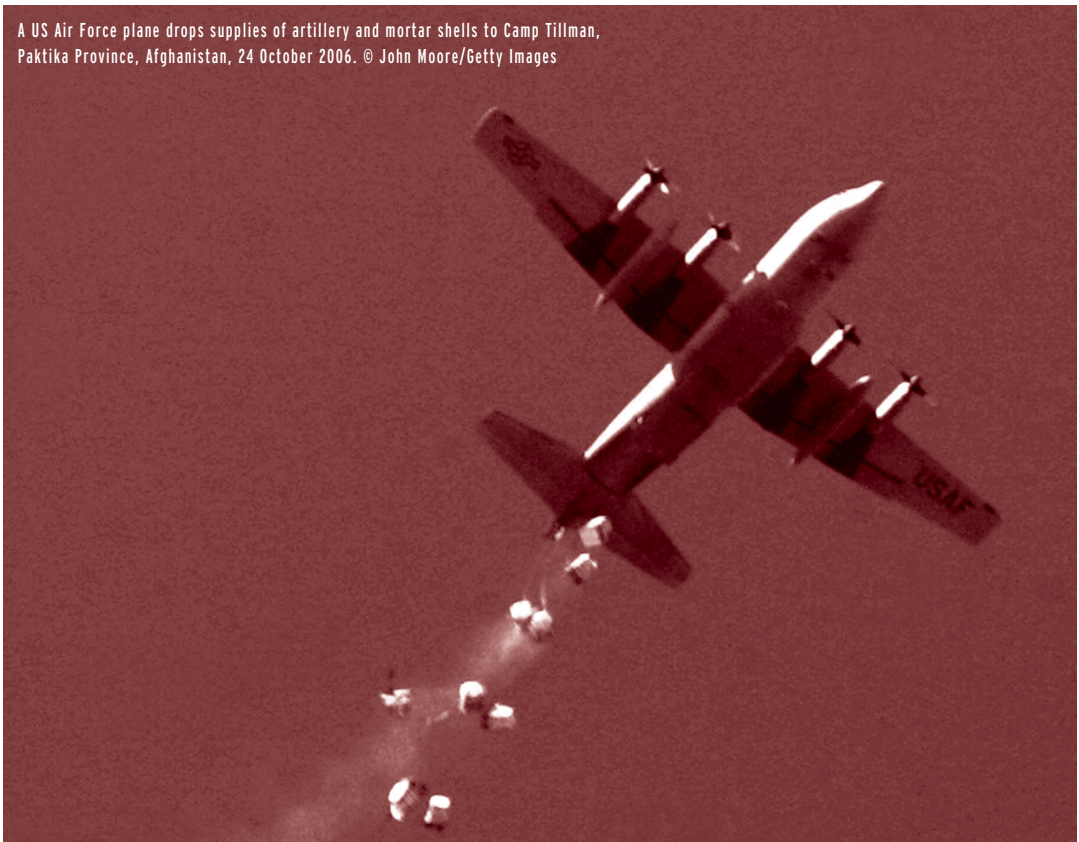
and illicit small arms transfers, and a detailed account of the French–Belgian initiative. The third section analyses existing international and national control regimes, including arms export controls, customs rules and procedures, and civil aviation regulations. This section shows that an extensive body of rules exists to control transportation agents, which could help prevent illicit small arms trafficking. Nevertheless, effective implementation for such purposes requires overcoming several practical and political hurdles, among them the divergent goals of authorities in charge of issuing arms transfer licences, enforcing customs regulations, and applying civil aviation rules.

ARMS TRANSFERS AND TRANSPORTATION⁴

Arms deals are complex transactions that involve a multitude of actors—each with specific roles and responsibilities—along with several states and applicable control regimes. In basic terms, these transactions can be described as involving an exporter, importer, transportation companies, and, potentially, one or more transit countries. In practice, however, many other actors are involved. They include the following:

Brokers are frequently used by producing or exporting companies and governments. They may be in charge of facilitating one or more aspects of the arms transfer, such as the initial identification of buyers and sources of weapons and the organization of transportation and financing.

A US Air Force plane drops supplies of artillery and mortar shells to Camp Tillman, Paktika Province, Afghanistan, 24 October 2006. © John Moore/Getty Images



Freight forwarders are agents contracted by the exporter. Usually specialized in the organization of the shipment of the goods, they may take charge of several services, including the preparation of export and shipping documents, the booking of cargo space, and the collection of freight.

Transportation agents may be thought of as ‘carriers’, companies that physically move goods—by air, land, or sea (AI and TransArms, 2006, p. 2, table). In a broader sense, they have been defined as ‘agents involved in arrangements for the transportation of the arms and associated goods, and include shipping agents and brokers, freight forwarders

Table 2.1 Legal transfer scheme

Stage	Contract negotiation	Preparation of export	Transit	Import
Actions	Decision on the terms of the deal: what is bought, at what price; financing scheme; transportation scheme.	Packaging of weapons; obtaining relevant authorization; transportation to the point of loading; clearing customs of exporting country.	Warehousing/possible transfer to a different mode and/or company of transportation.	Warehousing; transportation to importer/final end user; post-delivery check.
Actors	Buyer/seller/manufacturer; broker.	Manufacturer/exporter; broker; freight forwarder; carrier (air, land, or sea); warehousing agent; handling agent.	Carrier (air, land, or sea); broker; warehousing agent; handling agent.	Importer/end user; broker; warehousing agent; carrier (air, land, or sea); handling agent.
Authorities	In some countries negotiations are subject to licensing; in such cases, relevant authorities are usually those responsible for issuing export licences.	Export licensing authority; origin port, airport, and/or land transport authority; customs authority at export.	Transit port, airport, and/or land transport authority; customs authority at transit.	Import licensing authority; import port, airport, and/or land transport authority; customs authority at import.
Documents	Negotiation licence.	Export licence; end-use documentation; transportation licence/authorization; brokering licence; customs export documents (goods declaration for export); transportation documents (airway bill/bill of lading); dangerous goods declaration (if applicable); forwarders' documents (e.g. certificate of origin, packing list, certified description of quantity and type of goods).	Transit authorization; transit customs documents; transportation/warehousing/handling documents.	Import licence; customs import documents; warehousing documents; transportation documents; delivery verification certificate.

and charterers' (UN, 2001, p. 24). The legal systems analysed in this chapter tend to define the term 'transportation agent' broadly, encompassing not only those responsible for physically moving arms—air carriers and ships, for instance—but also third parties in charge of the organization of transportation.

Warehousing and handling agents are companies responsible for the storage of arms and their handling, especially during transit or transshipment.⁵

Table 2.1 offers an overview of the arms transfer process, including relevant actors, authorities, and documentation.⁶

One of the reasons why arms transfers are very complex is the overlap of roles among the various actors involved. For example, there may be a significant overlap between the activities of a broker and those of a freight forwarder, or between those of a freight forwarder and transportation companies. As a result, there may be confusion as to who is legally responsible for which stage of the arms transfer.

Companies transporting arms are often involved in the shipping of other goods.

Another source of complexity stems from the plurality of legal frameworks that typically govern an arms transfer. Applicable rules tend to be a complicated combination of regimes established by the various countries concerned—those of origin, transit, and destination. Although international standards exist, the prevailing legal reality is one of diversity among the countries involved in a transfer. Such complexity is not unique to the arms trade sector, but arms traffickers can use it to obfuscate the chain of responsibility in an illicit transfer.

Absent safety measures that may be needed, the transportation of small arms does not present particular logistical challenges. Materiel can be shipped in large quantities and in different types of containers; it may also be transported together with other goods on commercial ships and aircraft (AI and TransArms, 2006, p. 30).

The choice of mode of transportation will depend—for small arms, as for any other goods—on the combination of exporter/importer needs, cost, and the destination. While transportation by sea is cheaper and allows for the movement of sizeable cargoes, air transfers will be favoured when 'difficult' places must be reached—including zones of conflict and embargoed recipients. The willingness of some air companies to take on an illicit consignment of arms, provided the pay is good, increases the likelihood that transportation by air will be the chosen means for an illicit arms deal.

The transportation of small arms is usually integrated with that of other commercial goods. By the same token, companies that transport small arms will often be involved in the shipping of other goods. In fact, a recent study indicates that some of the companies involved in the illicit transfer of small arms have also been contracted by government agencies for the transport of humanitarian goods (Griffiths and Bromley, 2009). Commercial flows of small arms are thus not part of a discrete regime that can be easily controlled or restricted—a situation that is exploited by arms traffickers. While this does not preclude effective counter-measures to curb arms trafficking, it does call for more than the mere regulation of arms transfers in isolation.

THE POLITICAL DEBATE

The early small arms debate and the Group of Governmental Experts on brokering

The role of transportation in the delivery of weapons to illicit users and destinations has been a central element of the small arms debate since its very beginning. As early as 1997, the first Panel of Governmental Experts' report on small arms noted that the illicit supply of weapons was 'characterized by a lack of transparency that is due to the

characteristics of small arms and light weapons which can be easily concealed during transport' (UN, 1997, para. 52). The same report pointed to the use of ships with 'bogus registration and flags of convenience' as a typical means of illicitly transferring small arms (para. 53).

Nevertheless, discussions regarding the role of transportation agents in illicit arms deals mainly developed as part of the debate on controlling arms brokering activities. Since 2001—with the publication of the first report by the Group of Governmental Experts (GGE) on small arms brokering (UN, 2001)—transportation has been defined as an 'associated' (or 'related') activity of intermediation, together with such activities as the financing of arms deals. Arguments in favour of more—or more stringent—controls on transportation have been a constant feature of this debate, albeit treated as a 'corollary' to the central issue of intermediation and brokerage. In fact, for at least ten years, such arguments have been effectively trumped by the claim that the nature of the transportation business—globalized and transnational, with outsourcing to third parties on the increase—makes it impossible to enforce state controls effectively.⁷

The elements of the transportation question that are central to current research and political action were all contained in the 2001 GGE report. Based on evidence that transportation agents play a key role in transferring small arms in violation of United Nations (UN) Security Council arms embargoes (UN, 2001, para. 69), the GGE proposed several options for control. These included:

- penalizing actors that take part in the transport of weapons to embargoed destinations (para. 70);
- establishing an additional licensing process for the transport of arms by air, in addition to that applying to arms exports (para. 71);
- requiring the broker to disclose the names of agents, airlines, and routes used in a particular arms deal (para. 73); and
- encouraging industry to adopt a code of conduct with undertakings to provide full information on cargoes and flight plans relating to an arms shipment, and not to ship arms to destinations where they 'could be used in conflict, etc.' (para. 74).

In some sense, the GGE report took one step forwards and two back, as it coupled these proposals for control with counter-arguments that proved powerful in the debate on the issue for the following years. For example, when discussing the possible introduction of an additional 'layer' of licensing applicable to air transport, the GGE emphasized that this would sit uneasily with the 'short deadlines' typical of the airline industry (para. 72). On the other hand, such observations sought to strike a balance between security and trade considerations, a goal seldom pursued in recent transport control efforts.

The GGE also considered the possibility of focusing on the effective implementation of existing legal frameworks rather than on the creation of new rules. Based on 'international agreements and domestic legislation already available to control the airline industry', the report underlined the need for:

- verifying flight plans, particularly those of cargo aircraft on ad hoc charters, at the points of departure and transit;
- comparing end-use documentation submitted at the time of the export licence application with landing permits or certificates issued by the importing state;
- encouraging and assisting national administrations in the enforcement of existing civil aviation regulations, for instance those governing the certification of individual aircraft and airlines (para. 75).

While some regional instruments following the 2001 UN small arms conference provided for the control of transportation agents, at the UN level the question remained largely in the shadows. The two major global instruments for the control of small arms—the UN Programme of Action and the Firearms Protocol—make no mention of the control of transportation agents. Indeed, this gap in the Programme of Action is one of the main reasons behind the French–Belgian initiative.⁸

The most significant UN process on small arms brokering to date—the second brokering GGD—resulted in a report that treated the question of transportation only tangentially (UN, 2007). The document lists transport and freight forwarding among:

activities closely associated with brokering in small arms and light weapons that do not necessarily in themselves constitute brokering [but that] might be undertaken by brokers as part of the process of putting a deal together to gain a benefit (para. 10).⁹

The 2007 GGE report does not contain any specific recommendations for the control of transportation, although it notes that national brokering legislation may provide for:

the control of financial, transport and other services when these are arranged or facilitated by a broker as an integral part of a small arms and light weapons transaction designed to benefit the broker (para. 46).

The French–Belgian initiative

Global instruments on small arms do not provide for the control of transportation. To date, the French–Belgian initiative represents the most concerted effort to prevent illicit small arms trafficking by air. Launched in early 2006, it is a response to the claim that around 80 per cent of small arms transfers in violation of international arms embargoes are carried out using air transportation.¹⁰ During the Security Council debate on small arms in March 2006, the French representative stated that, in the context of the crises dealt with by the Council:

there is a crucial problem, a practical problem, that arises every time: the problem of the transport, including aerial transport, of small arms and light weapons (UNSC, 2006, p. 16).

The problem, continued the French representative, was compounded by the absence or inconsistency of domestic regulations; the fluid connections between the legal and the illegal trade; and the unequal capacities of states to control their airspace. Emphasizing that, despite these challenges, the time to act had come, the representative proposed ‘a process of reflection on the various dimensions of this problem’ within ‘the framework of the European Union and in other contexts’ (UNSC, 2006, p. 16).

The French government proposed tackling the transportation of illicit small arms as a way of dealing with the ‘weak link’ in the chain of illicit transfers; unlike brokering transactions, illicit transportation is likely to be reconstructed and potentially broken due to the ‘paper trail’ it inevitably leaves behind.¹¹ This approach was also aimed at dealing with the lack of relevant provisions in the Programme of Action (UNSC, 2006, p. 16).

From the start, the French–Belgian initiative followed a distinctly regional approach, with parallel tracks being pursued simultaneously within the European Union (EU), the Organization for Security and Co-operation in Europe (OSCE), and the Wassenaar Arrangement (WA). The OSCE was the forum chosen for a first awareness-raising meeting on the issue of air traffic and small arms proliferation, held in Vienna on 21 March 2007. It was selected because

of its capacity to establish regional norms and because of its membership, which comprises some of the major small arms players. The meeting also allowed different economic and political actors to come together and debate the issue; participants included representatives from the International Air Traffic Association (IATA), the International Civil Aviation Organization (ICAO), and the World Customs Organization (WCO) (OSCE–FSC, 2007).

Wassenaar Arrangement best practices

The first normative document to emerge from the French–Belgian initiative was adopted in 2007 by the Wassenaar Arrangement: the *Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport* (WA, 2007). The best practices (BP) cover air transport of small arms, ‘excluding those that are transported by government, military or Government-chartered aircraft’, for which WA participating states ‘recognise that they assume full responsibility’ (sec. 1).¹² The core measures in the BP are aimed at enhancing WA members’ control of air transport through additional requirements at the export licensing stage. In particular, the BP establish that, when issuing export licences, and before the actual export has taken place, a WA member may require information on:

The first normative document of the French-Belgian initiative was adopted by the Wassenaar states.

- the air carrier and freight forwarding agent involved in the transportation;
- aircraft registration and flag;
- the planned flight route, including stopovers;
- records of previous similar transfers by air;
- compliance with national and international norms relating to air transport of weapons (WA, 2007, sec. 2.1).

Mindful of the fact that some of the requested information may not be available at the time of the export licence application (such as details on the transport route), the BP provide that states are entitled to condition the actual export of the material on the submission of such outstanding information (sec. 2.1).

The BP also encourage Wassenaar participating states to exchange information relating to: exporters, air carriers, or agents that fail to provide requested information; ‘an identified destabilising attempt to export [small arms and light weapons] by air’; and planned exports that could ‘contribute to a destabilising accumulation’ or otherwise threaten the ‘security and stability of the region of destination’ (sec. 2.2).

In addition, the BP envisage the provision by exporters of documentation confirming delivery at the intended destination (sec. 2.3) and the referral of cases of concern to ‘relevant national enforcement authorities’ (sec. 2.5).

The BP were later adopted as ‘standard elements for implementation’ by the Forum for Security Co-operation of the OSCE (OSCE, 2008, p. 2). A questionnaire is annexed to the relevant decision, which OSCE members agreed to use to exchange information on national practices to prevent the proliferation of small arms through illicit air transport (OSCE, 2008, annex 2).

The EU strategy

In the context of the European Union, the French–Belgian initiative built on the *Strategy to Combat Illicit Accumulation and Trafficking of SALW and Their Ammunition* (CoEU, 2006). Adopted in December 2005, this document focuses on the small arms problem in parts of Latin America, Central and East Asia, the Balkans, the Middle East, and Africa. Up to that point, the EU’s small arms strategy was essentially based on reaction (such as through disarmament and peacekeeping), but the 2005 *Strategy* also calls for preventive measures to ‘tackle illegal supply’ and include ‘controls on exports of conventional weapons’ (para. 14). In addition, it urges members to pay greater attention to weapons

stockpiles, particularly those in Eastern and South-east Europe, and to ‘the ways and means by which they are disseminated in Africa (illegal brokering and transport)’ (para. 14).

Among its various recommendations for action, the EU *Strategy* emphasizes cross-border measures, including strengthened border controls—in particular air borders—in exporting and importing states (para. 20(a)). More specifically, it advocates:

- programmes to provide equipment and assistance in drafting national legislation on export controls and to train institutions in the states of sub-Saharan Africa;
- training programmes for customs departments and other agencies, in particular in Eastern European countries (para 20(a)).

Within the EU, the *Strategy* calls for: implementation of the EU 2003 Common Position on the control of arms brokering; the establishment of mechanisms for the exchange of information on small arms trafficking networks, in particular for monitoring UN and EU arms embargoes; and the development of a counter-trafficking policy (illicit brokering and transport) using EU air, sea, and land space, together with new alert and cooperation mechanisms and Europe-wide police operations (para 20(a)).

Within this framework, the French–Belgian initiative aimed to update and strengthen the EU Joint Situation Centre’s list of air cargo carriers of concern. First established in 2007, the list was intended as a way to exchange information on suspect air transportation companies among designated national contact points,¹³ and to bring this information to bear on EU states’ arms export licensing decisions. As of May 2009, however, efforts to strengthen and update the list, as pursued by the French and Belgian governments, had yielded few tangible improvements.¹⁴

In addition, during its presidency of the EU, the French government promoted the inclusion of language stressing the need to combat small arms proliferation in the Union’s cooperation agreements with third countries.¹⁵ Failure to comply with these clauses may now entail the suspension of relevant cooperation agreements (French MFA, n.d.).

The French-Belgian initiative targets mainly ‘sizeable’ transfers to embargoed recipients.

Overall, the French–Belgian initiative aims to prevent ‘sizeable’ small arms transfers in violation of international arms embargoes. More specifically, it seeks to make states more transparent and responsible in this area through the exchange of information between national authorities. The initiative implicitly encourages exporters to make greater use of state aircraft or state-contracted private companies, which would entail more protection for the contracted companies and more responsibility for the state contracting them.¹⁶ The underlying idea is to curb the increased freedom enjoyed by private trade companies in the post-cold war era—a goal that arguably clashes with the reality of today’s globalized commodities markets, including small arms, and the pivotal role of private companies within these.

The potential impact of the initiative is also likely to be limited by its restricted geographic and substantive scope. Proponents of the instruments adopted within the WA and the OSCE had intended them as the first step of an ‘incremental’ process that would lead to the adoption of similar, consensual arrangements by other regional bodies, which would eventually cover other modes of small arms transportation (maritime and land) as well.¹⁷ There are no signs of this occurring in the near future; the initiative seems to have lost momentum since the adoption of the *Best Practices* by the OSCE.¹⁸

Some of the measures proposed by the initiative also create practical problems of implementation as they do not adequately reflect certain trade realities. For instance, the Wassenaar and OSCE *Best Practices* request that information on aircraft registration and flag be submitted at the time of the export licence application. Yet, while the flag may be known at that time, ‘the registration will almost certainly not be’; in the ‘unlikely event’ it is known, the

registration may change for technical or operational reasons.¹⁹ In some EU countries, the issuing of an export licence is made conditional on the later provision of information on transport modalities, which suggests that such a system is possible.²⁰ The practicality of such measures is open to challenge by actors that would be called upon to implement them. Yet diplomatic discussions on the French–Belgian initiative were conducted without the meaningful involvement of customs and air industry organizations,²¹ despite initial signs that the process would be inclusive.²²

THE REGULATORY DIMENSION

A broader approach to the development of transfer controls—one involving all stakeholders and different spheres of regulation—would facilitate the identification of existing measures that could be harnessed to attain counter-proliferation goals. As this section of the chapter shows, transportation agents—both general and specific to air transportation—are subject to several control and monitoring measures at the national and international levels. While the priorities of each control regime may vary (such as customs vs. transfer licensing authorities) and do not typically prioritize arms control, these regulations could be used to better effect in tackling the problem of illicit small arms transportation.

Both internationally and domestically, at least three bodies of law are relevant for the control of small arms transportation. The first is represented by arms control regimes. At the national level, these comprise both trade controls—the laws and regulations governing the export, import, and transit of military equipment by or through a country—and the rules on the domestic possession and circulation of weapons. The second body of law is represented by customs controls, which establish—among other things—the information that must be provided when arms shipments cross national borders (imports, exports, and transits). Finally, as far as transportation by air is concerned, a third relevant body of law is represented by national and international civil aviation regulations.

Transportation agents are subject to several national and international control measures.

Arms control regimes

The international dimension

The secondary attention accorded the control of transportation activities in international initiatives on small arms is reflected in the near-total neglect of the issue in international and regional small arms agreements (legally binding or not). As mentioned above, neither the UN Programme of Action nor the UN Firearms Protocol addresses the issue.

Transportation standards do exist at the international level, but only in relation to dangerous goods, which include ammunition. These are contained in the *Model Regulations Elaborated by the Sub-committee of Experts on the Transport of Dangerous Goods of the United Nations Economic and Social Council* (ECOSOC, 2007). Applicable to all modes of transportation (air, rail, road, and sea), the Model Regulations include ‘principles of classification and definition of classes, listing of the principal dangerous goods, general packing requirements, testing procedures, marking, labelling or placarding, and transport documents’ (p. 1). While technically non-mandatory, the Regulations enjoy ‘worldwide acceptance’ (Berkol and Gramizzi, 2004, sec. 2).

Regionally, provisions for the control of transportation can be found in a minority of documents dealing with small arms: the Nairobi Protocol (2004), the Organization of American States’ Model Regulations on brokering (OAS, 2003), and the Economic Community of Western African States (ECOWAS) Convention (ECOWAS, 2006).

The Nairobi Protocol, which commits states parties to adopt national measures to control brokering activities, includes the regulation of small arms transporters through a system of licensing (Nairobi Protocol, 2004, art. 11). In the OAS Model Regulations, the control of transportation agents is effected through the definition of ‘brokering activities’, which include:

transporting, freight-forwarding, [. . .] and delivering firearms, their parts or components or ammunition or any other act performed by a person, that lies outside the scope of his regular business activities and that directly facilitates the brokering activities (OAS, 2003, art. 1).

The ECOWAS Convention, which also defines brokering as including the activity of weapons transportation, contains several specific provisions on the issue (ECOWAS, 2006, art. 1.8). When applying to the ECOWAS Executive Secretariat for an exemption to the Convention’s ban on small arms imports, states parties must include information on:

the number and period of shipments, the routes including transit locations, the type of transport to be used, all companies involved in importing, freight forwarding and handling, details of the storage and management of the weapons whilst being transferred’ (art. 5.1.c).

The Convention also mandates the inclusion in national registries of transport-related information for individual transactions (art. 9.2.e); the national registration of transportation agents (art. 20.1); and the inclusion of information on shippers, routes, and shipping points in brokering licence applications (art. 20.3).

The national dimension

Licensing. Within national arms export regimes, the control of transportation agents can be broadly divided into direct and indirect measures. In the first case, transportation companies are required to possess a written licence in order to transport weapons—either within the national territory or abroad, or both. In the second case, transportation companies do not need a licence to transport small arms; however, those who apply for an export licence must



Thai police officers and soldiers surround a cargo plane from Kazakhstan with a cache of weapons found on board, Don Muang Airport, Bangkok, December 2009. © AP Photo



provide information on transportation (such as companies involved and routes).

The majority of the 23 countries analysed for the study have in place one or both forms of control, although these measures vary in their details.

In eight countries a licence is required before a company may transport small arms (Bulgaria, China, the Czech Republic, France, Germany, South Africa, the United Kingdom, and the United States). In the United States, transportation is included in the definition of brokering activities,²³ which are subject to licensing, regardless of whether they are conducted on US territory.

In Bulgaria, Germany, and the United Kingdom, the licensing requirement explicitly applies to nationals or residents transporting small arms between third countries; that is, it does not cover arms being transported from or to national territory. In Bulgaria, registration is also necessary for individuals and companies wishing to transport small arms. The latter must specify what military items are to be included in the authorization (Bulgaria, 2007a, art. 10(3).13). In Germany, the licensing requirement applies to all nationally registered ships and aircraft that are to transport war weapons—which

include many classes of small arms—when they are loaded and unloaded outside federal territory and do not transit German territory (Germany, 1961, sec. 4(1)). In these cases, general licences may be granted ‘in or to certain regions’ (sec. 4(2)).²⁴

In the United Kingdom, the transportation of category B weapons—including small arms—between third countries must be licensed in ‘limited circumstances’, including when the transfer relates to a country under embargo (UK, 2008, arts. 22(2), 22(4); UK, 2009, secs. 5, 7).²⁵ Importantly, the explanatory note annexed to the law clarifies that drivers, pilots, and other individuals who provide services to transport contractors already subject to the controls are not ‘caught in their own right’ (UK, 2008). Authorization of the transportation of category B weapons between third countries can take the form of general licences for transfers towards specified lists of countries provided certain conditions are met (UK, 2008, sec. 8). In other cases—including all transfers to embargoed destinations—individual licences are necessary.

In the five other countries mentioned above, all transportation of military goods must be licensed. For example, in the Czech Republic, a five-year licence is needed to transport military firearms (Czech Republic, 2002, sec. 31). The competent police directorate (sec. 32(1)) issues it only to those in possession of a trade licence (sec. 33(a)) and on the basis of an application, which is to specify the categories of arms in which the business deals (sec. 32(2)).

An individual transport licence is also necessary for each case of export, import, and transit. For arms falling in the categories A–C, the relevant police directorate grants the licence based on an application that must be accompanied by the export/import authorization (sec. 50(1)).²⁶ The authorization contains information on the quantity of arms that are the object of the transfer (50.2.d) as well as on the types and means of transport, the carrier, and the dates of dispatch and takeover, unless the transfer occurs between ‘businessmen or entrepreneurs dealing in arms and/or ammunition’ (sec. 50(2)f–g). The police issues a one-off document that must contain the above information and accompany the goods (sec. 50.3). A licence is also needed to transport non-military small arms from and to EU states (Czech Republic, 2005a, art. 1(3); 2005b). The licence application must include the name, quantity or volume, and additional specifications of the product (2005a, art. 2(2)(c)); customs tariff code (art. 2(2)(d)); information on the manufacturer, the foreign partner, the end user (art. 2(2)(e–g)); and the purpose of the transport (art. 2(2)(i)). The decision to grant the licence may contain the names of the states through which the goods are authorized to transit as well as information on the international contracting partner and on the end user (art. 4(2)).

In some cases, provisions regulating the transit of arms through a country’s territory have direct relevance to the control of transportation agents. For example, in Japan,



A mobile X-ray machine used for screening cargo at Logan Airport, Boston, October 2003. © Douglas McFadd/Getty Images

transit licences must be obtained by transportation companies themselves—as opposed to the exporter or importer (Japan METI, n.d.). Similarly, transportation companies resident or domiciled in Switzerland may request a general authorization for the transit of war materiel to a specified list of end users (Switzerland, 1998, art. 9e.2). In other countries, transit is controlled by means of a licensing requirement, but it is unclear which party to the transaction must obtain the authorization to move the weapons. For instance, in Finland, the transit of military equipment, defined as the ‘transport through Finnish territory into a third country’, must be authorized by an export licence (Finland, 1990, sec. 2.1).

As mentioned above, an indirect form of control on transportation agents takes place through the provision of information on transport in conjunction with the application for an export or transit licence. While several of the countries under review require such information to be submitted at the time of the export licence application, the requisite details and the relative stringency of these provisions vary greatly. For example, in Belgium, licensing authorities *may* request that information on transport modalities, customs office of clearance, and day, hour, and place of exit from Belgian territory be submitted at least three days before the actual export takes place (Belgium, 1993, art. 9). In the case of transportation by air, the information includes all stopovers (art. 10.2). The wording of the law indicates that the submission of such information is not always required, but is instead subject to a case-by-case decision of the licensing authorities.

Similar, non-mandatory requirements are in place in Canada, Italy, and South Africa. In Italy, the law expressly stipulates that arms export applications must contain a copy of any existing contract relating to the transportation and financing of the deal (Italy, 1990, art. 11.3.b). Nevertheless, the provision of such a contract is not a condition for the issuance of the licence.²⁷ Generally speaking, in Italy arms exporters are responsible for the accuracy of the information provided by transportation companies and carriers and for any variation that occurs during the transfer. Exporters have the obligation to store relevant documents for ten years (art. 19.1).²⁸

Conversely, Bulgaria, the Czech Republic, France, Portugal, Spain, and the United States all *require* that information on transportation be included in any export licence application. This must include: details on forwarders/carriers; points of loading/unloading (also abroad); points of entry/exit in the national territory; modes of transportation; approximate date of delivery; and transit countries.²⁹

Record-keeping. In eight of the states under review, transportation companies, exporters, or both are required to keep records of their transactions together with associated documentation (such as airway bills and transportation contracts). In Bulgaria, China, and South Africa, information kept by individuals and companies is also entered in central registers. In China and Spain, such records must be kept by exporters; however, requested details also cover transportation. In China these records specifically cover small arms transfers and include information on importing countries, end users, shippers, transporters, means of transport and number of shipments, shipping manifests, product model, quantity shipped, and label numbers. These records are consolidated and retained on a long-term basis in national registers (China, 2008, p. 11).³⁰ In Singapore, relevant companies operating with ‘bulk permits’ may be asked to submit reports that include information on the final recipients (Singapore, 2004, art. 7). In the United States, annual reporting of brokering activities is mandatory (US, 2009, sec. 129.9).³¹

Safety and security measures. Six of the countries under review provide for safety measures relating either to the conditions that must be respected when transporting weapons or to secure storage. For instance, in France, safety measures apply to all transportation of weapons in specified categories—including firearms—regardless of whether

Several countries request information on transportation at the export licensing stage.

their transfer is subject to a licence. The external packaging containing the weapons shipment must not identify the nature of the contents (France, 1995, art. 60.1). Firearms themselves must be transported in two separate consignments: on the one hand, the actual arms, from which security components have been removed, and, on the other, the security components, with an interval of at least 24 hours between the two shipments (France, 1995, art. 60.2).³² In the United Kingdom, transit of goods must comply with the following security rules:

(a) the goods in question remain on board a vessel or aircraft for the entire period that they remain in the United Kingdom or are goods on a through bill of lading or through air waybill and in any event are exported before the end of the period of 30 days beginning with the date of their importation;

(b) the destination of the goods in question following exportation from the United Kingdom has been determined in the country from which they were originally exported prior to their original exportation in connection with the transaction which has given rise to transit or transshipment and has not been changed prior to their exportation from the United Kingdom, or the goods are being returned to that country; and

(c) the goods in question were exported from that country in accordance with any laws or regulations relating to the exportation of goods applying there at the time of exportation of the goods (UK, 2008, art. 17(4)).³³

Criminalization. The violation of arms transfer regimes, including provisions on weapons transport, is criminalized in all of the countries reviewed in this chapter, with penalties commonly including both fines and imprisonment. States also generally distinguish between ‘serious’ violations, treated as criminal offences, and administrative violations, usually entailing fines.³⁴

Customs laws and procedures

Customs officials have the advantage of the physical proximity to the transferred goods. Customs laws, regulations, and procedures apply to the control of arms transportation in several ways. First, they establish the rules that must be followed when goods—including arms—cross international borders. Among these are rules governing what must be declared, how, and by whom. As the analysis below shows, in the majority of states under review customs procedures require the submission of information that—if provided in full—would allow for the complete tracing of the transportation chain.

Second, all national regimes establish rules whereby customs authorities are entitled to search shipments and retain or seize goods that are transferred in violation of relevant national laws. Unlike licensing authorities, customs officials have the advantage of the physical proximity to the transferred goods, enabling them to effectively monitor and stop illicit activities. That said, in practice customs authorities tend to focus on imports, rather than exports or transits, which undermines their potential advantage compared to transfer licensing authorities.

The international dimension

The World Customs Organization is the only intergovernmental organization with competence in customs issues outside the EU.³⁵ Its areas of activity include the development of common standards, relating in particular to: the harmonization of customs procedures; ensuring the security and facilitation of trade supply chains; and building the capacity of national customs authorities.

In 2002, the WCO issued two recommendations directly relating to small arms and light weapons. The first proposed the insertion, in national statistical nomenclatures, of small arms-related sub-headings. This measure, agreed following

the adoption of the UN Firearms Protocol, was aimed at facilitating monitoring and control through the creation of a more detailed classification system for firearms (WCO, 2002b).

Based on the acknowledgement that ‘effective controls on the legitimate movements of firearms are essential in order to distinguish illicit movements’ (WCO, 2002b, preamble), the second recommendation listed a series of measures aimed at facilitating the implementation of the Firearms Protocol. These included:

- adopting the statistical nomenclature proposed by the WCO Harmonized System Committee in order to facilitate the monitoring and control of Firearms Protocol items;
- allowing customs declarations and supporting documentation to be submitted to customs authorities prior to shipment;
- verifying that appropriate authorizations are available or in place at the time the items are presented for import, export, or transit;
- verifying the authenticity of licensing or authorization documents for the import, export, or transit of the items;
- implementing appropriate security measures for the import, export, and transit of the items (such as security checks on temporary storage, warehouses, and means of transport), and vetting persons involved in these operations;
- considering designating specific offices or sites for processing shipments of items covered by the Firearms Protocol in order to enhance control over their transborder movement;
- broadening information exchanges, increasing cooperation between law enforcement agencies, and promoting the use of specialized systems and techniques in their jurisdictions (WCO, 2002a).

Most states gather information on arms transportation through customs procedures.

The WCO also helps standardize customs procedures for ‘risk assessment’. The large volume of goods traded worldwide makes the physical inspection of all shipments impossible, even in countries with abundant financial, technical, and human resources. As a consequence, physical inspections are carried out based on an assessment of the potential risk that a given consignment may contain illicit goods. The WCO has developed indicators for these assessment procedures, including some for the identification of illicit small arms and light weapons.³⁶

The WCO also has mechanisms and resources designed to facilitate the exchange of information between different national customs authorities. Potentially, these mechanisms could be used to exchange information on illicit small arms transfers although, as discussed below, member states have tended to prioritize responding to other security risks. Finally, the non-binding nature of WCO recommendations constitutes an obstacle to enforcing compliance by member states.³⁷

The national dimension

Most states have adopted customs procedures for goods entering or exiting their territory that are useful for the control of arms transportation in that they tend to require the submission of information on the physical movement of weapons.

The EU has established customs procedures applicable to its members, including those contained in the *Single Administrative Document* (SAD). The SAD is a standard customs declaration form that is used for trade with third countries and for the movement of non-EU goods within the EU. Since 1987, it also applies to the European Free Trade Association countries Iceland, Norway, and Switzerland and to trade between these countries and the EU (EC, n.d.j).

The SAD was created with several goals in mind, including the harmonization of administrative procedures and documentation, the promotion of openness in relevant national requirements, and the standardization of data submitted

during customs procedures (EC, n.d.l). The *Document*, which must be filled out in eight copies, indicates the information that must be declared to customs in the context of any international transfer. A distinction is made between mandatory information, information that states may request, and information that operators may choose to provide but states cannot demand (EC, n.d.m).

The following details contained in the SAD are particularly relevant to weapons transport, as they would allow for the tracking of all phases of a goods shipment, from departure to destination, and also provide information on the type of transferred goods and transit countries:

- Customs procedures in the EU allow for the tracking of all phases of a goods shipment.**
- total number of packages (EC, n.d.b);
 - consignee (mandatory for transits) (EC, n.d.b);
 - country of dispatch/export (mandatory for transits) (EC, n.d.b);
 - country of destination (mandatory for transits) (EC, n.d.b);
 - identity and nationality of means of transport at departure; in the case of air transportation, this may include the number and date of flight or, in their absence, the aircraft's registration number (EC, n.d.c);
 - identity and nationality of active means of transport crossing the border (mandatory for exports and transits); this refers to the means of transport 'crossing the Community's external frontier as known at the time of completion of formalities' (EC, n.d.d);
 - mode of transport at the border ('the active means of transport which it is expected will be used on exit from the customs territory of the Community') (EC, n.d.e);
 - inland mode of transport (mode of transport after clearing customs) (EC, n.d.f);
 - place of loading (mandatory for transits): 'the place, as known at the time of completion of formalities, at which the goods are to be loaded onto the active means of transport on which they are to cross the Community frontier' (EC, n.d.g);
 - office of exit (mandatory for exports and transits): customs office at which the goods will leave Community customs territory (EC, n.d.h);
 - packages and description of goods; marks, numbers (such as container numbers), quantity, and kind: information necessary to identify the goods, in conformity with EU and national classifications (EC, n.d.i);
 - intended offices of transit (and country) (mandatory for transits) (EC, n.d.j);
 - transshipments (mandatory for transits): 'The first three lines of this box are to be completed by the carrier where, during the operation in question, the goods are transhipped from one means of transport to another or from one container to another' (EC, n.d.k).

As Table 2.2 shows, a great deal of harmonization exists among EU countries with respect to the information included in customs declarations.

In non-EU countries it is also common for customs declarations to request information relating to transportation. For instance, in Canada, exported goods must be reported (declared) by exporters, carriers (i.e. transporters), and customs service providers (Canada, 2005, art.2). Normally one declaration is required per shipment. In the case of restricted goods—which include firearms—exporters may report bulk or homogeneous goods on a monthly basis as long as they receive written confirmation to that effect from the authority administering this more restrictive regime prior to the export (art. 4). While exporters can delegate the reporting to a carrier or customs service provider, they

Table 2.2 Information routinely collected in the SAD by selected EU states³⁸

Information collected*	Austria	Belgium	Bulgaria	Finland	Germany	Italy	Spain	Sweden
Total packages (6)		e, t		e, t				
Consignee (8)		t				t	e, t	
Country of dispatch/export (15)	t	t	t	t	t	t	t	t
Country of destination (17)	t	t	t	t	t	t	t	t
Identity and nationality of means of transport at departure (18)	e, t	e, t	e, t	t	e	t	t	e, t
Identity and nationality of active means of transport crossing the border (21)	e, t	e, t	e, t	e, t	e, t	e	e, t	e
Mode of transport at the border (25)	e, t	e, t	e, t	r	e	r, t	e	e, r
Inland mode of transport (26)	e, t	e	t	e	r, t	e, r	t	e
Place of loading (27)		t	t					
Office of exit (29)	e, r	e, r	e, r		e	e, r	e, r	e, r
Packages and description of goods; marks, numbers, quantity, and kind (31)								
Intended offices of transit (and country) (51)	t	t	t	t	t	t	t	t
Transhipments (55)	t	t	t	t	t	t	t	t

Legend:

- Mandatory
- Optional
- Not specified

e = export

t = transit

r = re-export

Note: * The numbers in brackets indicate the relevant sections in the SAD form.

remain responsible for meeting reporting requirements (Canada, 2007, sec. 2). Finally, the transporter must also file a conveyance report for the export of the vessel or aircraft³⁹ (Canada, 2005, art. 9).

The customs laws and regulations of the countries under review also commonly provide for the following:

- the legal basis for inspection of cargo and possible seizure;
- rules for safe transit and warehousing of goods in customs zones (such as the sealing of containers);
- penalties (such as for undeclared goods or the refusal to allow inspection);
- specification of documentation in addition to the customs declaration (such as export permits).

In many respects, customs authorities are best placed to identify illicit arms transfers, as they deal with the actual movement of goods. By reinforcing transfer controls through customs procedures—including the declaration of goods when they enter, exit, or transit national territory—customs authorities are in principle in a position to assess all aspects of the transfer based on a complete set of documentation, including earlier export/transit permits. Nevertheless, several factors hamper the application of current customs rules and procedures to the detection of illicit small arms transfers.

In general, most—if not all—customs administrations place more of an emphasis on import controls and less on export consignments and transshipments,⁴⁰ thus diminishing the likelihood of stopping an illicit consignment at its point of origin. Even in the case of import controls, however, national capacities vary greatly. A lack of capacity for effective border control is a particular problem in developing countries, where most customs administrations have few or no investigative powers, risk management strategies and techniques are lacking, and effective technical equipment is rarely available. Additional impediments to border control in developing states include weak governance (such as poor inter-agency cooperation and corruption) and porous borders featuring multiple unguarded entry points.⁴¹ Yet in all countries, only a small share of incoming shipments is physically inspected,⁴² the exact proportion depending on national risk assessment policies, technical capabilities, available resources, and level of training.

The use of customs procedures to prevent illicit small arms transfers is not a priority at the global level.

Nonexistent or inadequate communication between customs and licensing authorities presents an additional problem. Information relating to a given shipment is rarely conveyed to licensing authorities. As a result, they cannot know when weapons have been transferred, how many are involved, which part of the licence covers them, or whether they have reached the authorized destination. Delivery verification certificates are not requested systematically. Even when they are, confirmations may arrive long after a delivery has been completed; in the best cases, the rate of response to delivery verification requests does not exceed 65 per cent of exported arms (Berkol and Moreau, 2009, p. 18ff).

At a more fundamental level, the use of customs resources and procedures to stop illicit small arms transfers is obstructed by the differing priorities of customs and arms export authorities. Currently, WCO members do not consider preventing illicit small arms transfers a priority.⁴³ Areas of priority for border checks include counter-terrorism, violations of intellectual property norms (such as counterfeit goods, especially medicine), and drug trafficking. The three regional groupings of states within the WCO emphasize different elements of this list: EU countries tend to focus on the protection of national economies and societies, thus paying greater attention to the smuggling of highly taxable goods (such as cigarettes); the United States stresses anti-terrorism measures; and the largest group (including most African and many Asian countries) is revenue-oriented. To that group, taxes levied on imported goods represent an important source of revenue, which sometimes wholly replaces weak or non-existent systems for the generation of national income. From this perspective, the nature of goods coming into a country is not as important as the value they have in the form of potential customs duties.⁴⁴

Like the regimes in place to control civil aviation (see the next section), those established for customs controls offer considerable potential for the improved monitoring of arms flows and the prevention and stopping of illicit consignments. Yet the concerted use of these regulatory frameworks for such purposes is not imminent. It will require the enhanced coordination of relevant agencies—especially customs and licensing authorities—including improved information flows. Before this can happen, however, the fundamental goals pursued by the different control agencies need to be aligned, or at least coordinated, at the political level.

Civil aviation regimes

A broad set of measures established at all levels—global, regional, and national—makes civil aviation one of the most highly regulated sectors in the world (Doganis, 2002). This complex set of rules follows goals that do not directly coincide with those of an arms non-proliferation regime—as it relates mostly to the facilitation of civil aviation worldwide and to ensuring equal economic regulation across countries (such as airport landing fees). Nevertheless, this body of rules becomes relevant because the provision of small arms to illicit end users or destinations by air often, if not always, entails violations of civil aviation rules, even if these do not specifically relate to the movement of arms. UN investigative panels have highlighted this point. In violating the arms embargo on Liberia, for example, traffickers used the following ‘deceptive practices’ to avoid detection:

- multiple requests filed to civil aviation authorities in different countries for flights at the same time, all relating to the same aircraft;
- use of false flight plans and routings;
- refusal of the pilots to contact control towers or aviation authorities in the countries they overfly;
- ‘flexible’ and sometimes fraudulent use of call-signs and flight numbers;
- use of forged documents with respect to registration, operating licences, or airworthiness certificates of aircraft used in the trafficking (UNSC, 2002, para. 62).⁴⁵

The provision of small arms to illicit end users or destinations by air often, if not always, entails violations of civil aviation rules.

This list also includes the well-known practice by which irresponsible air cargo companies register their aircraft—and obtain relevant operating licences—in states where civil aviation rules are insufficiently developed, or not enforced, or both.⁴⁶

The centrepiece of civil aviation regulations is represented by the Convention on International Civil Aviation, signed in 1944 in Chicago and now with virtually universal membership (190 contracting states). Implementation of the Convention is the main responsibility of the International Civil Aviation Organization, which was established with the goal of facilitating the ‘safe and orderly’ development of civil aviation worldwide (Chicago Convention, 1944, preamble).

In addition to a framework treaty, the Chicago Convention comprises a set of 18 annexes that formulate standards in areas such as the nationality and registration marks of aircrafts (annex 7); customs procedures (annex 9); air traffic controls (annex 11); security (annex 17); and dangerous goods (annex 18). Since 1998, ICAO has audited all its members for compliance with the safety rules and, since 2002, for security.⁴⁷

Civil aviation rules have also been adopted regionally, bilaterally, and at the domestic level. The EU Commission, an important player in aviation security, has developed an extensive set of regulations that are directly applicable to the EU’s 27 member states and that are also legally binding for members of the European Civil Aviation Conference, together with other states that have close transportation ties to the EU and consent to the application of these rules. Rounding out the picture are the standards created by air industry associations—most notably the International Air Traffic Association.

Among the various measures regulating civil aviation, the following appear particularly relevant with respect to their actual or potential application to the prevention of illicit small arms transfers.⁴⁸

Cargo restrictions. The provision most directly relevant to the control of small arms transportation by air is contained in article 35 of the Chicago Convention, according to which:

No munitions of war or implements of war may be carried in or above the territory of a State in aircraft engaged in international navigation, except by permission of such State. Each State shall determine by regulations what constitutes munitions of war or implements of war for the purposes of this Article (Chicago Convention, 1944, art. 35).

The translation of this provision into domestic systems is anything but uniform among European states. Even where these authorizations are required, and national civil aviation authorities are empowered to grant or deny them, available flight and cargo information typically allows only for an assessment of compliance with aviation safety rules, not broader proliferation risks (Bromley et al., 2009, p. 45).⁴⁹

This, once again, points to the need for greater coordination among different control spheres and enforcing authorities. Civil aviation authorities would not normally be expected to make political decisions on whether to grant or deny a specific arms-carrying flight permission to overfly or land on national territory. Nevertheless, they have information on the transaction that is often unavailable at the time of an export licence application.

Registration of aircraft. Articles 17–20 of the Chicago Convention deal with the registration of aircraft, establishing that:

- Civil aviation authorities have transfer information that is often unavailable at the export licensing stage.**
 - an aircraft has the nationality of the country in which it is registered (art. 17);
 - an aircraft cannot be registered in more than one state at once, although the country of registration can be changed (art. 18);
 - rules on registration—including its transfer from one country to another—are to be elaborated at the national level (art. 19);
 - nationality and registration marks will be shown appropriately on any aircraft (art. 20);
 - ICAO member states will exchange, among themselves or with ICAO, on demand, information on the registration and ownership of any aircraft registered by them. For aircraft ‘habitually engaged in international air navigation’ this information is also to be submitted to ICAO (art. 21).

Annex 7 of the Convention expands on these provisions by specifying the characteristics of nationality and registration marks and where they should be displayed.

Customs clearance. The Chicago Convention also regulates the customs clearance of aircraft. Article 10 establishes that, with limited exceptions, aircraft should land at and depart from airports designated by an ICAO member state for the purpose of ‘customs and other examination’.⁵⁰

Article 29 requires every aircraft engaged in international navigation to carry certain documents, including a certificate of airworthiness, journey log book, and, if it carries cargo, a manifest and detailed declarations of the cargo.

Annex 9 of the Convention, building on these and other articles, provides a detailed set of recommended practices. Because the main goal of these provisions is to avoid delays to air navigation, while simultaneously ensuring respect for national customs laws, the practices are unsurprisingly geared towards providing ‘a frame of reference for planners and managers of international airport operations’ as well as ‘describing maximum limits on obligations of industry and minimum facilities to be provided by governments’ (Chicago Convention, 1944, annex 9). Faced with the growing volume of air traffic, the provisions of Annex 9 have been adjusted with a view to ‘reducing paperwork, standardizing documentation and simplifying procedures’. Greater emphasis has also been placed on inspection techniques based on risk assessment (secs. 1.3, 4.5).

Security and safety measures. Measures specifically targeting the transportation of (small) arms are scarce in civil aviation regulations since—as mentioned earlier—their goals differ from those of an arms control regime. Historically, the civil aviation sector has been more concerned with the safety of passengers, crew, and airports than with the security risks associated with illicit arms deliveries.⁵¹ Nevertheless, as shown above, there are regulatory structures already in place in this sector that could be adapted to the control of small arms transportation.

In addition to the measures already mentioned, one example of a security-specific aviation rule is IATA's *Recommended Practice 1630* on cargo security (IATA, 2009). The document was adopted to counter 'acts of lawful interference' against air carrier operations; it gives concrete expression to Annex 17 (security) and Annex 18 (safe transportation of dangerous goods by air) of the Chicago Convention, as well as related guidance material (ICAO, n.d.; 2009). In general terms, *Practice 1630* states: 'All cargo intended to be carried on passenger or all-cargo aircraft should be subjected to security controls before being uplifted on the aircraft' (IATA, 2009, para. 3.1). As a corollary, 'regulated agents' should have security programmes in place.⁵² In support of these principles, 'known shippers' are required to certify in writing that:

- their consignments are prepared in secure premises (para. 3.3.2.1);
- they employ reliable staff in preparing the consignments (para. 3.3.2.2);
- consignments are protected against unauthorized interference during preparation, storage, and transportation (para. 3.3.2.3);



Lufthansa Cargo employees control the freight of a Boeing 747 at Frankfurt Airport, May 2002.
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- they accept that packages and contents of the consignment may be examined for security reasons (para. 3.3.4); and, finally,
- ‘the consignment does not contain any explosives/ammunition/flammable liquids/corrosives or disabling or incapacitating items, which they are not licensed to ship in accordance with IATA Dangerous Goods Regulations, or unknown cargo’ (para. 3.3.3).

If consignments are accepted from ‘unknown shippers’, they should be ‘physically searched, electronically screened or screened by other means’ (para. 3.6.3). This IATA recommendation reflects the international standard found in Annex 17 of the Chicago Convention. Regardless of whether shippers are known, air carriers are required to ‘ensure that from the time of acceptance and until completion of air transportation, cargo consignments are protected from unauthorized interference’ (para. 3.7.1).

CONCLUSION

Recent initiatives to control transportation agents have been predicated on two claims: on the one hand, that these actors are central in the delivery of arms to illicit destinations or end users; on the other, that despite this centrality, transportation agents are insufficiently regulated, if at all.

These initiatives—most notably that led by the French and Belgian governments against small arms trafficking by air—have marked a significant turn in the debate on small arms. As the chapter has shown, attention to the importance of transportation in illicit arms deliveries has always been present in international discussions on small arms proliferation. At the same time, concrete initiatives for control have been hampered by the frequent—yet repeatedly disproven—argument that the complexity of modern trade does not lend itself to effective monitoring of transportation companies and of the increasing numbers of third-party service providers, such as freight forwarders.

As a contribution to this debate, this chapter has analysed existing controls on transportation—particularly by air—at the international, regional, and national levels. Measures relevant to the control of transportation agents fall into three main bodies of law, namely, arms transfer controls, customs rules and procedures, and civil aviation regulations.

As part of their arms transfer control regimes, the majority of the 23 reviewed states regulate transportation agents, either directly or indirectly. Direct controls take the form of a licensing requirement directly applicable to transportation companies—in addition to exporters—while indirect controls entail an obligation on exporters to submit information on transportation when they apply for an arms export licence.

Customs laws are also relevant to transport controls, to the extent that they demand that information on transportation—means, routes, and content of the cargo—be submitted when goods cross a state’s border. Such information is commonly requested in the countries analysed in this chapter. In addition, customs regulations usually establish powers of search, inspection, and seizure of cargo, as well as measures to secure shipments transiting or warehoused in customs-controlled areas.

Finally, the extensive body of rules governing civil aviation also contains measures that either directly concern the transportation of arms or could be adapted to this end. These comprise rules of aircraft registration and of customs clearance, as well as safety and security standards that, for instance, outline recommended practices when dealing with cargo coming from ‘unknown shippers’.

The existence of these measures does not automatically translate into effective control of transportation agents. Besides the question of whether these rules are actually implemented—something that should be verified—a major impediment to effective regulation stems from the lack of coordination among the various spheres of control within a single state. Most often, this means that all the information concerning an arms transfer is not concentrated in one institution but rather scattered among many. Information on transportation means and routes will be available to customs and civil aviation authorities but not to licensing agencies; the political or security considerations affecting arms export decisions will be clear at the licensing stage but not relevant for customs clearance; and so on. Additional challenges include: huge variations in the capacity, authority, and effectiveness of civil aviation authorities across countries; overlapping or inconsistent rules; and the practice adopted by many irresponsible air companies of registering in states where transport rules are not strict or not enforced (regulatory gaps).

At a more fundamental level, however, the effective application of existing customs and civil aviation measures to stem illicit small arms trafficking is prevented by the divergent goals of the various control agencies. The primary aims of export control, customs, and civil aviation authorities are quite distinct. Efforts to ensure that an arms transfer is legal (and responsible) will not always—or even routinely—line up with those aimed at avoiding tax fraud or ensuring that a consignment not jeopardize the safety of passengers and crew. In short, different agencies will focus on different aspects of the same transfer.

At the end of the day, bodies that have the means to prevent illicit small arms transportation—for example, customs agencies—often will not do so because they have other priorities.

This analysis suggests some promising avenues for further action. There is the option, in consultation with all relevant actors, including industry, of strengthening or adapting existing control mechanisms so that they can be used to detect and prevent illicit small arms transport. As emphasized throughout the chapter, however, any enhancements to current control strategies will depend on improved coordination and information flows between arms transfer, customs, and civil aviation authorities. That, in turn, requires action at the political level; in other words, governments must include the issue of illicit air transport among their priorities. ■

LIST OF ABBREVIATIONS

BP	Best practices
ECOWAS	Economic Community of Western African States
EU	European Union
GGE	Group of Governmental Experts
IATA	International Air Traffic Association
ICAO	International Civil Aviation Organization
OSCE	Organization for Security and Co-operation in Europe
SAD	<i>Single Administrative Document</i>
UN	United Nations
WA	Wassenaar Arrangement
WCO	World Customs Organization

ENDNOTES

- 1 See Griffiths and Bromley (2009, p. 1).
- 2 The states selected for the study are: Austria, Belgium, Brazil, Bulgaria, Canada, China, the Czech Republic, Finland, France, Germany, Israel, Italy, Japan, Norway, Portugal, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. They are among the 27 states identified by the Small Arms Survey as 'major exporters' (annual exports of small arms and light weapons exceeding USD 10 million) in four out of five years, from 2004 to 2008. Four of the 27 countries were not retained for analysis in this chapter because of a lack of access to original legal texts: the Republic of Korea, Mexico, Romania, and the Russian Federation.
- 3 While transfer controls in transit and import countries are important, this chapter focuses on controls applicable in *exporting* states. The farther an illicit consignment of arms moves from the source of export, the more difficult it becomes to identify and stop it—mainly due to the ability of arms traffickers to break the transfer into many segments and diversions (Griffiths and Wilkinson, 2007, p. 7).
- 4 The purpose of this section is not to provide an in-depth analysis of the dynamics of arms transportation, but rather to offer a simple sketch of the multiplicity of actors involved in an arms deal and the administrative steps that are usually necessary for a legal transfer to take place. For detailed studies on the dynamics of arms transportation and the arms logistics sector, see AI and TransArms (2006) and Griffiths and Wilkinson (2007).
- 5 The terms *transit* and *transshipment* are commonly used as synonyms but define two different activities. Specifically, transshipment refers to a transit during which a given cargo is transferred from one mode of transportation to another (such as from land to air) or from one carrier to another within the same mode of transportation. AI and TransArms (2006, pp. 38–40); interview with IATA official, February 2008.
- 6 Table 2.1 provides a general indication rather than a precise breakdown of each stage of the transfer process in all countries. For instance, the requirement for a 'negotiation licence' (i.e. authorization to start contract negotiations) is the exception rather than the rule; similarly, an arms producer may also be an exporter for some or all shipped goods.
- 7 This observation stems from the author's direct participation in international debates on arms brokering controls (such as the 'UN Workshop in Preparation for the Broad-based Consultations on the Illicit Brokering in Small Arms and Light Weapons' held in Geneva on 3 June 2005).
- 8 Interview with an official of the French Ministry of Foreign Affairs, 13 February 2008.
- 9 Other mentions of transportation are contained in UNSC (2006, paras. 2, 15, 23, 27, 34, 46).
- 10 Interview with an official of the French Ministry of Foreign Affairs, 13 February 2008.
- 11 Interview with an official of the French Ministry of Foreign Affairs, 13 February 2008.
- 12 This reflects the common practice whereby national arms exports controls—and specifically export licensing requirements—do not apply to operations conducted by, or on behalf of, national armed and security forces.
- 13 Interview and correspondence with an official of the French Ministry of Foreign Affairs, October 2009.
- 14 For details on the Situation Centre's list and its impact to date, see Bromley et al. (2009, pp. 62–63).
- 15 Email communication with a French government official, October 2009; see also Giannella (2008).
- 16 Interview with an official of the French Ministry of Foreign Affairs, 13 February 2008.
- 17 Interview with an official of the French Ministry of Foreign Affairs, 13 February 2008.
- 18 Email communication with an official of the French Ministry of Foreign Affairs, October 2009.
- 19 Email communication with an IATA official, March 2008.
- 20 For details, see Bromley et al. (2009).
- 21 This point was confirmed by IATA and WCO officials during interviews with the author, and reiterated by an official of the French Ministry of Foreign Affairs (interview, 13 February 2008).
- 22 IATA and WCO representatives were invited to the 2007 conference on the French–Belgian initiative at OSCE headquarters, mentioned above.
- 23 'Financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service' (US, 1976, sec. 2778(b)(1)(A)(ii)).
- 24 Contrary to individual licences, which are issued on a case-by-case basis, a general licence allows for multiple transfers of one or more weapon categories towards one or more specified destinations. The specific characteristics of a general licence vary across countries.
- 25 As of December 2009, relevant UK authorities had not publicly specified the 'limited circumstances' in which such licences are necessary (UK, 2009, sec. 5).
- 26 In the Czech Republic, firearms are divided into four categories (A to D); category E comprises related ammunition that is not 'banned'. For details of these categories, see Czech Republic (2002, ch. II).
- 27 Phone interview with an official of the Italian Ministry of Foreign Affairs, March 2008.
- 28 Similar provisions exist in Canada, where exporters are required to 'evaluate' foreign clients, which includes indicating in the licence application whether the shipping routes requested by the consignee are 'unusual' (Canada, 2009, p. 29, box 3).
- 29 See Bulgaria (2007b, arts. 5(1).6, 5(3)); Czech Republic (1994, annex 4); France (1992); Portugal (2006, arts. 67.2.g–h, 68.4); Spain (2007, art. 4.2); US (1976, sec. 2778(g)(2)).
- 30 See also, Bulgaria (2007a, art. 19) and Spain (2007, art. 15.1).
- 31 See also relevant provisions in the Czech Republic (2002, sec. 39(1)(k.2); Germany (1961, sec. 12(2)); UK (2009, p. 10).
- 32 In Belgium, the main text regulating arms transfers provides for the adoption of transport safety measures by government decree (Belgium, 1991, art. 3). See also Portugal (2006, art. 41).

- 33 See also, France (1995, art. 66) and the Czech Republic's provisions on the safekeeping of weapons (2002, sec. 58).
- 34 For more details on this point, see Parker (2009).
- 35 Currently, 176 customs administrations in the world are members of the WCO; altogether, these process approximately 98 per cent of world trade (see WCO, n.d.).
- 36 For security reasons, these indicators are not made public by the WCO.
- 37 Email communication with a WCO official, November 2009.
- 38 Unless otherwise indicated, the sources for this table are implementation reports submitted by EU members (EC, n.d.a). For a legend, see EC (n.d.m).
- 39 This measure does not apply to scheduled flights.
- 40 Email communication with a WCO official, November 2009.
- 41 Email communication with a WCO official, November 2009.
- 42 According to one source, only around five per cent of shipments are physically inspected to ensure that their contents match accompanying documentation. Chapter review provided by Ilhan Berkol, November 2009.
- 43 Interview with a WCO official, March 2008.
- 44 Interview with a WCO official, March 2008.
- 45 Earlier UN Panels investigating arms embargo violations similarly underlined the link between air safety violations and illicit small arms trafficking. For more information, see Griffiths and Bromley (2009).
- 46 The phenomenon of 'offshore registration' or use of 'flags of convenience' has been consistently highlighted by research on illicit arms brokering activities. See, for example, Wood and Peleman (1999); Small Arms Survey (2001, ch. 3).
- 47 Interview with former ICAO official, July 2009.
- 48 For more information on the impact of EU civil aviation regulations on illicit small arms flows, see Griffiths and Bromley (2009).
- 49 The cited study covers EU countries as well as Belarus, Croatia, Norway, the Russian Federation, Switzerland, Turkey, and Ukraine (Bromley et al., 2009, p. 7).
- 50 See also, Chicago Convention (1944, art. 13).
- 51 Interview with an IATA official, February 2008.
- 52 See also Chicago Convention (1944, annex 17).

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