



DEADLY MOVEMENTS

TRANSPORTATION
CONTROLS IN THE
ARMS TRADE TREATY

AMNESTY
INTERNATIONAL



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Amnesty International is a global movement of 2.8 million people in more than 150 countries and territories, who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. We are independent of any government, political ideology, economic interest or religion. Our work is largely financed by contributions from our membership and donations.

TransArms, founded in 2002, is a US-based not-for-profit organization dedicated to analyzing and monitoring the logistics of conventional and non-conventional arms transfers. TransArms maintains a major databank monitoring transport and brokering companies historically or currently engaged in the transport of military equipment by air, sea, and land.

IPIS vzw is a Belgium-based research centre that conducts in-depth action research focussing on the impact of arms flows on conflict and underdevelopment; the role of natural resource exploitation in supporting poor governance and corruption; and the financing of conflicts and corporate social responsibility (CSR).

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1/INTRODUCTION

‘Mostly the stuff we carried was brand new AK’s plus the ammunition. They’re all packed in plastic bags and in beautiful condition... It’s quite a standard operation for us... We know there is a war on. We are not involved in it because we...are just charter pilots... We were doing about 80 to 90 hours flying a month... It is very easy. Leave the hotel, do a little hour there and two hours on the ground and you are back in time for dinner.’

British contract pilot describing the delivery by air of Kalashnikov-type assault rifles and ammunition from Rwanda and Uganda during 2000 to Kisangani, Democratic Republic of Congo, then held by the armed opposition group the Rassemblement Congolais pour la Démocratie (RCD-Goma)¹

Effective regulation of the global trade in conventional arms must include adequate provisions to control the physical movement of arms across international borders. The proposed Arms Trade Treaty (ATT) should be designed to prevent unauthorised or irresponsible international transfers of weapons, munitions and related equipment internationally: it must therefore require states to impose effective controls and reporting requirements on the transport and transporters of arms, including through Free Trade Zones. Without such requirements, the ATT will fail to address a significant gap in international arms transfer controls, and will deprive states of a key tool to prevent arms transfers where it can be foreseen the arms are likely to be used to violate human rights and destroy lives and livelihoods contrary to international law.

This briefing note draws on recent research undertaken by Amnesty International, Transarms and the International Peace Information Service (IPIS). Some of this material forms part of a more comprehensive study of the role of civil aviation in military logistics, the arms trade and arms trafficking, to be published by IPIS and

Transarms later in 2010.

Critically, it reveals that inadequate regulation of arms transportation is a global problem, not confined to jurisdictions with weak arms transfer controls. It documents recent international arms transfers at substantial risk of being used to commit or facilitate serious violations of international human rights and humanitarian law, and which have been transported by transport companies registered in all five permanent members of the UN Security Council (China, France, the Russian Federation, the UK, and the USA), and which have been undertaken using ships and aircraft registered ('flagged') in European states: states which in theory operate robust controls on arms *exports*, but which continue in many cases to have inadequate controls on the arms transportation activities of aircraft, vessels and transport service providers within their jurisdictions.

Differing national controls on arms transportation, as well as variations in the national implementation of existing international transportation standards covering arms and dangerous goods, have resulted in a global patchwork of regulation which continues to undermine states' ability to properly regulate international arms transfers. The resulting loopholes, whether by design or omission, continue to allow international arms transfers that are used to commit or facilitate serious violations of international human rights and humanitarian law. The Arms Trade Treaty provides a critical opportunity to define high common international standards to address the adequate regulation of the physical movement of conventional arms.

WHO ARE ARMS TRANSPORTERS?

The term 'transport service providers' is used in this report to mean both

- (i) carriers (entities owning or operating ships, aircraft and other vehicles which are responsible for physically transporting goods across international borders); and
- (ii) entities involved in arrangements for the transportation of goods (including shipping agents and shipping brokers, freight forwarders, and charterers).

This second set of actors follows the definition of 'transportation agents' developed in the 2001 report of the 'UN Group of Governmental Experts on brokering activities, particularly illicit activities, relating to small arms and light weapons, including transportation agents and financial transactions'.²

2/STOPPING UNAUTHORISED AND ILLEGAL INTERNATIONAL ARMS TRANSFERS

All UN Member States have legal obligations to impose controls on arms transportation in some cases to prevent unauthorised or illegal international arms transfers.³ Recognising states' existing legal authority over ships and aircraft which are registered or 'flagged' in their jurisdictions, most UN Security Council arms embargoes require all states to prevent the supply of arms and other embargoed materiel "using their flag vessels or aircraft" to embargoed regions or entities.⁴ Many UN Security Council arms embargoes also require states to prevent the "direct or indirect supply" of arms "by their nationals", an obligation which includes nationals engaged in the transportation of arms internationally to embargoed regions or entities.

Beyond specific obligations imposed by binding UN Security Council arms embargoes, many states have recognised the role that some transport service providers have played in helping to transfer arms shipments internationally to unauthorised or unlawful end-users or end-uses. This was recognised in the 2007 report of the UN Group of Governmental Experts on combating illicit brokering in small arms and light weapons, which recommended that all states should be encouraged to adequately regulate through their national laws "closely associated activities" of arms brokering, including "transport [and] freight forwarding".⁵ The Group's recommendations, which all states have been encouraged to implement by a 2007 UN General Assembly resolution, backed by 179 states, reflect the widespread findings of arms embargo investigative panels established by the UN Security Council, as well as investigative reports by Amnesty International and other non-governmental organisations. This extensive body of detailed investigative work has highlighted the critical role played by cargo carriers, ship and aircraft owners, shipping brokers, charterers and freight forwarders in supplying shipments of arms and ammunition to arms-embargoed states and armed opposition groups, and to those committing serious violations of international law.⁶

A customs officer in the port of Gioia Tauro, Italy, inspects a shipping container after more than 8,000 Kalashnikov rifles, machine guns and other weapons were seized, April 2004.
© Private



In some cases, transport service providers have themselves collaborated with arms brokers to organise arms transfers to unauthorised or unlawful end-users, using complex and altered shipping routes and flight plans, shell companies, and changing registrations of ships and aircraft. In June 2007, for example, the Syrian arms dealer Monzer Al Kassar was arrested in Spain by a ‘sting’ operation organised by the U.S. Drug Enforcement Agency (DEA), and extradited to the USA. Al Kassar was accused of seeking to organize a multimillion-dollar transaction of weapons including assault rifles, millions of rounds of ammunition, grenades and surface-to-air missiles, with sources working for the DEA who told al Kassar that they represented the Colombian guerrilla group FARC (Fuerzas Armadas Revolucionarias de Colombia).⁷ In February 2009 a U.S. court sentenced Al Kassar to 30 years imprisonment for conspiracy to acquire and export anti-aircraft missiles, murder US nationals and provide material aid to FARC.⁸

In this instance, the arms transfer was initiated by the DEA’s sting operation, rather than by FARC.⁹ Nonetheless the case illustrates ways in which transport service providers may collude in attempting to transfer an arms shipment to an unauthorised end-user. Court documents set out how Al Kassar, according to the DEA, proposed to use a “trusted associate” shipper to divert the arms shipment from Eastern Europe to an unauthorised destination. The DEA’s sources provided Al Kassar with end-user documentation for Bulgarian and Romanian authorities, ostensibly showing that the weapons were destined for government agencies in Nicaragua. According to the DEA’s affidavit, Al Kassar agreed to the confidential sources’ suggestion that the weapons should then be shipped to Suriname instead, where they were to be delivered to FARC representatives.

Al Kassar introduced the DEA’s sources in Spain to two ship captains, “Christos”

and “George”, whom Al Kassar stated had been his “trusted associates...who would transport the weapons from Romania and Bulgaria to Suriname”, according to the affidavit.¹⁰ Al Kassar reportedly told the DEA’s confidential sources that one of these ship captains “had been working with Al Kassar and his organization for over 30 years, and...had never been detained or arrested on charges of arms trafficking....[the captain] could take the weapons right into the port, even if the United States was watching, and not be detected.”¹¹ Emails submitted as evidence to the court, apparently between Captains “Christos” and “George”, forwarded by “Christos” to an email address used by Al Kassar and his associates, appear to show that Captain “George” worked for a Greek shipping company, and proposed to use a particular ship which they were attempting to register in Liberia through a Liberian company.¹²

In other cases, arms brokers organising unlawful arms transfers may themselves double as transport service providers. In August 2000, for example, arms broker Leonid Minin was tried in Italy for supplying weapons to arms-embargoed Liberia, whose then government was supplying arms and military support to the Revolutionary United Front (RUF) armed group in Sierra Leone. Liberia was itself in the midst of a 14-year civil war which resulted in over 250,000 deaths and the displacement of a third of the population. Human rights abuses committed by fighting forces supplied with arms from the Liberian government and other actors included forced displacement, abduction, forced recruitment of child soldiers, torture, looting, forced labour, rape, sexual slavery, and unlawful killings.

Court documents appear to show how Minin reportedly provided not just arms but an aircraft which was used to transport them to Liberia. Using a company registered in Gibraltar, Minin reportedly arranged for the arms shipment to be transported from Ukraine to Burkina Faso using an Antonov-124 aircraft operated by a UK company, and provided an end-user certificate ostensibly indicating that the arms were destined for the government of Burkina Faso. Flight records and photographs indicate that the arms were then flown on from Ouagadougou and Bobo Dioulasso in Burkina Faso to Liberia, using a private BAC-111 jet owned by Minin, registered in the Cayman Islands.¹³

These cases illustrate how arms brokers and complicit governments have sought to use complex, transnational transport operations to divert arms shipments from authorised end-users to armed forces and armed groups engaged in war crimes and serious violations of international human rights law. Minin’s case in particular illustrates the need for states to regulate the activities of arms brokers and transport service providers operating in their jurisdictions. Italy lacks adequate regulation of arms brokering, and so the Italian court hearing Minin’s case determined that it lacked jurisdiction, since the arms had not physically entered into Italian territory. Minin was acquitted of charges relating to arms trafficking, and was released.¹⁴

3/PREVENTING IRRESPONSIBLE INTERNATIONAL ARMS TRANSFERS

THE 'SHIP OF SHAME'

On 10 April 2008 a Chinese-flagged cargo ship, the MV An Yue Jiang, arrived in Durban, South Africa. Owned and operated by Chinese Ocean Shipping Company (COSCO), the An Yue Jiang's cargo included six shipping containers filled with 3080 cases of arms, including 3 million rounds of rifle ammunition as well as rocket-propelled grenades, mortar bombs and mortar launchers, all exported by Poly Technologies Inc of Beijing.¹⁵ According to shipping documents and subsequent statements by the Zimbabwean government, the arms were destined to the Zimbabwe Defence Force.

At that time, shortly after disputed elections held on 29 March 2008, senior personnel in the Zimbabwean army were responsible for widespread human rights violations against opposition supporters, including beatings, enforced disappearances, assaults, unlawful killings and torture by soldiers, "war veterans" and supporters of the ruling party (ZANU-PF) against people accused of having voted for the then opposition parties. Abuses were continuing with impunity: though some victims reported these crimes to the police, no arrests of perpetrators were reported.¹⁶

Although, according to court documents, the shipment received a transit licence from the South African government to be moved on to Zimbabwe, trade unions in South Africa nonetheless appealed to transport workers not to offload the cargo if the ship docked at any African port and church leaders backed by lawyers in South Africa obtained a court order to stop the shipment through South Africa ports. When the An Yue Jiang sailed away from South African ports with the arms cargo, transport workers in ports in Mozambique, Namibia and Angola, mobilised by national trade unions and assisted by the International Transport Workers' Federation (ITF) and lawyers in those countries, similarly refused to offload the military cargo. Although some cargo was offloaded in Luanda, the ship reportedly returned its military cargo to China.¹⁷

As well as helping to prevent diverted and illegal arms transfers, controls on arms transportation and transporters provide states with one of the few available tools to prevent irresponsible arms transfers which are likely to facilitate serious violations of international human rights or humanitarian law, but which have nonetheless been authorised by exporting states. Preventing such irresponsible arms transfers cannot be left to direct action by civil society, as in the case above. Where irresponsible arms transfers are at substantial risk of being used to facilitate serious crimes and violations of international law, but nonetheless are exported by states or with their authorisation, national controls on arms transportation enables ATT States Parties to prevent such irresponsible shipments where they are transported by vessels or entities within the jurisdictions of ATT States Parties. Regulating arms transporters should also form part of states' due diligence obligations to prevent serious violations of international law facilitated by state and private entities operating within their jurisdictions, including those operating ships and vessels 'flagged' with their nationality and thus also within their jurisdictions.¹⁸

AN EFFECTIVE HUMAN RIGHTS RULE FOR THE ARMS TRADE TREATY

States Parties to an ATT should prevent international transfers of conventional arms where there is credible and reliable information indicating a substantial risk that the intended recipient is likely to use these arms to commit or facilitate serious violations of international human rights law or international humanitarian law.¹⁹

Where there is clear information indicating such a substantial risk, States should be required under the treaty to refuse or revoke authorisation for the transfer of arms in question until the substantial risk of further serious violations using such arms has been curtailed through remedial action.²⁰

Critically, national controls on arms transportation and transport service providers can be effective in this way because irresponsible arms transfers are not always shipped using aircraft or vessels registered in poorly-regulated 'flags of convenience'. Nor are the operators of such aircraft or vessels always located in the jurisdictions of states with weak arms transfer controls. Rather, as the examples below indicate, commercial transport service providers involved in irresponsible arms transfers – in some cases without their knowledge or complicity – often operate from states which may have robust arms control mechanisms to assess the risk that arms *exports* may contribute to serious violations of international law; but which may not apply such mechanisms to regulate or risk-assess arms *transportation* under their jurisdiction.

The following examples of irresponsible arms transfers around the world show how such transfers have been transported by ships, aircraft and well-known air cargo carriers and shipping companies registered in France, the UK, Germany and elsewhere. Extending robust risk-assessment licensing mechanisms from arms *exports* to include arms *transportation* and *transport service providers* would thus provide a much-needed means for responsible states with greater regulatory capacity to prevent irresponsible or unlawful arms transfers exported from other states which fail to adhere to international standards on the export, import and transfer of conventional arms.

CASE STUDY: 2009-10: CLUSTER MUNITIONS AND COMPONENTS SHIPPED BY EUROPEAN VESSELS

In November 2006 a South Korean arms manufacturer, Poongsan Corporation, reportedly signed a 'licensed-production' deal for Pakistan's major arms manufacturer, Pakistan Ordnance Factories, to produce K-310 155mm artillery shells designed by Poongsan Corporation in South Korea.²¹ Both companies have reportedly stated that the munitions produced under this arrangement will be marketed for export.²² K-310 artillery shells are cluster munitions, each shell containing 49 'DPICM' bomblets designed to scatter and explode over a wide area.²³ Cluster munitions act indiscriminately when used near civilians, in contravention of

international humanitarian law, and also leave unexploded ordnance – de-facto landmines – causing deaths and injuries for months or years after attacks, and denying livelihoods to affected communities by making large areas of their land dangerous to use or cultivate. The manufacture, transfer and use of cluster munitions is prohibited by the 2008 Convention on Cluster Munitions, which 103 states have signed, and which enters into force on 1 August 2010.

In April 2008, the Pakistan army reportedly received its first batch of South Korean-designed 155mm 'DPICM' cluster artillery shells from Pakistan Ordnance Factories.²⁴ Neither South Korea nor Pakistan has signed the Convention on Cluster Munitions, which prohibits the manufacture, transfer and use of cluster munitions.

However, between 2008 and 2010 a series of shipments of inert cluster munition parts, as well as complete cluster munitions and other goods, were transported from South Korean arms manufacturers to Pakistan's armament factories on ships operated by shipping companies registered in and operating from countries which *have* signed the Convention; and in some cases using ships flagged in those countries.

During March 2008, a consignment of munitions from Hanwha Corporation in South Korea, destined for Pakistan's Inspectorate of Armament according to documentation produced by Pakistan's Federal Board of Revenue, was transported from Busan (Pusan) to Karachi on the *BBC Islander*, a ship operated by a German company.²⁵ According to revenue authority documentation, this consignment included 2.75 inch 'MPSM' (Multi-Purpose Sub-Munition) rockets: air-launched cluster munitions which each carry 9 'multipurpose' bomblets.²⁶ The *BBC Islander* also carried 6 metric tons of unidentified goods from Poongsan Corporation to the Sanjwal factory of Pakistan Ordnance Factories,²⁷ the plant which produces 155mm artillery shells, according to Pakistan's Ministry of Defence Production;²⁸ although it is not clear from the revenue authority documentation whether the consignment carried on the *BBC Islander* included parts for cluster munitions.²⁹

There is no suggestion that the owners and operators of the ship acted unlawfully: indeed, these shipments highlight the fact that although Germany is amongst those states which do control arms transportation in some circumstances, loopholes in German regulations persist.³⁰ In this case, the *BBC Islander* was flagged in Antigua and Barbuda: German arms transportation controls cover German-flagged ships, but not ships which are owned or operated by German firms, but are flagged in other jurisdictions.

During April 2009 a further consignment of inert components for 155mm K-310 (cluster munition) artillery shells was exported by South Korea's Poongsan Corporation to Pakistan Ordnance Factories' Sanjwal plant. The munition parts were described in detail on shipping documents as "155MM K310 DUMMY KIT", "KM577 DUMMY METALIC FUZE" and "M10 PLASTIC CASE".³¹ Revenue authority documents show that the consignment was transported from Busan (Pusan) in South Korea to Karachi in Pakistan on a UK-flagged ship, the MV *Hyundai Baron*.³² As well as being registered in the UK, the ships also appears to

have been operated by a UK-registered company: it has been listed in the fleet list of vessels operated by a London-based ship management company, Zodiac Maritime Agencies Ltd.³³ The *Hyundai Baron* was at the time also owned by a British Virgin Islands company, Tair Marine Inc; although it is not possible to determine who controls Tair Marine Inc, its sister company Tair Marine (UK) Ltd shares directors with Zodiac Maritime Agencies Ltd, and has its registered office in the same London building.³⁴

The UK passed legislation in October 2008 which effectively prohibits UK individuals and companies, including UK-registered companies, from doing “any act calculated to promote the supply or delivery” of a range of prohibited weapons, including cluster munitions and their components, “where that person knows or has reason to believe that such action or actions will, or may, result in the removal of those goods from one third country to another third country.”³⁵ Amnesty International contacted Zodiac Maritime Agencies Ltd in December 2009 expressing the organisation’s concerns that a cargo carried on one of their vessels may have consisted of components for K310 cluster munitions, noting the relevant UK legislation, and requesting further details about the cargo.³⁶ Nonetheless in February 2010 revenue authority documents show that a further 1.515 metric-ton consignment from Poongsan Corporation of inert components for K-310 artillery shells – again described in detail on shipping documents as 4 pallets of “OF155MM K310 TP PROJECTILE (DUMMY)” – was transported to Karachi by the MV *Hyundai Emperor*, another UK-flagged vessel listed on the fleet list of Zodiac Maritime Agencies.³⁷



MV Hyundai Baron, which transported components of 155mm K-310 cluster munition artillery shells to Pakistan in April 2009
© Henk Guddee

Zodiac Maritime Agencies Ltd declined to disclose to Amnesty International further details of “cargoes our chartering clients may or may not have carried on our vessels”, and stated that “these vessels were on charter to Hyundai Merchant Marine of South Korea who is obliged as the shippers under the terms of employment to comply with all relevant international law and convention. We have no reason to believe that the applicable laws and conventions were not complied with here.”³⁸

Amnesty International has been unable to determine whether the UK transport service providers involved in providing means of transport for these shipments were aware of the nature of the cargoes carried by the ships they operated or owned. However, UK enforcement of this legislation, and notification of transport companies known to be involved in shipments of prohibited items, could prevent further shipments facilitating the production and export of weapons which the majority of states, including the UK, have committed to banning on the grounds of international humanitarian law.

CASE STUDY: 2008: ARMS TO THE GREAT LAKES REGION ON A FRENCH PASSENGER FLIGHT

On 16 January 2007, the Rwandan government issued an end use certificate (EUC) for the procurement of 49 kits of parts and tools for 14.5mm KPVT machine guns. According to the EUC, the arms were to be procured through a UK-registered arms brokering company, System Use Contract Ltd, which does not appear to have obtained a brokering license from the UK government for the transaction.³⁹ Transport documents indicate that the machine gun parts were supplied by the Sofia-based Armico Ltd, and authorised for export by the Bulgarian government to Rwanda. The arms were finally exported from Sofia on 19 September 2008.

Although KPVT machine guns are particularly intended for use on armoured vehicles, KPV-type guns and their parts are the basis of most Soviet-type 14.5mm anti-aircraft weapons, amongst the most common heavy weapons found with armed forces and armed opposition groups, used either against aircraft or helicopters or against forces on the ground, often mounted on light vehicles as 'technical'.⁴⁰

At the time of export in September 2008, more than 220,000 people had been displaced by a brutal upsurge of fighting in neighbouring eastern Democratic Republic of Congo (DRC), between the DRC armed forces and the armed opposition group the *Congres national pour la defense du peuple* (CNDP). The fighting had precipitated a new human rights crisis in the eastern DRC, with both government and armed group forces killing, raping, abducting and torturing civilians, including the widespread rape of women and children; and the CNDP forcibly recruiting child soldiers from schools, from which escapees were allegedly killed or tortured, sometimes in the presence of other children.⁴¹ In December 2008, the report of the UN Group of Experts on the DRC presented evidence that during 2007 and 2008 the CNDP was receiving logistical and military support from the Rwandan Defence

Forces, including facilitating the supply of arms, and reported complicity in the recruitment of adult and child CNDP fighters within Rwanda.⁴² This continued a pattern over many years of Rwandan military support for armed groups in the eastern DRC, including supplies of arms and military support to the CNDP's predecessor group, the *Rassemblement Congolais pour la Démocratie-Goma (RCD-Goma)*.⁴³ support which only appears to have ended in 2009 with the arrest of CNDP leader Laurent Nkunda in Rwanda, the hasty integration of CNDP and other armed group fighters into the DRC armed forces (FARDC), and a subsequent violent joint operation by DRC and Rwandan forces against the FDLR armed group in which serious violations of international humanitarian and human rights law were committed by both armed groups and the DRC national army.⁴⁴



A woman caught in a rain storm in the Kibati camp north of Goma in eastern DRC, 4 November 2008. Many of those in Kibati camp had been displaced by fighting between the CNDP and the DRC armed forces, © AP/PA Photo/Jerome Delay

It is impossible to determine definitively whether the specific parts flown from Bulgaria were shipped on or used in the eastern DRC. However, at that time there appears to have been a clear and substantial risk that machine gun/anti-aircraft gun parts procured by the Rwandan government might be diverted or used in the DRC fighting. During 2008, according to the UN Group of Experts, Rwandan Defence Forces reportedly entered into DRC territory itself, and provided fire in support of the CNDP's armed offensive against the DRC government. In particular, the UN Panel noted that UN peacekeepers came under anti-aircraft gun fire in October 2008 from guns which appeared to have been transported by road from Rwanda (they also noted that the CNDP had themselves acquired anti-aircraft guns).⁴⁵

Given the substantial risk to human rights in the eastern DRC of supplying machine

The French, Bulgarian and South African companies appear to have acted lawfully. Nonetheless the Bulgarian, French and Kenyan governments which permitted the export and transit of the shipment through their territories failed in this instance to stop a clearly irresponsible arms transfer. In the case of France, the institutional mechanisms for doing so adequately are not in place. France, alongside Belgium, has been at the forefront of multilateral efforts to incorporate transporters into arms transfer licensing mechanisms. A French and Belgian government initiative led in 2007 and 2008 to the members of the Organisation for Security and Cooperation in Europe (OSCE) and the Wassenaar Arrangement (WA) arms transfer control grouping, including France, adopting 'Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport'.⁵¹ These 'Best Practices', which exempt government, military, or government-chartered aircraft, are intended to help prevent and reduce risks of diversion or "destabilising" arms transfers. They encourage states to require arms exporters (rather than arms transporters) to provide details of the transporters and transport routes involved in their exports of small arms and light weapons prior to obtaining an export licence. Yet while these 'Best Practices' allow the transport arrangements of exports from participating states to be scrutinised by licensing authorities, neither the 'Best Practices' nor French national arms transfer controls require carriers or other transport service providers themselves, such as Air France, to obtain specific licences to transport arms for arms exporters outside of France.

In the absence of specific controls on arms transport service providers themselves, France was thus unable to prevent this arms shipment, at substantial risk of diversion or misuse; despite the arms being carried by France's national airline, and in this instance trans-shipped through Paris.⁵²

4/HOW SHOULD THE ARMS TRADE TREATY CONTROL ARMS TRANSPORTATION?

The UN General Assembly has tasked the Arms Trade Treaty Conference and its Preparatory Committee with developing an international instrument containing the “highest possible common international standards for the transfer of conventional arms”.⁵³ A number of UN Member States already have regulations to control arms transportation: the “highest possible common international standards” should therefore include arms transportation controls in some form.⁵⁴ In addition, a range of obligations and powers to control arms transportation and transporters, outlined below, have been imposed in certain instances by the UN Security Council and conferred by international instruments on *all* UN member states.

International instrument	Provisions	Includes flag vessels/aircraft transporting arms?	Includes arms transport in a state's jurisdiction?	Includes arms transport service providers operating from a state's jurisdiction?
UN Security Council arms embargoes	All UN Member States must prevent the supply of arms and other embargoed materiel “using their flag vessels or aircraft” to embargoed regions or entities; and prevent the “direct or indirect supply” of arms “by their nationals” to embargoed regions or entities ⁵⁵	Yes	Yes	Yes
EU arms embargoes	All EU Member States must prevent the supply of arms and other embargoed materiel “by nationals of Member States or... using their flag vessels or aircraft... whether originating or not in their territories”. ⁵⁶	Yes	Yes	Yes

International instrument	Provisions	Includes flag vessels/aircraft transporting arms?	Includes arms transport in a state's jurisdiction?	Includes arms transport service providers operating from a state's jurisdiction?
Convention on International Civil Aviation (Chicago Convention) – <i>air transport only</i>	Article 35: “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.” ⁵⁷	No	Yes, but does not stipulate grounds for refusing carriage, or require states to consider the destination or intended end-use of the weapons in granting authorisation	No
Council (EC) Regulation 1899/2006 of 12 December 2006 [prescribing common EU aviation safety standards] – <i>air transport only</i>	“An [aircraft] operator shall not transport weapons of war and ammunitions of war by air unless an approval to do so has been granted by all States concerned” [the states of origin, transit, overflight and destination]	Yes, but does not stipulate grounds for refusing carriage, or require states to consider the destination or intended end-use of the weapons in granting authorisation	No (except dangerous goods, which may include ammunition but not many other kinds of arms)	Yes, but does not stipulate grounds for refusing carriage, or require states to consider the destination or intended end-use of the weapons in granting authorisation

International instrument	Provisions	Includes flag vessels/aircraft transporting arms?	Includes arms transport in a state's jurisdiction?	Includes arms transport service providers operating from a state's jurisdiction?
ECOWAS Convention on Small Arms and Light Weapons, their ammunition and other related materials	Defines brokering to include “the transportation of small arms and light weapons”. All brokering agents in member states must “obtain an explicit authorization for each individual transaction in which they are involved irrespective of where the arrangements take place”	No	Transit of small arms and light weapons through a state party's territory requires authorisation	Yes (but only covers small arms and light weapons)
Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa	States Parties must regulate all “transporters of small arms and light weapons through licensing”. Brokering also defined to include acting “to facilitate the transfer...in respect of any transaction relating to the buying or selling of small arms and light weapons”. Such authorisations shall not be given, inter alia, if “the arms are destined to be used: for the violation of international humanitarian law or infringement of human and peoples' rights and freedoms, or for the purpose of oppression”	No	Prior to an arms transfer taking place, transit states must have at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit.	Yes (but only covers small arms and light weapons, and not clear whether ‘case-by-case’)

International instruments and national regulatory systems thus already impose a range of obligations and powers to control arms transportation and arms transporters. In many states, however, these obligations and powers are either not implemented, or are only implemented through transport safety regulations rather than through specific arms transfer control mechanisms. As a result, substantial loopholes exist regarding the transport service providers and the types of weapons and associated equipment covered by different states' transport regulations. In addition, as the above examples show, transport regulations in most states do not incorporate any risk assessment that an international arms transfer may be diverted to unauthorised end-users, or be used in serious violations of international law: such risk assessment procedures are critical for preventing irresponsible or unlawful arms transfers, and protecting human rights.

There are four ways in which states currently implement their obligations to prevent illicit and irresponsible arms transfers undertaken by transport service providers, aircraft and vessels under their jurisdictions.⁵⁸

(I) CONTROLLING FLAG VESSELS AND AIRCRAFT

As noted above, all UN member states are obliged to prevent the supply of arms in breach of UN arms embargoes from being transported on vessels and aircraft 'flagged' (registered) in their jurisdictions. Some member states have acted on these obligations when potential embargo breaches on their flag vessels have been detected. For example, on 29 January 2009 a Cypriot-flagged ship the MV *Monchegorsk* was ordered into a Cyprus port by Cypriot authorities after it was stopped while passing through the eastern Mediterranean. According to information provided by Cyprus to the UN Security Council, the ship had been chartered by an Iranian shipping company and was found to be carrying parts for 125mm anti-tank ammunition, bullet shells, and explosive charges from Iran in contravention of UN Security Council Resolution 1747.⁵⁹

However, if states are to adequately fulfil their obligation to prevent breaches of mandatory arms embargoes, they cannot rely only on the difficult task of detecting unlawful shipments, but should adopt and implement precautionary procedures to stop potential embargo breaches before they take place. This can be achieved, for instance, by requiring aircraft and vessel operators to obtain prior authorisation for arms shipments on their flag vessels and aircraft, as is done in Germany for arms shipments on German ships.⁶⁰ At a minimum, states should require flag vessels and aircraft to obtain a general authorisation to transport arms as part of an aircraft or vessel's registration process, and should exclude aircraft, vessels and carriers found to have been breaching arms embargoes or other arms transfer laws from being authorised to transport arms.

(II) CONTROLLING ARMS TRANSPORT IN A STATE'S JURISDICTION

A number of states place specific controls on arms transported through their territory or airspace. In the case of air transport, this power is explicitly mandated by Article 35 of the Convention on International Civil Aviation (the 'Chicago' Convention).⁶¹ In some states these controls are currently confined to air safety regulations requiring authorisation for the carriage of 'dangerous goods', which include ammunition but not many weapons or other types of military equipment, and which do not involve any consideration of the destination or final use of the equipment to be delivered.

One example where a system of national authorisations for the carriage of weapons through national territory or airspace is integrated into wider arms control risk assessment procedures is the practice of Ireland. Aircraft carrying "munitions of war or implements of war" over Ireland, or landing in Ireland, require authorisation from the Department of Transport. Applications for such flights are referred to the Department of Foreign Affairs, Department of Justice and the Irish Aviation Authority for observations, and the Department of Defence for information, allowing policy-based risk assessments of the arms transfers themselves to be made, rather than simply safety-based assessments of the flights.⁶²

A lack of sufficient information has sometimes led to irresponsible transfers taking place. For example, on 27 February 2006 a Russian-registered Antonov-124 cargo aircraft (RA 82042) reportedly made a technical stop at Shannon airport while transporting military attack helicopters from the USA to Israel.⁶³ The Israeli military has repeatedly used attack helicopters in the Occupied Palestinian Territories and in Lebanon in attacks which have resulted in high numbers of civilian fatalities and injuries, including direct attacks on civilian objects, indiscriminate attacks in densely populated civilian areas, and extrajudicial executions.⁶⁴ Amnesty International has urged all governments to respect their international obligation to refrain from supplying arms likely to be used in serious human rights violations and breaches of international humanitarian law. In this instance, the Irish government stated that it was not informed about the flight's outbound stop-over in Ireland: "[t]he original information provided to the department [of Transport] by the aircraft operator shows that the flight in question intended to travel from the USA to Israel via Iceland and to return via Shannon. We were informed that the flight landing at Shannon on the return leg would be empty. Following inquiries today, it has been discovered that the aircraft landed in Shannon on the outbound leg."⁶⁵ Equally problematic is the fact that the Irish government has previously not systematically collected information on the origin or destination of arms-carrying flights, apart from their immediately previous and next point of landing, making it difficult in some cases to undertake prior risk assessment about the final destination or end-user of the arms.⁶⁶

Nonetheless the Irish government *has* used its Chicago Convention powers to prevent other arms shipments at substantial risk of being used in serious violations of international human rights or humanitarian law. Information provided by the

Department of Transport indicates that between January 2003 and October 2006, eight weapons-carrying flights were refused authorisation for overflight or landing in Ireland, including four flights refused on the grounds that they were carrying landmines, which Ireland prohibits due to its obligations under the (anti-personnel) Mine Ban Convention.⁶⁷ The Irish government also stated that during the Lebanon conflict in 2006 “permission would not be granted to any such application for the transport of munitions of war to Israel”.⁶⁸

(III) CONTROLLING ARMS TRANSPORT SERVICE PROVIDERS OPERATING FROM A STATE’S JURISDICTION

The examples in this briefing of UK- and German-registered transport service providers involved in the transport of cluster munitions and their components within South-East Asia, and Air France-operated aircraft transporting an irresponsible arms transfer to the Great Lakes region, indicate the clear potential value of specific controls on transport service providers themselves.

Some states have introduced controls, similar to controls on arms brokering, requiring the licensing of arms transport service providers (rather than individual aircraft or vessels) operating from their jurisdiction. For example, Ukrainian aircraft operators, as well as those operating aircraft registered on the Ukrainian national registry, have since at least 2003 been required to obtain authorisations from the Ukrainian State export control authority and the Ukrainian civil aviation authority to transport military goods, even outside of Ukraine; although these authorisations are not always specific to individual flights, and so may not detect or prevent particular irresponsible transfers.⁶⁹ The UK, by contrast, has imposed extraterritorial and flight-specific controls on the transportation of some weapons by UK-registered transport service providers: since 2008, transport service providers operating from the UK have been required to obtain authorisation from the UK government prior to providing transport for transfers between third countries of small arms and light weapons, as well as all types of arms prohibited for transfer by the UK government, where they are aware of the arms transfer. Similarly, the ECOWAS Convention on Small Arms and Light Weapons, to which 15 West African states are bound, requires all arms brokering agents in ECOWAS member states to obtain “obtain an explicit authorization for each individual transaction in which they are involved irrespective of where the arrangements take place”, and defines arms brokering to include “the transportation of small arms and light weapons”.⁷⁰ The 11 signatories to the Nairobi Protocol have likewise committed to regulating “all... transporters of small arms and light weapons through licensing”.⁷¹

(IV) INCORPORATING TRANSPORT ARRANGEMENTS INTO ARMS EXPORT RISK ASSESSMENT

Finally, some states have sought to integrate transport arrangements into their existing arms *export* licensing procedures. The 56 participating states of the OSCE, as well as the forty states of the Wassenaar Arrangement which includes most of the world's major arms exporters, have adopted 'Best Practices' under which arms exporters should be required to provide licensing authorities with information about the route, carrier, and aircraft involved in exports of small arms and light weapons by air, prior to receiving authorisation for such exports.⁷² The ECOWAS Convention on Small Arms and Light Weapons similarly requires applications for transfer authorisations, referred to the ECOWAS Executive Secretariat, to include information on "transit locations, the type of transport to be used, all companies involved in importing, freight forwarding and handling".⁷³

These measures are designed principally to prevent the illicit diversion of small arms and light weapons to unauthorised end-users, by allowing export licensing authorities undertaking risk assessment of the likelihood of such diversion to identify the involvement of transport routes or suspected illicit arms carriers which might indicate the risk of diversion. The OSCE and Wassenaar 'Best Practices' remain confined, however, to air transport; to transfers of small arms and light weapons only; and to exports from participating states' jurisdictions. They also exempt government, military, or government-chartered aircraft, on which many arms transfers are carried. They do not contain an obligation for participating states to control arms transfers undertaken by transport and transport service providers registered in participating states' jurisdictions but operating elsewhere – as is evident in the cases detailed in this briefing, and as is already required of all states by recent UN arms embargoes. Nor do they contain any obligation for participating states to assess the risk that such transfers might be used to facilitate violations of international law. Without specific controls on arms transporters themselves, incorporating robust standards of human rights risk assessment, irresponsible transfers like those highlighted in this briefing will likely continue.

5/CONCLUSION AND RECOMMENDATIONS

There is a clear need for the consistent and coherent incorporation of states' existing powers and obligations to regulate arms transportation, into an international instrument such as the ATT. The ATT should ensure that these powers and obligations are applied to all types of arms and to all means of international arms transportation. In particular, ATT provisions should ensure that national arms transportation controls are used to prevent international arms transfers which would contravene the terms of the Treaty. Ultimately, controls should be designed to enable states to prevent unauthorised or illegal arms shipments as well as irresponsible arms shipments within their jurisdictions, requiring all states to properly assess the risk that a particular shipment would contribute to serious violations of international law, especially of international human rights or humanitarian law. To do this, transportation controls must incorporate risk assessment mechanisms regarding the likely misuse or diversion of weapons, munitions or related equipment.

As much as possible, such controls should incorporate and enhance existing mechanisms and authorities regulating the physical movement of cargo, including customs, border control, civil aviation and maritime authorities. In particular, enhancing and incorporating uniform provisions for the customs control of shipments of ATT-controlled items would not only assist in the control and verification of international arms transfers, but would also promote their transparency. States' reporting of international arms transfers currently lacks coverage and uniformity. Government-to-government transfers are usually not recorded by customs authorities, and are often not reported by governments in published arms transfer reports. In addition, many states' published national arms transfer reports do not contain information that precisely identifies the type of weapons sold or purchased beyond the level of broad categories, or the type of end-user to which the arms transfer has been authorised. This makes it difficult to determine what arms are being transferred from which states and to which end-users.⁷⁴ Developing uniform customs tariff codes for ATT-controlled items, and uniform standards for the control and verification of ATT-controlled items by customs authorities, would provide common standards for states parties to collect information and report on international arms transfers under the ATT, which would be made easier for states to implement by taking advantage of systems of trade surveillance already undertaken by all national customs authorities.

RECOMMENDATIONS

To be effective, the ATT must enable states to regulate the physical movement of weapons. It should reinforce existing obligations and powers to regulate the transport of weapons (i) through states' territory or airspace; (ii) by arms transport service providers operating from their jurisdiction; and (iii) on ships and aircraft 'flagged' in their jurisdiction.

Recommendations to all states

1) Under the ATT, each State Party should:

- Establish or maintain an effective national system for regulating the activities of transport service providers involved in transporting conventional arms covered by the Treaty. Such a system should include:
 - registering transport service providers operating within their territory;
 - licensing each proposed transport service provision or activity relating to a transfer of conventional arms;
 - disclosing details of transport and transport service providers in applications for import and export licences or authorisations;
 - requiring transport service providers to maintain for inspection comprehensive and verifiable documentation, including manifests, airway bills, bills of lading and invoices, which at a minimum contain details of the export authorisation, consignee/consignor, end-user and the relevant customs tariff codes identifying each movement of ATT-controlled goods.

- At a minimum, take effective steps to ensure that transport service providers in their jurisdictions do not facilitate the supply of conventional arms in contravention of a binding UN arms embargo, or any other of the state party's obligations or commitments on non-proliferation, small arms and light weapons or other arms control and disarmament

- At a minimum, require the operators of vessels and aircraft registered in their jurisdiction to obtain a prior general authorisation to transport arms as part of an aircraft or vessel's registration process, and to exclude carriers found to have been breaching arms embargoes or other arms export laws from obtaining authorisation to transport arms

- Implement existing powers under the ICAO Convention to regulate and require specific authorisation for the passage of conventional arms (and not only dangerous goods) through its territory or airspace; and take effective steps to prevent the movement of any such arms transfer through their

territory or airspace which is in contravention of a binding UN arms embargo, or any other of the state party's obligations or commitments on non-proliferation, small arms and light weapons or other arms control and disarmament agreement

- Inspect, in accordance with their national authorities and legislation and consistent with other international law (in particular the law of the sea and relevant international civil aviation agreements) all cargo in their territory, including seaports and airports, if the State Party has information that provides reasonable grounds to believe the cargo forms part of an international arms transfer which is prohibited under the ATT.
- Ensure that transport service providers are required to declare to customs authorities that they are transporting ATT-controlled goods; and ensure that customs authorities are required to verify that such shipments have obtained the necessary authorisation

2) Under the ATT, State Parties' controls on the transport of weapons (i) through their territories or airspace; (ii) by arms transport service providers operating from their jurisdiction; and (iii) on ships and aircraft 'flagged' in their jurisdiction; should incorporate a mechanism for prior risk assessment which would require permission for the transport activity to be refused if the international arms transfer for which transport was to be provided was considered to breach the terms of the ATT, including where there is credible and reliable information indicating a substantial risk that the intended recipient is likely to use these arms to commit or facilitate serious violations of international human rights law or international humanitarian law.

Recommendations to all states' customs authorities, and to the World Customs Organisation

To facilitate the declaration and verification of ATT-controlled shipments, the World Customs Organisation and national customs authorities should work with national export control authorities and the transport industry to provide clearly identifiable customs tariff codes specifically covering ATT-controlled goods.⁷⁵

Recommendations to the IMO, ICAO, IATA, ITF and other relevant international organisations

Initiatives on security and safety in the transport industry promoted by the

International Maritime Organization (IMO) and the International Civil Aviation Organization (ICAO), as well as international associations of the transport industry such as IATA and the “Flags of Convenience Campaign” of the International Transport Workers’ Federation (ITF), should be encouraged to address the prevention of weapons, ammunition and associated equipment transfers where they are likely to contribute to serious violations of international human rights and humanitarian law, and consider them as “a common security threat”.

NOTES

- 1** Taped interview undertaken for Oxfam GB, 22/23 February 2000, transcript on file with Amnesty International.
- 2** United Nations, *Report of the Group of Governmental Experts Established Pursuant to General Assembly resolution 54/54V of 15 December 1999 (A/CONF.192/2)*, 11 May 2001, p. 24
- 3** The term 'unauthorised arms transfer' is used in this paper to indicate the transfer or diversion of conventional arms to an end-use or end-user not specifically authorised by the exporting or importing state. The term 'illegal arms transfer' is used to indicate an arms transfer which breaches national and/or international laws covering the transfer of conventional arms.
- 4** UN Convention on the Law of the Sea, Article 94 and passim; Convention on International Civil Aviation (Chicago Convention), Chapter III and passim. UN Security Council Resolution 1132 (8 October 1997) on Sierra Leone, para. 6; UN Security Council Resolution 1521 (22 December 2003) on Liberia, para. 2(a); UN Security Council Resolution 1333 (19 December 2000) on Afghanistan under Taliban control, para. 5(a); and other UN Security Council resolutions on Sudan, the Democratic Republic of Congo, Cote d'Ivoire, Somalia, Eritrea and Ethiopia.
- 5** United Nations, *Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons (A/62/163)*, 30 August 2007, paras. 10, 63(iii); UN General Assembly resolution A/RES/62/47, paragraph 3 (vote 5 December 2007)
- 6** For example, United Nations, *Report of the Group of Governmental Experts Established Pursuant to General Assembly resolution 54/54V of 15 December 1999 (A/CONF.192/2)*, 11 May 2001; Amnesty International, *Blood at the Crossroads: Making the case for a global Arms Trade Treaty* (Index: ACT 30/011/2008, September 2009); Amnesty International, *Dead on Time – arms transportation, brokering and the threat to human rights* (Index: ACT 30/008/2006, 10 May 2006); Amnesty International, *Democratic Republic of Congo: Arming the East* (Index: AFR 62/006/2005, 4 July 2005)
- 7** For further details, see Amnesty International, *Blood at the Crossroads: Making the case for a global Arms Trade Treaty* (Index: ACT 30/011/2008, September 2009), p.22. Colombian guerrilla groups including the FARC, as well as the other parties to the conflict including the security forces and paramilitary groups, have been responsible for repeated and widespread human rights abuses and violations of international humanitarian law.
- 8** US Attorney, Southern District of New York, press release, 24 February 2009
- 9** Al Kassar's court case dealt only with the 'sting' operation, and not with other allegations of Al Kassar's involvement in arms transfers, including other selected allegations about earlier arms trafficking activity by Al Kassar which were included in the DEA's indictment. Amnesty International believes that international law provides for any state to investigate and prosecute individuals suspected of complicity in serious crimes under international law, including those knowingly providing arms for the commission of such

crimes, regardless of the nationality of the alleged perpetrator, or the place that the alleged crime was committed. However, Amnesty International is concerned that such universal jurisdiction should be used to prosecute serious crimes under international law, and must include safeguards to ensure that the human rights of suspects are respected, including sufficient time and proper judicial procedures to oppose extradition where such suspects would risk torture, ill-treatment, unfair trial or the death penalty. "Sting operations" may in some case amount to "entrapment," a practice prohibited in several countries, including the United States. European countries such as Sweden and the Netherlands prohibit "sting operations." Courts should ensure that investigation of the alleged crimes has not amounted to entrapment. See for example: Newman, G. R., *Sting Operations*, U.S. Department of Justice, Problem-oriented guide for police, Response Guide Series n.6, October 2007.

10 US District Court, Southern District of New York, Affidavit in support of request for Extradition, S3 07 Cr. 354 (JSR), 24 July 2007

11 US District Court, Southern District of New York, Affidavit in support of request for Extradition, S3 07 Cr. 354 (JSR), 24 July 2007

12 USA vs. Monzer al Kassar et al, Exhibit I, on file with Amnesty International. The ship quoted in the affidavit as "*previously been used in 2001 to transport more than 600 metric tons of weapons to Angola -- would be used by CC-1 and CC-3 to transport the weapons, that Nicaragua...*" [§70] was actually another ship that soon after the Angola shipment changed name and was scrapped.

13 Court documents and interviews with legal authorities, Monza, 2002-4, detailed in Amnesty International, *Dead on Time – arms transportation, brokering and the threat to human rights* (Index: ACT 30/008/2006, 10 May 2006), pp.62-65. Charles Taylor, former president of Liberia, has recently stated in evidence given to the Special Court on Sierra Leone that he had flown in Minin's BAC-111 aircraft, and that he had attempted to obtain weapons from Mr Minin, but had failed to do so: Special Court of Sierra Leone, *Case No. SCSL-2003-01-T (The Prosecutor of the Special Court vs. Charles Ghankay Taylor)*, transcript for 25 August 2009 (p. 27669), transcript for Thursday 28 January 2010 (p. 34431)

14 On 18 December 2002 at the trial of Minin in Monza, the judges declared Minin non-prosecutable for the charges relating to international arms trafficking because the court lacked jurisdiction, but upheld the charge for his illegal possession of diamonds, for which he was later convicted and fined 40,000 Euros. Thus, Minin walked free and left Italy. The Monza public prosecutor appealed against the sentence in February 2003 and later submitted evidence to the Corte di Cassazione, including from the authorities in Ukraine, to support the right of jurisdiction to prosecute Minin for his trafficking of arms even though the arms never entered Italy. Nevertheless, on 9 January 2004, the Corte di Cassazione declared its non-competence to examine the documentation, rejected the appeal, and confirmed the acquittal of Minin. For further details, see Sergio Finardi, "The Case of Leonid Minin" in Brian Wood, 'The Prevention of Illicit Brokering of Small Arms and Light Weapons – Framing the Issue', in United Nations Institute for Disarmament Research (UNIDIR), *Developing a mechanism to prevent illicit brokering in Small Arms and Light Weapons – Scope and Implications* (September 2007), <http://www.unidir.org/pdf/articles/pdf-art2590.pdf>. Amnesty International believes that international law provides for any state to investigate and prosecute individuals suspected of complicity in serious crimes under international law, including those knowingly providing arms and other means for the commission of such

crimes, regardless of the nationality of the alleged perpetrator, or the place that the alleged crime was committed.

15 MV An Yue Jiang Arrival Notification document, 10 April 2008. For fuller details, see Amnesty International press release, 24 April 2008.

16 Amnesty International press release, 24 April 2008.

17 Sam Dawson (ITF), 'Arms embargoed', in Amnesty International UK, *TU Alert, Spring 2009*, pp. 8, 21

18 Article 55 of the UN Charter requires UN Member States to promote the full range of human rights, including "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." Article 56 of the Charter also requires Member States to "take joint and separate action" in cooperation with the UN to promote human rights, amongst other things. These UN Charter provisions reflect a positive obligation of all States to cooperate in the promotion of human rights within and beyond their borders. Internationally recognised principles of state responsibility provide that states bear responsibility for aiding or assisting in the commission by another state of internationally wrongful acts, including human rights violations, if they are aware of the circumstances (International Law Commission, Responsibility of States for Internationally Wrongful Acts in Report of the International Law Commission on the Work of Its Fifty-third Session, UN GAOR, 56th Sess., Supp. No. 10, at 43, UN Doc. A/56/10 (2001), Article 16). There are stronger obligations where other states have committed serious breaches of peremptory norms of international law, including violations of key human rights. In such cases, states must cooperate to bring the breaches to an end, and must not recognise nor provide aid or assistance to the commission of such acts (*Ibid.*, articles 40-1). The commission of serious violations of human rights that may amount to serious breaches of peremptory norms of international law would include violations of most of the non-derogable provisions of the 1966 International Covenant on Civil and Political Rights (ICCPR), and key provisions of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and of other international human rights treaties. The most prominent right likely to be breached using arms, including small arms and light Weapons, is the right to life. This right imposes both positive duties on States, including enacting laws to protect the right to life; and a negative duty not to arbitrarily deprive anyone of their right to life. In its authoritative General Comment on States of Emergency, the UN Human Rights Committee explained that the number of non-derogable rights under the ICCPR is in fact larger than the list of non-derogable rights contained in Article 4 of the ICCPR, and includes: the prohibition against arbitrary detention; the prohibition against taking of hostages, abductions or unacknowledged detention; the protection of the rights of persons belonging to minorities; taking of hostages, abductions or unacknowledged detention; the protection of the rights of persons belonging to minorities; the deportation or forcible transfer of population without grounds permitted under international law; and the prohibition against engaging in propaganda for war, or in advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence (UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001).

19 For the Control Arms campaign's full proposed criteria for an Arms Trade Treaty, including this human rights standard, see Control Arms/Arms Trade Treaty Steering

Committee, *ATT Position Papers* (<http://www.controlarms.org/en/resources-and-reports/ngo-arms-trade-treaty-steering-committee-position>)

- 20** For details of the basis of this standard in international human rights law, and how it would be applied in practice, see Amnesty International, *How to apply human rights standards to arms transfer decisions* (Index: ACT 30/008/2008), 1 October 2008
- 21** 'South Korea's Poongsan helps Pakistan manufacture ammunition', *Jane's Defence Industry*, 23 November 2006
- 22** 'Pakistan Ordnance Factory, S. Korean Firms Sign Ammunition Pact', *Asia Pulse (Karachi)*, 24 November 2006
- 23** Poongsan Corporation, promotional material (n.d.), on file with Amnesty International
- 24** "Pak Army Gets First Lot of DPICM Ammunition," *PakTribune* (Online Edition), 12 April 2008
- 25** Import General Manifest No. 538 for MV BBC Islander at Karachi Port, 19 March 2008
- 26** Hanwha Corporation, promotional material (n.d.), on file with Amnesty International. The shipment from Hanwha Corporation was described on revenue authority documentation as "01X40' PART CONTAINER STC: 04 PKGS OF AMMUNITION 40 MM GRENADE, HE M383, HEDP K212, TP K222, 2.75 INCH ROCKET HE, 2.75 INCH ROCKET MPSM. CLASS / UN NO: 1.1E/0006, 1.4C/0338, 1" (Import General Manifest No. 538 for MV BBC Islander at Karachi Port, 19 March 2008)
- 27** Import General Manifest No. 538 for MV BBC Islander at Karachi Port, 19 March 2008 (cargo consigned to the Sanjwal plant described as 55 packages, 27,000 each, of stores)
- 28** Pakistan Ministry of Defence Production, *promotional document* (n.d.) on file with Amnesty International
- 29** Just a month after this shipment from Poongsan Corporation to Pakistan Ordnance Factories it was announced that the Pakistan Army had taken delivery of its first batch of South-Korean-designed 155mm cluster munitions: "Pak Army Gets First Lot of DPICM Ammunition," *PakTribune* (Online Edition), 12 April 2008
- 30** German law requires those who operate German-flagged ships or vessels transporting arms which are loaded and unloaded outside German territory, as in this instance, to obtain a licence from the German government. However, this licensing requirement does not include German ship and aircraft operators whose vessels are not registered in Germany. Section 4 of Act Implementing Article 26(2) of the Basic Law ('War Weapons Control Act'), 20 April 1961, as amended by the Announcement of 22 November 1990 (Federal Law Gazette I, p. 2506) (as amended by Article 3 of the law of 11 October 2002, Federal Law Gazette I, p. 3970), www.bafa.de/bafa/en/export_control/legislation/export_control_cwc_p_war_weapons_control_act.pdf accessed 23 June 2010.

- 31** Import General Manifest No. 5269 for MV Hyundai Baron at Karachi Port, 3 April 2009; Import General Manifest No. 6886 for MV Hyundai Emperor at Karachi Port, 18 February 2010
- 32** Import General Manifest No. 5269 for MV Hyundai Baron at Karachi Port, 3 April 2009
- 33** www.zodiac-maritime.com accessed 31 May 2009, 14 June 2010
- 34** Company and registry documents from UK Companies House and UK Ship Registry
- 35** UK Export Control Order 2008 (S.I. 2008 No. 3231). Although the Convention on Cluster Munitions does not define 'components' of cluster munitions, UK trade control law prohibits the trading and transportation of cluster munition components.
- 36** Correspondence sent by email to Zodiac Maritime Agencies Ltd, 9 December 2009, and telephone call with Zodiac Maritime Agencies Ltd staff member, 9 December 2009.
- 37** Import General Manifest No. 6886 for MV Hyundai Emperor at Karachi Port, 18 February 2010
- 38** Letter from Zodiac Maritime Agencies Ltd to Amnesty International, 18 June 2010
- 39** Rwandan end use certificate, REF: 033/DEF/318/F/007/08 (16 January 2007); analysis of UK strategic arms export licensing reports, 2007-present; discussions between Amnesty International UK staff and relevant UK officials, 2008. System Use Contract Ltd appears to be active, trading and receiving income, according to accounts filed during 2008 and 2009 at the UK's Companies House. Company documentation filed at Companies House states that System Use Contract Ltd is owned by Merida Inc, a company which accounts state is incorporated in the Seychelles (System Use Contract Ltd, Report of the Director and Unaudited Financial Statements for the Year Ended 30 April 2009).
- 40** KPV-type 14.5mm machine guns are used in ZPU-1, ZPU-2 and ZPU-4 anti-aircraft guns.
- 41** Amnesty International, *Democratic Republic of Congo: North Kivu: No end to war on women and children* (Index: AFR 62/005/2008), 29 September 2008
- 42** Final report of the Group of Experts on the Democratic Republic of the Congo (S/2008/773), 12 December 2008
- 43** Amnesty International, *Democratic Republic of Congo: Arming the East* (Index: AFR 62/006/2005), 4 July 2005
- 44** Amnesty International, *Report 2009*, pp. 126-7
- 45** Final report of the Group of Experts on the Democratic Republic of the Congo (S/2008/773), 12 December 2008
- 46** International Committee for the Red Cross, *Arms Availability and the situation of civilians in armed conflict* (1999)
- 47** EU Code of Conduct on Arms Exports, adopted by Council of the European Union, 8 June 1998. In December 2008 this Code of Conduct was transformed into Council Common

Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment.

- 48** Air France Airway Bill No 057-10679933, dated 19 September 2008
- 49** Letter from Air France to Amnesty International, reference CL.DS-CY/PG 06/209, 25 June 2010; Air France Airway Bill No 057-10679933, dated 19 September 2008; T5 document number BG130415957.
- 50** Air France Airway Bill No 057-10679933, dated 19 September 2008;
- 51** Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport, agreed at 2007 Wassenaar Arrangement Plenary; OSCE Decision No. 11/08 'Introducing Best Practices to Prevent Destabilizing transfers of Small Arms and Light Weapons Through Air Transport and on an Associated Questionnaire', FSC.DEC/11/08, 5 November 2008
- 52** Amnesty International has been unable to determine whether a transit authorisation was obtained for this shipment. According to Air France: "In case of a declared shipment of arms connecting by road, in addition to the exportation authorization number and the importation authorization number, AF [Air France] must check the transit authorization for war material granted by the French authorities. In this particular instance, the shipment was carried by air from SOF [Sofia airport] to CDG [Charles de Gaulle airport] and then carried by air from CDG [Charles de Gaulle airport] to NBO [Nairobi] by carrier KQ. AWB [Air Waybill] indicated "Spare parts and tools for KPVT" and was consigned to the Ministry of Defence Kigali Rwanda. Documentation included exportation permit number and importation permit number....The records of AF [Air France] Cargo security department do not show any declared shipments of arms to Rwanda for the year 2009." Letter from Air France to Amnesty International, reference CL.DS-CY/PG 06/209, 25 June 2010
- 53** UN General Assembly Resolution 64/48 (A/RES/64/48) adopted 2 December 2009, para. 4, 7
- 54** See below for examples of national controls on arms transporters.
- 55** This is standard language in a number of UN Security Council resolutions (see, for example, UN Security Council Resolution 1493 (28 July 2003); but in other cases the language varies somewhat between different UN arms embargoes.
- 56** See, for example, EU arms embargoes on Zimbabwe (Council Common Position 2004/161/CFSP of 19 February 2004 renewing restrictive measures against Zimbabwe) and Myanmar (Council Common Position 2006/318/CFSP of 27 April 2006 renewing restrictive measures against Burma/Myanmar)
- 57** The Chicago Convention does not contain a definition of 'munitions of war' or 'implements of war', and stipulates that "each State shall determine by regulations what constitutes munitions of war or implements of war for the purposes of this article". As a result, national practice varies widely. Some states (for example, France), only require permission for the carriage of munitions of war which are also 'Dangerous Goods' as defined in Annex 18 of the Chicago Convention, thus generally only covering ammunition rather than weapons themselves. Others, such as the UK, distinguish between military and sporting small

arms for the purposes of 'weapons of war' flight authorisations simply through a list of typical calibres for military and sporting small arms, which do not correlate with the categories of military weapons contained in the UK or EU Military Lists: see UK Civil aviation Authority, *CAP 688: Transport by Air of Dangerous Goods, Munitions of War, Sporting Weapons and Animals: Guidance Material on the Operator's Responsibilities* (3rd Edition 2004).

58 For a more detailed discussion of arms transportation control mechanisms, see Amnesty International, *Dead on Time – arms transportation, brokering and the threat to human rights* (Index: ACT 30/008/2006, 10 May 2006), especially pp. 132-148, and Silvia Cattaneo, 'Controlling Air Transport: Practice, Options, and Challenges', in *Small Arms Survey, Small Arms Survey 2010* (Cambridge: 2010).

59 UN Security Council committee established pursuant to resolution 1737 (2006), *Implementation Assistance Notice* (24 July 2009), www.un.org/sc/committees/1737/pdf/ImplementationAssistanceNotice%20ENGLISH.pdf, accessed 8 June 2010. UNSCR resolution 1747 (2007), para. 5 stipulates that: "Iran shall not supply, sell or transfer directly or indirectly from its territory or by its nationals or using its flag vessels or aircraft any arms or related materiel, and that all States shall prohibit the procurement of such items from Iran by their nationals, or using their flag vessels or aircraft, and whether or not originating in the territory of Iran."

60 See Section 4 of Act Implementing Article 26(2) of the Basic Law ('War Weapons Control Act'), 20 April 1961, as amended by the Announcement of 22 November 1990 (Federal Law Gazette I, p. 2506) (as amended by Article 3 of the law of 11 October 2002, Federal Law Gazette I, p. 3970), www.bafa.de/bafa/en/export_control/legislation/export_control_cwc_p_war_weapons_control_act.pdf accessed 23 June 2010.

61 For example, in the UK, the Air Navigation Order 2005 (S.I. 2005 No. 1970) Part 5 Article 69. In Ireland, the Air Navigation (Carriage of Munitions of War, Weapons and Dangerous Goods) Order 1973 (S.I. No. 224 of 1973). In the Russian Federation, since 2000 aircraft carrying small arms or light weapons "may not cross the territory of the Russian Federation without landing for border and customs formalities": Paragraph 4 of Government Decision No. 306 of 8 April 2000 on the transit of arms. See also the Government of Russian Federation, *2007 Submission to UN Programme of Action on the Illicit Trade in Small Arms and Light Weapons*.

62 Letter from Department of Transport to Amnesty International Ireland, 23 November 2006

63 Statement by Irish Ministry of Transport cited in 'US moved helicopters to Israel via Shannon', *Irish Independent*, 8 April 2006

64 Amnesty International, *Israel/Occupied Territories: Israeli Army must respect human rights in its operations* (Index: MDE 15/094/2004, 1 October 2004); Amnesty International, *Israel/Lebanon: Deliberate destruction or 'collateral damage'? Israeli attacks on civilian infrastructure* (Index: MDE 18/007/2006); Amnesty International/Oxfam GB/IANSAs, *Arms without Borders: Why a globalised trade needs global controls* (Index: POL 34/006/2006, 1 October 2006); Amnesty International, *Israel/OPT: Fuelling conflict: foreign arms supplies to Israel/Gaza* (Index: MDE 15/012/2009, 23 February 2009).

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- 65** Irish Ministry of Transport cited in 'US moved helicopters to Israel via Shannon', *Irish Independent*, 8 April 2006
- 66** Amnesty International Ireland, *Controlling a Deadly Trade* (September 2007)
- 67** Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction
- 68** Dermot Ahern (Minister, Department of Foreign Affairs), parliamentary written answer, 25 October 2006.
- 69** Decree of the Cabinet of Ministers No. 690 of 20 November 2003 'On Improvement of the Mechanism for Executing Control over International Air Transfers of Military and Dual-Use Goods'.
- 70** ECOWAS Convention on Small Arms and Light Weapons, their ammunition and other related materials, Article 1.8 and Article 20.
- 71** Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, Article 11
- 72** Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport, agreed at 2007 Wassenaar Arrangement Plenary; OSCE Decision No. 11/08 'Introducing Best Practices to Prevent Destabilizing transfers of Small Arms and Light Weapons Through Air Transport and on an Associated Questionnaire', FSC.DEC/11/08, 5 November 2008
- 73** ECOWAS Convention on Small Arms and Light Weapons, their ammunition and other related materials, Article 5.1.c.
- 74** There are three basic methods to report commercial arms sales (recorded by customs authorities): Country of Origin/Consumption; Country of Consignment/Destination; and Country of Purchase/Sale.
- 75** The World Customs Organisation recommended in 2002 that the harmonized system of customs tariff codes should be amended and elaborated to facilitate monitoring and control of firearms specified by the UN Firearms Protocol. This approach could be elaborated for the ATT. World Customs Organisation, *Recommendation of the Customs Co-operation Council on the Insertion in National Statistical Nomenclature of Subheadings to Facilitate the Monitoring and Control of Products Specified in the Protocol Concerning Firearms Covered by the UN Convention against Transnational Organized Crime*, 29 Jun 2002, www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/HarmonizedSystem/HS%20Recommendations/HS_reco_june2002_29_EN.pdf

DEADLY MOVEMENTS

TRANSPORTATION CONTROLS IN THE ARMS TRADE TREATY

FRONT COVER: An Antonov 12 cargo aircraft takes off from a remote airstrip in Central Africa. This kind of cargo aircraft has often been used to deliver weapons to embargoed conflict zones in many parts of the world © Guy Tillim

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