



THE ROLE OF TRANSIT AND TRANS-SHIPMENT IN COUNTERPROLIFERATION EFFORTS

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INTRODUCTION

By the nature of its business, the transport sector is well placed to counter the proliferation of weapons of mass destruction (WMD): its potential for contributing to global counterproliferation efforts should not be underestimated. All parties in the international supply chain have a responsibility to ensure that a transaction complies with the numerous requirements captured under the general description of ‘export controls’ or ‘strategic trade management’. This may include the fulfilment of export, transit and trans-shipment licence requirements; and end-use, dual-use and restricted-party screening. Complying with export control regulations can be particularly complex for the transport sector since transactions involve multiple jurisdictions and, in some situations, have extraterritorial implications.

The SIPRI Good Practice Guides on the transport sector as counterproliferation partner have been developed to support partnerships between the transport sector and government authorities to counter proliferation and to implement proliferation-related United Nations Security Council resolutions. The series identifies and explores various aspects of the transport sector as a counterproliferation partner, with the aim of strengthening the sector’s contribution in this area.

This guide aims to support compliance and good practice as it relates to transit and trans-shipment. Transit and trans-shipment are common features of international trade, and a high proportion of international containerized trade will transit and/or trans-ship at least once along the supply route. And, while transit and trans-shipment offer proliferators occasions to divert consignments to WMD programmes, they also offer significant opportunities for the identification and interdiction of suspect consignments. In particular, this guide pays specific attention to various aspects of transit and trans-shipment and the roles they may play in combatting non-compliance and proliferation-related activities. In doing so, the guide reviews proliferation-related transit and trans-shipment controls, explores their associated risks and opportunities and identifies key actions transport sector actors can take to counter proliferation.

SERIES SUMMARY

● The SIPRI series of good practice guides on the transport sector as counterproliferation partner is the culmination of a MacArthur-funded research project that recognizes the importance of the transport sector to counterproliferation efforts and seeks to encourage the sector’s enhanced activity and partnerships with government authorities.

Throughout 2015 the project team engaged with a broad range of transport sector stakeholders in Asia, Europe, the Middle East and the United States to better understand their compliance challenges; to explore risks and obligations; and to identify, share and test good practice. In doing so, the team also hosted regional good practice workshops that brought together government officials, experts and transport sector representatives and provided a rare opportunity for a spectrum of stakeholders to engage directly on counterproliferation issues.

The guides reflect the main findings of the project’s research, engagement and workshops. They explore an array of counterproliferation activities and can be used individually or combined to support training, awareness raising or the development of internal compliance programmes. The format and focus have been developed in consultation with the transport sector.



WHAT ARE TRANSIT AND TRANS-SHIPMENT?

The terms ‘transit’ and ‘trans-shipment’ are often used interchangeably and legal definitions can differ according to purpose and between jurisdictions. The international foundation for customs activities—the 1974 World Customs Organization’s International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention)—defines transit as ‘the Customs procedure under which goods are transported under Customs control from one Customs office to another’, and trans-shipment as ‘the Customs procedure under which goods are transferred under Customs control from the importing means of transport to the exporting means of transport within the area of one Customs office which is the office of both importation and exportation’.¹

In layman’s terms transit is the transport of goods through a territory where the goods remain on board the original means of transport (e.g. vessel, train or aircraft), and trans-shipment is the transport of goods through a territory where the goods are unloaded from one means of transport and loaded on to another means of transport (e.g. from a vessel to a train).

Consignments that transit or trans-ship are usually subject to significantly fewer regulatory and reporting requirements to facilitate trade and because they are considered to pose limited, or no, fiscal/safety and security risks for the state through which they are passing. However, to prevent illicit diversion and the triggering of more stringent customs controls (i.e. export controls), many jurisdictions require that in order for consignments to be classed as a transit or trans-shipment their destination/consignee on entering the territory must be the same as the destination/consignee on leaving the territory.

THE INTERNATIONAL OBLIGATIONS AND NATIONAL CONTROLS RELATED TO TRANSIT AND TRANS-SHIPMENT CONTROLS

Reference to mandatory transit and trans-shipment controls are found in a range of proliferation-related UN Security Council resolutions. UN Resolution 1540 (2004) established legally binding obligations on all states to control the proliferation of weapons of mass destruction (WMD), their means of delivery and related materials and specified that states should ‘Establish, develop, review and maintain appropriate effective national export and trans-shipment controls . . . including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls’.²

There have also been a series of proliferation-related UN sanctions resolutions that highlight transit and trans-shipment controls, most notably on Iran and North Korea. In particular, UN Resolution 1737 (2006) and Resolu-

¹ The International Convention on the Simplification and Harmonization of Customs procedures (Kyoto Convention) entered into force 1974. The revised convention entered into force in 2006, <http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/kyoto_new/spane.aspx>.

² UN Security Council Resolution 1540, 28 Apr. 2004, para. 3(d).



tion 1929 (2010) require states to inspect and control goods passing through their territories en route to Iran. Iran is currently subject to UN Resolution 2231 (2015), which sets out a schedule for the suspension and lifting of previous UN sanctions linked to the implementation of the Joint Comprehensive Plan of Action (JCPOA).³ In accordance with the JCPOA, the UN's nuclear-related restrictions on transfers to Iran of dual-use items and conventional arms were lifted on 16 January 2016. However, any transfers will remain subject to approval by the UN Security Council until the sanctions have been fully lifted.⁴

Resolution 1737 requires all states to 'prevent the supply, sale or transfer directly or indirectly from their territories, or by their nationals or using their flag vessels or aircraft to, or for the use in or benefit of, Iran, and whether or not originating in their territories, of all items, materials, equipment, goods and technology which could contribute to Iran's enrichment-related, reprocessing or heavy water-related activities, or to the development of nuclear weapon delivery systems'.⁵ While transit and trans-shipment are not specifically mentioned, the reference to the 'transfer directly or indirectly' implies that states are required to exert controls in this area.

Resolution 1929 requires all states to 'inspect, in accordance with their national authorities and legislation and consistent with international law, in particular the law of the sea and relevant international civil aviation agreements, all cargo to and from Iran, in their territory, including seaports and airports, if the state concerned has information that provides reasonable grounds to believe the cargo contains items the supply, sale, transfer, or export of which is prohibited'.⁶ Similarly, while no direct mention is made of transit and trans-shipment, the reference to 'all cargo to and from Iran, in their territory' implies that states are required to exert controls in this area. Similar wording related to transit and trans-shipment can be found in proliferation-related UN resolutions targeting North Korea: 'cargo within or transiting through their territory'.⁷

A number of arms control treaties also include proliferation-related transit and trans-shipment controls. State parties to the 1972 Biological and Toxin Weapons Convention (BTWC) undertake 'not to transfer to any recipient whatsoever, directly or indirectly, . . . any of the agents, toxins, weapons, equipment or means of delivery specified in article I'.⁸ The 1993 Chemical Weapons Convention (CWC) requires its states parties to prohibit the 'transfer, directly or indirectly' of prohibited 'toxic chemicals and their precursors', 'Munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals' and 'any equipment specifically designed for use directly in connection with the employment of

³ UN Security Council Resolution 2231, 20 July 2015.

⁴ See Anthony, I. et al., 'The role and impact of international sanctions on Iran', *SIPRI Yearbook 2016: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2016).

⁵ UN Security Council Resolution 1737, 23 Dec. 2006, para. 3.

⁶ UN Security Council Resolution 1929, 9 June 2010, para. 14.

⁷ UN Security Council Resolution 2270, 2 Mar. 2016, para. 18.

⁸ Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (Biological and Toxin Weapons Convention, BTWC), opened for signature 10 Apr. 1972, entered into force 26 Mar. 1975, *United Nations Treaty Series*, vol. 1015 (1976), Article III.



[those] munitions and devices'.⁹ Again, while no direct mention is made of transit and trans-shipment, the references to 'transfer, directly or indirectly' implies that states are required to exert controls in this area.

It is important to note that UN resolutions and treaties are only binding on the state; in order for them to be binding on individuals or other legal entities, they require appropriate and effective implementation at the national level.¹⁰ Once implemented, state authorities (usually the customs authority) will face the challenge of enforcement: promoting compliance and identifying consignments of proliferation concern while minimizing disruption to legitimate trade.

IDENTIFYING CONSIGNMENTS OF PROLIFERATION CONCERN

There are primarily three ways in which consignments of proliferation concern can be identified when transiting or trans-shipping: intelligence, risk profiles or operational activity. All three are dependent on, or enhanced by, the availability of consignment-level information. For example, even if the intelligence is detailed enough to include a container number, it is still necessary to know the location of the container on a vessel that could be carrying nearly 20 000 20-foot-long containers.

In all three cases, the ability of the customs authority to identify a consignment of proliferation concern and minimize disruption to legitimate trade is proportionate to the information available. The nature and detail of consignment-level information submitted to customs authorities will differ considerably depending on whether the consignment is either being directly imported or exported or is in transit or being trans-shipped.

For consignments being directly exported or imported, the consignor or consignee (or an agent acting on their behalf) will usually make a mandatory export or import declaration to customs that includes information on the goods, consignor and consignee. Customs authorities can then combine this declared information with additional information sources, including company registration, compliance history, trading history and so on, to validate the declaration. For transiting or trans-shipping consignments the information submitted to customs for control purposes may include a pre-arrival declaration or cargo manifest submitted by the carrier (rather than the consignor). The pre-arrival declaration or cargo manifest would consolidate information on all consignments carried but with significantly less information on each consignment in comparison with an associated export or import declaration.¹¹ Since the consignor and consignee are unlikely to be

⁹ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention, CWC), opened for signature 13 Jan. 1993, entered into force 29 Apr. 1997, articles I, II.

¹⁰ The phrase 'appropriate effective' is used to describe the standard required when implementing Resolution 1540.

¹¹ A cargo manifest may include information on the shipper; the consignee; the notify address; the bill of lading number; the container number(s) and seal number(s), as well as other marks or numbers associated with the individual container(s); a description of the goods; the number and kind of packages; gross weight and measurement; the first port where the carrier took possession of the cargo and the foreign port where the cargo was loaded aboard the vessel. If hazardous materials are included in the consignment, a full list of the hazardous goods should be included, together with the relevant UN number.



established in the country of transit or trans-shipment, there will be limited or no additional information sources about them.

Other useful sources of information about the consignment may be found in mandatory maritime or air-related reporting documents that are usually submitted to the port/airport operator/authority for transit or trans-shipment. For example, the 1965 Convention of Facilitation of International Maritime Traffic (FAL Convention) provides standardized facilitation forms for ship-reporting formalities on arrival or departure from a port. The forms are usually submitted to the port or similar authority.¹² These standardized forms include a basic cargo declaration known as International Maritime Organization (IMO) Cargo Declaration (also known as IMO FAL Form 2).¹³ This additional sources of information are particularly useful if there are no pre-arrival declaration or cargo manifest reporting requirements or, as is true in some cases, no carrier information systems.¹⁴

When they are in place, carrier information systems are an additional source of information which contain significant amounts of consignment-level information that is not required or included in pre-arrival declarations or cargo manifests. In some cases, the information available will be particularly detailed (e.g. in cases where the carrier is also providing the container or for regular direct customers) and in other cases the information may be relatively limited (e.g. where the carrier is transporting containers for another carrier). However, in latter case, more detailed information will be held by the other carrier and could be accessed if necessary.

PROLIFERATION RISKS AND OPPORTUNITIES

Proliferators tend to adopt two basic modus operandi. The first is to evade controls by submitting false export declarations. This approach depends on concealing both the true nature of the goods and WMD end-use. It is usually undertaken by proliferators who are active in the country of export. The second is to procure goods from overseas in what appears to the exporter to be a legitimate transaction with no military or WMD associations. This approach depends on concealing the WMD end-use only. It is usually undertaken by proliferators who are based overseas.

In both approaches, the consignment will be diverted to the WMD end-use at an opportune point along the supply chain. This may occur following

¹² Members of the International Maritime Organization (IMO) adopted the FAL Convention in 1965. The convention entered into force in 1967 and has been amended in 2002 and 2005. The convention aims to facilitate maritime transport by simplifying and minimizing the formalities, data requirements and procedures associated with arrival, stay and departure of ships engaged in international voyage. To this end the convention contains standards and recommended practices. Its main contribution lies with the acceptance of a set of models for standardized facilitation forms for ships to fulfil certain reporting formalities when they arrive in or depart from a port. These standardized forms include, among others, the IMO General Declaration, the Cargo Declaration, and the Crew and Passenger Lists, and Dangerous Goods Declaration.

¹³ Available at International Maritime Organization, <<http://www.imo.org/en/OurWork/Facilitation/FormsCertificates/Pages/Default.aspx>>.

¹⁴ The term *Carrier information systems* is used to refer to the information management and communication systems used by carriers to manage their information and business processes. Although each carrier owns and operates its own system, the information inputted, generated and stored will be similar and include information on the consignment, payment, container, consignor and consignee.



an import and subsequent re-export or when the goods transit or trans-ship. The proliferation risk is further compounded by the fact that a consignment may transit or trans-ship any number of times before being diverted to a WMD end-use.

Minimizing the risks

In the transit and trans-shipment context there are two risks that need to be mitigated: that a consignment of proliferation concern transits or trans-ships through a territory in contravention of national controls; or that a consignment of proliferation concern is diverted while transiting or trans-shipping through a territory. In both cases information is key to first identifying and then interdicting the consignment. To mitigate these risks, national customs authorities usually adopt a two-stage risk-based approach.

First, intelligence and risk profiles are applied to information submitted by the carrier. The initial intelligence and risk profiles will focus on a range of possible risk indicators—either on their own or in combination—and vary in sophistication and effectiveness (e.g. matches against lists of entities of proliferation concern, high-risk routings, anomalies in the information provided, destination country etc). However, findings will only indicate that the consignment may be of proliferation concern; seldom will the information available at this stage be sufficient or the profile definitive.

Second, if a profile indicates that a consignment may be of proliferation concern, further information will be sought to either verify or refute whether the consignment is of proliferation concern. The goods, consignor, consignee, destination, end-use, licence requirements, and so on, will be more closely assessed to ascertain whether the goods are subject to controls. For transit, the additional information will, in the first instance, be sought from, or via, the carrier. For trans-shipment additional information may also be available from an in-country agent.

If the goods are subject to controls then state authorities will either detain or seize the goods and take appropriate enforcement action.

Maximizing the opportunities

Transit and trans-shipment also offer important counterproliferation opportunities, such as to retrieve consignments that have been cleared and exported in error; to identify and interdict consignments of proliferation concern from proliferating states or states with inadequate controls; and to identify previously unknown proliferators or proliferation networks.

It is not uncommon for consignments to be shipped without clearance or shipped with clearance due to technical or administrative errors. Depending on the risk, it may be necessary to interdict the consignment and either return it or undertake a physical check before allowing the consignment to continue. Sometimes it is possible to secure the return of a consignment by engaging directly with the carrier to facilitate the return. This is often easier if the technical or administrative error was theirs.

Some states actively seek to proliferate (these states are usually subject to UN resolutions), turn a blind-eye to proliferation-related matters, or do not have adequate controls or capacity to enforce counterproliferation meas-



ures. Transit and trans-shipment hubs therefore offer an opportunity (often the only opportunity) to identify and interdict consignments of proliferation concern. Seldom will a proliferator know how a consignment will be shipped or its route and may not have attempted to conceal the nature of the goods or end-user. The information provided by the consignor to the carrier will then be submitted to state authorities in the territory where the transit or trans-shipment takes place. From there, consignments of proliferation concern may then be identified from intelligence or risk management systems and interdicted.

It may also be possible to identify unknown proliferators or proliferation networks from attempts to divert consignments transiting or trans-shipping through a territory. Diversion is a common feature of proliferation, and while there may be legitimate and entirely legal reasons to divert a consignment it is an important proliferation risk indicator.

THE TRANSPORT SECTOR AS COUNTERPROLIFERATION PARTNER

To minimize the risks of proliferation and maximize the opportunities to support the identification and interdiction of consignments of proliferation concern, the following areas of good practice for the transport sector have been identified:

1. Ensure that all relevant entities are fully compliant with all customs and proliferation-related legal obligations for transit and trans-shipment. These will usually include some form of mandatory reporting requirement.

2. Proactively develop positive relations with the state authorities responsible for the enforcement of proliferation-related controls. It is worth recognizing that developing partnerships with state authorities in this area are mutually beneficial.¹⁵

3. Submit declarations and other relevant documentation as early as possible in the supply chain—rather than just meeting the deadline. This will allow state authorities in the transit or trans-shipment territory to undertake their risk assessment, secure additional information where necessary, and identify which consignments (if any) will need to be interdicted prior to the arrival of the vessel or aircraft. This will minimize any disruption to legitimate trade and the activities of the carrier.

4. Ensure that systems are in place for the quick sourcing and provision of additional information. The information required to allay the concerns of state authorities may not be readily available. Quick and effective systems should be in place for providing such information. Ideally, the additional information can be provided before the vessel or aircraft arrives and, if the consignment proves to be of no proliferation concern, there will be no disruption to trade.

5. Similarly, ensure that other carriers, agents or shipper in the country of export are prepared to retrieve and supply additional information if

¹⁵ Muscat, I., 'Securing the supply chain through transport sector cooperation', SIPRI Good Practice Guide: The Transport Sector as Counterproliferation Partner no. 1, Sep. 2016, <www.sipri.org/publications/2016/securing-the-supply-chain-good-practice-guide>.



requested by the transit or trans-shipment state authority. This can be supported by the adoption of clear protocols and systems to ensure the information can be provided quickly and will deliver the same benefits as above.

6. Ensure that internal compliance processes include proliferation-risk assessments for transit and trans-shipments, and ensure that there are policies or plans in place to mitigate the highest risks. More could be done by the transport sector to identify and counter proliferation risks.¹⁶

7. Ensure that there are policies or plans in place to effectively support state authorities when the risks are realized and an interdiction is required. Assess whether or not carriers are prepared for the possibility of having to unload a container intended for transit.

8. Report consignee or destination changes to state authorities in both the country of export and transit or trans-shipment. Such changes may be illegal and/or invalidate export licences. As a common modus operandi adopted by proliferators, the information may identify previously unknown proliferation actors and networks.

9. Provide state authorities with 'read-only access' to carrier information systems for all consignments in transit or trans-shipping. The information available on these systems is significantly greater than standard declarations or reporting and allows state authorities to better assess the risk and identify consignments of concern without engaging the carrier and with less disruption to legitimate trade.

GLOSSARY¹⁷

Agent A person authorized to transact business for and in the name of another person or company.

Bill of lading A document that establishes the terms of a contract between a shipper and a transport company. It serves as a document of title, a contract of carriage and a receipt for goods.

Carrier Any person or entity who, in a contract of carriage, undertakes to perform or to procure the performance of carriage by rail, road, sea, air, inland waterway or by a combination of such modes.

Consignee A person or company to whom commodities are shipped.

Consignor A person or company shown on the bill of lading as the shipper.

Export declaration A document declaring designated goods to be shipped out of the country. It is to be completed by the exporter and submitted to Customs before export.

Import declaration A document declaring designated goods to be shipped into the country. To be completed by the importer and submitted to Customs before import.

¹⁶ Orzel, R., Pal, D. and Heine, P., 'Export control compliance and the transport sector: lessons for internal compliance programmes', SIPRI Good Practice Guide: The Transport Sector as Counterproliferation Partner no. 5, Sep. 2016, <www.sipri.org/publications/2016/internal-compliance-programmes-good-practice-guide>.

¹⁷ These definitions are drawn in part from US Department of Transport, *Glossary of Shipping Terms*, May 2008, <https://www.marad.dot.gov/wp-content/uploads/pdf/Glossary_final.pdf>.



Manifest A document that lists in detail all the bills of lading issued by a carrier or its agent or master for a specific voyage. A detailed summary of the total cargo of a vessel. Used principally for Customs purposes.

Pre-arrival declaration A document submitted to Customs authorities with advance information on goods brought into the country.

Transit The transport of goods through a territory where the goods remain on board the original means of transport (e.g. vessel, train or aircraft).

Trans-shipment The transport of goods through a territory where the goods are unloaded from one means of transport and loaded on to another means of transport (e.g. from a vessel to a train).

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