

**The Control of Air Transportation  
of Small Arms and Light Weapons and Munitions:  
A Comparative Study of National Systems Utilised  
in the European Union**

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## Table of Contents

|          |   |            |
|----------|---|------------|
| 1        | Introduction .....  | 6          |
| 2        | Regulations, procedures and practices at the national level.....  | 10         |
| 2.1      | Mapping the scope and interaction of typical control systems .....                                      | 10         |
| 2.1.i    | Arms transfer licensing authorities .....   | 14         |
| 2.1.ii   | Customs authorities .....   | 15         |
| 2.1.iii  | Civil aviation authorities (CAA) .....  | 16         |
| 2.1.iv   | Information and regulation outside of regulatory authorities.....                                       | 19         |
| 2.2      | Understanding the reality of States' practices.....   | 24         |
| 2.2.i    | States' views on controlling SALW transfers by air transport.....                                       | 24         |
| 2.2.ii   | Licensing procedures .....  | 27         |
| 2.2.iii  | Customs procedures.....   | 39         |
| 2.2.iv   | National Civil Aviation Authorities.....  | 44         |
| <b>3</b> | <b>- The role of relevant international mechanisms and organisations .....</b>                          | <b>58</b>  |
| 3.1      | Facilitating inter-governmental information exchange .....  | 58         |
| 3.1.i    | Information sharing among national licensing authorities.....   | 58         |
| 3.1.ii   | Other relevant mechanisms of generating and sharing information.....                                    | 61         |
| 3.1.iii  | Assessment .....  | 64         |
| 3.2      | Limiting the activities of air cargo carriers involved in illicit or destabilising SALW transfers ..... | 66         |
| 3.2.i    | Indirectly, by tightening the application of rules relating to air safety .....                         | 66         |
| 3.2.ii   | Directly, by limiting the involvement of certain air carriers in the transport of SALW .....            | 68         |
| <b>4</b> | <b>- National Case Studies of Controls on Air Transport of SALW.....</b>                                | <b>72</b>  |
|          | Case Study: France.....   | 74         |
|          | Case Study: The Netherlands.....  | 86         |
|          | Case Study: Sweden.....   | 98         |
|          | Case Study: United Kingdom .....  | 112        |
|          | Case Study: Ukraine.....  | 124        |
| <b>5</b> | <b>Conclusions: Findings, Strategic Approaches and Priorities for Action .....</b>                      | <b>140</b> |
| 5.1      | Existing national controls and implications.....  | 140        |
| 5.2      | Needs and priorities of systems of national controls.....   | 142        |
| 5.3      | A Strategic Approach for Enhancing Controls on Air Transport of SALW .....                              | 143        |
| 5.4      | Priorities for key elements of national control systems.....  | 144        |
| 5.4.i    | Further steps by national licensing authorities .....   | 144        |
| 5.4.ii   | Increased cooperation between transfer licensing and customs authorities.....                           | 145        |
| 5.4.iii  | Increased cooperation between transfer licensing and civil aviation authorities .....                   | 145        |
| 5.4.iv   | Increased cooperation between customs and civil aviation authorities .....                              | 146        |
| 5.4.v    | Improving mechanisms used by customs authorities.....   | 146        |
| 5.4.vi   | Develop systems aimed at collecting and systematizing information .....                                 | 146        |
| 5.4.vii  | Identifying national authorities as most useful information recipients .....                            | 147        |
| 5.4.viii | Integration into existing brokering licence requirements .....  | 147        |
| 5.4.ix   | Develop improved mechanisms of delivery verification .....  | 148        |
| 5.4.x    | National and international mechanisms limiting involvement in SALW transfers .....                      | 148        |
| 5.4.xi   | The role for EU air safety regulations in limiting the activities of air carriers .....                 | 149        |
| 5.4.xii  | Elaborated controls, decision-making and risk assessment .....  | 149        |
| 5.5      | Potential initiatives for effective European controls on air transportation.....                        | 150        |

|  |            |
|--|------------|
| <b>ANNEXES.....</b>  | <b>152</b> |
| Annex 1 - Summary of Questionnaire responses and in-depth case studies .....   | 154        |
| Annex 2 - Copies of questionnaire responses submitted.....   | 156        |
| Annex 3 - list of possible checks which might be made by competent authorities on shipments of SALW at each stage of licensing and control ..... | 158        |
| Annex 4 – flow of information spreadsheet .....  | 160        |
| <br>   |            |
| <b>Selected Bibliography .....</b>   | <b>162</b> |

## Abbreviations

|         |   |
|---------|---|
| AEMG    | Autorisations d'Exportation de Matériels de Guerre (France)                                 |
| ATMG    | Transit Licence (France)  |
| ALV     | Automatic Licence Verification  |
| AOC     | Air Operator Certificates   |
| AP      | Agrément Préalable (France)   |
| APD     | Attestations d'exportation (France)   |
| ASC     | Air Safety Committee  |
| CAA     | Civil Aviation Authority  |
| CGA     | Contrôle Général des Armées (France)  |
| CIEEMG  | Commission Interministérielle pour l'Etude des Exportations de Matériels de Guerre (France) |
| CDIU    | Central Import and Export Service (Netherlands)   |
| CEN     | Customs Enforcement Network   |
| CIT MAP | Countering Illicit Trafficking-Mechanism Assessment Project (SIPRI)                         |
| CN      | Common Nomenclature   |
| CNOA    | Centre Nationale Opérationnel Aérien  |
| COARM   | Working Party on Conventional Arms Exports (Council of the EU)                              |
| CTE     | Technical Operating Inspectors  |
| DAS     | Délégation aux Affaires Stratégiques (France)   |
| DGA     | Direction Générale de l'Armement (France)   |
| DGAG    | Direction Générale de l'Aviation Civile (France)  |
| DGDDI   | Direction Générale des Douanes et Droits Indirects (France)                                 |
| DG TREN | Directorate-General for Transport and Energy of the European Commission                     |
| DIS     | Customs Information Centre (Netherlands)  |
| DVC     | Delivery Verification Certificate   |
| EASA    | European Aviation Safety Agency   |
| ECS     | Pre-Departure Declarations (Netherlands)  |
| EDI     | Electronic Data Interchange   |
| EUC     | End User Certificate (Netherlands, Sweden)  |
| EU TWIX | European Union - Trade in Wildlife Information Exchange                                     |
| GGE     | Group of Governmental Experts   |
| GODUN   | EU Council Working Party on Global Disarmament and Arms Control                             |
| HS      | Harmonised System   |
| IATA    | International Air Transport Association   |
| ICAO    | International Civil Aviation Organisation   |
| ISP     | (National) Inspectorate of Strategic Products (Sweden)                                      |
| LEOM    | Licensing and Enforcement Officers' Meeting (Netherlands)                                   |
| LFV     | Luftfartsverket (Sweden)  |
| MANPADS | Man-portable air defence systems  |
| MCI     | Muiden Chemie International (Netherlands)   |
| OIELS   | Open Individual Export Licences   |
| OL      | Operating Licences  |
| PDOD    | Post Delivery Onward Diversion  |
| RFI     | Request for Information   |
| RIF     | Risk Information Form (for EU Member state only)  |
| SAD     | Single Administrative Document  |
| SALW    | Small Arms Light Weapons  |
| SGDN    | Secrétariat Général de la Défense Nationale (France)  |

|        |  |
|--------|--|
| SitCen | EU Joint Situation Centre  |
| SPITS  | Special Program on Targeted Sanctions (Uppsala University<br>Department of Peace and Conflict Research)            |
| SEE    | South Eastern Europe   |
| SSEC   | State Service for Export Control (Ukraine)   |
| STC    | Scientific and Technical Centre for Export and Import of Special<br>Technologies, Hardware and Materials (Ukraine) |
| UATK   | Ukrainian Cargo Airways  |
| WA     | Wassenaar Arrangement  |
| WCO    | World Customs Organisation   |

# 1 Introduction

Numerous UN Security Council reports on arms embargoes and NGO documents have identified air transport as one of the main channels for the illicit spread of Small Arms and Light Weapons (SALW).<sup>1</sup> Where shipments have diverged from legitimate to illegitimate recipients, often with the falsification of end-user certificates or transport documentation, air transport companies have been frequently present. In comparison to slower and more easily verifiable forms of international transport, such as maritime cargo carriage, the difficulties of tracking and verifying the activities of numerous small cargo aircraft, operating between and within almost every region of the world, present obvious challenges to restricting illicit trade of any kind. The negative impact of these illicit flows of SALW upon security and economic development in the recipient regions has been well documented in numerous governmental, UN, EU and NGO reports.<sup>2</sup>

In December 2007, under a French initiative, the members of the Wassenaar Arrangement (WA) adopted the "Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport" (*Best Practices*), to contribute to efforts to prevent and reduce risks of diversion or destabilising SALW transfers through weaknesses in controls on air transportation. The *Best Practices* establish guidelines and standards new to many WA members. These include provisions that: when companies apply for licences to export SALW, States are encouraged to require companies to provide a) more detailed information on shipping companies and aircraft that will be employed during the transfer, and b) on the routes they will take during the delivery. The *Best Practices* also encourage States to use this information to support their own decision-making processes when issuing export licences. As well as to share information with other States on exporters, air carriers or agents that fail to provide the information required or who are denied export licences. In 2008, the OSCE adopted a similar set of guidelines.<sup>3</sup>

Despite agreement of the WA *Best Practices* document, there is currently little knowledge about the regulations, procedures and practices currently employed by States in this area. In particular, there has not been a study that systematically examines how governments in Europe and amongst regional partners currently monitor, assess and control air transport of SALW. **Moreover, there is inadequate understanding of the opportunities and challenges for developing national and Europe-wide systems to facilitate and enhance implementation of WA *Best Practices* in this area.**

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<sup>1</sup> For example, see SIPRI and the Special Program on Targeted Sanctions (SPITS) at Uppsala University, *United Nations Arms Embargoes: Their Impact on Arms Flows and Target Behaviour*, (Stockholm: SIPRI, 2007), URL <<http://books.sipri.org/>>; Griffiths, Hugh and Wilkinson, Adrian, "Guns, Planes, Ships: Identification and Disruption of Clandestine Arms Transfers" SEESAC, 2007, URL <<http://www.seesac.org/>>; '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', United Nations, Document A/62/623, 30 Aug. 2007, URL <<http://disarmament.un.org/CAB/brokering/GGE%20brokering/GGEbrokering.htm>>; Amnesty International, 'Dead on Time: arms transportation, brokering and the threat to human rights', (Amnesty International, UK, 2006); and the Reports of the various United Nations Sanctions Committees, URL <<http://www.un.org/sc/committees/>>

<sup>2</sup> For example, see Council of the European Union, 'EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition', Brussels, 13 Jan. 2006; 'Securing Development: UNDP's support for addressing small arms issues', UNDP, July 2005; Muggah, R. and Batchelor, P., "Development Held Hostage": Assessing the Effects of Small Arms on Human Development', UNDP, April 2002.

<sup>3</sup> 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 Nov. 2008.

This study therefore examines European States' existing national systems and plans for controlling the air transportation of SALW, and the contributions of relevant regional and international agreements and mechanisms for such controls. On the basis of this examination, it presents priorities for enhancing the effectiveness of these controls, in order to prevent cases of SALW diversion, as well as to combat illicit or destabilising SALW transfers.

## **Methodology**

The study undertook a systematic survey and analysis of the current regulations, procedures and practices of EU Member States, plus Belarus, Croatia, Norway, Russia, Switzerland, Turkey and Ukraine (34 States in total), through literature research and questionnaires. Questionnaires were sent to the 34 States at the beginning of October 2008. Officials were given a deadline of 31 October 2008 to return completed forms. A full version of the questionnaire was sent to either a COARM (Working Party on Conventional Arms Exports) or Wassenaar Arrangement contact point in national Ministries of Defence or Ministries of Foreign Affairs. They were asked to fill out the questionnaire themselves or in coordination with other departments. A detailed summary of the responses received are available in Annex 1. Full copies of the responses submitted (in their original language) are available in Annex 2.

The study then supplemented the survey and desk research with field missions and interviews in France, the Netherlands, Sweden, the Ukraine and the United Kingdom.

The study examined key aspects of:

- how these states monitor and control air transport of SALW, considering not just the activities of transfer licensing authorities, but also of
  - customs authorities and
  - civil aviation authorities, which also play a vital role in this area.
- Assessments of progress towards implementing the standards outlined in *Best Practices* are included, as well as
  - lessons-learned,
  - challenges and
  - priorities that emerge for ensuring the overall effectiveness of national control systems.

The study then reviewed the roles that international organisations and mechanisms play in helping to prevent cases of SALW diversion as well as to combat illicit or destabilising SALW transfers, and this report discusses ways in which regional or international mechanisms can be developed in this area. These include:

- facilitating information-sharing between States on air carriers that have been involved in illicit SALW transfers; or
- contributing - either directly or indirectly - to limiting the activities of such air carriers.

## **Structure of this report**

**Part 2 “Regulations, procedures and practices at the national level”**, maps the key regulations and institutions of the existing national control systems in Europe to control air transport of SALW. It then examines how they appear to work in practice, on the basis of the information collected.

Thus, **Part 2.1 “Mapping the scope and interaction of typical control systems”**, establishes an analytical framework for the study by mapping the various control systems that are already available in existing national regulations and institutions to implement controls on air cargo transport and SALW transfers. Although the WA’s *Best Practices* focuses on the powers exercised by licensing authorities, this study chose to focus on the full spectrum of national regulatory powers that apply to a transfer of SALW by air transport. Hence, the analysis sought to draw together three overlapping systems of control that apply in a typical transfer of SALW by air: export controls, customs procedures and air traffic control processes/civil aviation safety inspections.

The study focuses on the information provided to the relevant authorities at each stage of the process, coupled with the typical powers that are exercised at each stage. The resulting map illustrates the opportunities already available for detecting and preventing illicit SALW transfers through collaboration and information-sharing between different authorities.

**Part 2.2 “Understanding the reality of States’ practices”** highlights the key findings, key inadequacies and potential areas of best practice in existing national controls across Europe. It pays particular attention to what information is being generated, and what powers are being exercised at each stage of the process.

**Part 3 “Proposing new roles for relevant international mechanisms and organisations”** examines some of the relevant national, European and international organisations and associations which contribute to the monitoring and control of the air transportation of SALW, or could do so in the future.

The two sub-sections focus on two different, significant roles that regional and international mechanisms and organisations can play. **Part 3.1** examines the role of regional and international mechanisms and organisations in facilitating the exchange of information between government agencies, and helping them to identify as well as prevent cases of SALW diversion by air transport. **Part 3.2** examines regional and international mechanisms and organisations in limiting the activities of air cargo carriers involved in illicit or destabilising SALW transfers.

**Part 4** details the results of the five in-depth country case studies. Field trips were conducted in France, the Netherlands, Sweden, Ukraine, and the United Kingdom during December 2008 and January 2009. Attempts were also made to carry out a case study in Bulgaria but these proved unsuccessful. Additional information on process of carrying out the case studies can be found Annex 1.

To clarify different types of approaches towards the design and implementation of effective national controls on air transport of SALW, Part 4 outlines a broad typology of different national approaches, building on both the country case studies and the wider survey presented in Part 2.

**Part 5** presents the main conclusions and findings, and analyses their implications for future priorities to enhance controls on air transport of SALW in Europe and beyond. This section develops three broad strategic approaches towards enhancing the effectiveness of national control systems and developing the capacities and roles of regional and international organisations and mechanisms in this context. The approaches aim to inform strategic planning of interested States and organisations on priorities for future action.

## 2 Regulations, procedures and practices at the national level

This section examines information on the existing and planned national regulations, procedures and practices for controlling air transport of SALW of the 27 EU Member States and seven other European states (Croatia, Turkey, Norway, Switzerland, Russia, Ukraine and Belarus) covered by this study.

### 2.1 Mapping the scope and interaction of typical control systems

The mapping of information flow and institutional powers is based upon best practice documents and international documentation standards (from the Wassenaar Arrangement (WA), Organisation for Security and Cooperation in Europe (OSCE), the European Union (EU), the International Civil Aviation Organisation (ICAO) and the International Air Transport Association (IATA). The resulting map below indicates the *maximum* information and powers potentially available to export control and transport control authorities.

To establish an analytical framework, the study mapped the various **national systems** that are already - in principle - available for controlling SALW transfers by air transport. This analysis focuses on three overlapping systems of control, which are rarely analysed in the same document:

- export controls,
- customs procedures and
- air traffic control processes / civil aviation safety inspections.

Each of these **systems of control** can broadly be understood as stages through which a typical authorised transfer of SALW by air will have to pass through when leaving, transiting or arriving from, via or to different national territories. In each case, the study focuses on:

- the information and analysis typically available to the relevant authorities,
- the powers each of the relevant authorities typically have to halt or prevent certain transfers from taking place.

Each national system of control evidently involves actors and authorities with different objectives: arms control; trade security and fiscal control; transport safety; and the verification of payment and goods ownership. These varying objectives dictate the different categories of information gathered at each stage, and the different checks made on the shipment.<sup>4</sup>

#### Highlighting Gaps

One important purpose of analysing the data in this way is to highlight significant gaps between the availability of information and the authority and capacity to use it for control. It is worth noting at the outset a significant conclusion that emerged from this analysis:

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<sup>4</sup> A more detailed examination of typical document flows during arms shipments, and procedures for such cross-checking such documentation, is provided in Hugh Griffiths and Adrian Wilkinson, *Guns, Planes and Ships: Identification and Disruption of Clandestine Arms Transfers* (SEESAC, 2007) (<http://seesac.org/reports/EXTRACT%20Techniques.pdf>). Numerous examples of diversion, concealment and document falsification techniques are provided by Amnesty International, *Dead on Time – arms transportation, brokering and the threat to human rights* (ACT 30/008/2006, 10 March 2006) (<http://www.amnesty.org/en/library/info/ACT30/008/2006>).

Authorities which are provided with **the most detailed information** about the transport of a SALW cargo (and thus are best placed to establish the *risk* of SALW diversion by air or of illicit carriage of SALW) **are often not those authorities that are empowered to prevent arms transfers based upon such risks.**

In addition, greater information regarding: i) the entities involved in a transfer; ii) the nature of the cargo, and iii) the route of the transfer; is often available in commercial documentation exchanged between transport service providers themselves (air carriers, freight forwarders, cargo brokers and airport ground crew) rather than in export control, customs or civil aviation documentation. Some examples of this are given below, illustrating the opportunities for detecting the risk of illicit carriage or diversion through an examination of commercial documentation by an authority with risk-assessment-based export control powers.

### Checks

From our analysis a list was created of key checks which might be made by competent authorities on shipments of SALW at each stage of licensing and control. The four areas for key checks are: i) licensing process; ii) customs; iii) civil aviation authority; and iv) ramp inspections. The full list of potential checks across these areas is presented in **Annex 3**.

Strikingly, there are remarkably **few international guidelines specifically detailing checks** to verify aspects of SALW cargoes or cargo documentation and no relevant WA *Best Practices* cover this type of activity.

The OSCE *Best Practice Guidelines on Export Controls on SALW and Standard Elements of End-User Certificates and Verification Procedures for SALW Exports* (OSCE *Best Practice Guidelines*) contain some broad recommendations, suggesting that licensing authorities:

- should require import authorisations;
- may require the exporter to submit delivery verification certificates after a shipment has taken place; and
- should verify the bona-fides of authorising officials listed on End-User Certificates.

The OSCE *Best Practice Guidelines* also suggest that customs authorities should check at the point of shipment that:

- the exporter has a valid licence and all other required documentation;
- the goods and the quantity are in accordance with the licence; and
- the export documentation is consistent with the licence.

They also recommend that the national authorities should implement measures to ensure the secure delivery of exported SALW and associated technology, “for instance by conducting a physical inspection of the shipment at the point of delivery.”<sup>5</sup> Nonetheless these checks are limited in scope and elaboration.

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<sup>5</sup> OSCE, *Handbook of Best Practices on Small Arms and Light Weapons* (31 December 2003), Chapter 6, p.11 ([http://www.osce.org/documents/html/pdftohtml/13550\\_34\\_en.pdf.html](http://www.osce.org/documents/html/pdftohtml/13550_34_en.pdf.html) accessed 20 February 2009)

## Information Flow and Available Powers

### Information gaps and overlap

The detailed spreadsheet in **Annex 4** (sample pictured below) illustrates the flow of information and documentation which may typically take place during a shipment of SALW by air transport.

*Picture: Extract of Annex 4 – Flow-sheet of documentation and information on air control procedures*

|    | A  | B | C   | D                        | E                    | F                                  | G                                | H                                 | I                         | J                            |
|----|--|---|---|--------------------------|----------------------|------------------------------------|----------------------------------|-----------------------------------|---------------------------|------------------------------|
| 1  | <b>Flow sheet of documentation and information</b> |   |   |                          |                      |                                    |                                  |                                   |                           |                              |
| 2  | Information typically included                     |   | STAGE 1: License Application (export, brokering, transit/transshipment) |                          |                      |                                    |                                  | STAGE 2: Civil aviation           |                           |                              |
| 3  |  |   | DOCUMENT  | Licence Application Form | End-User Certificate | Import Authorisation Certification | Export/brokering/transit licence | Delivery Verification Certificate | Flight Permission Request | Dangerous Goods Notification |
| 4  | SUBMITTED (to authorities)                         |   | SUBMITTED   | SUBMITTED                | SUBMITTED            | CREATED                            | CREATED                          | SUBMITTED                         | SUBMITTED                 | SUBMITTED                    |
| 5  | Exporter   |   | X   | X O EU                   | ?                    | X                                  |                                  |                                   |                           |                              |
| 6  | Consignee  |   | X   | ?                        | X                    | X                                  | X                                |                                   | X                         | X                            |
| 7  | End-User   |   | X   | X O EU                   | ?                    | X                                  | X                                |                                   |                           |                              |
| 8  | Carrier  |   | W   |                          |                      |                                    |                                  |                                   | X                         | X                            |
| 9  | Freight Forwarder                                  |   | W   |                          |                      |                                    |                                  |                                   |                           |                              |
| 10 | EUC Number/Date                                    |   | X   | X O EU                   |                      | ?                                  |                                  |                                   |                           |                              |
| 11 | Name and contacts of                               |   |   | X O EU                   | X                    |                                    | ?                                |                                   |                           |                              |
| 12 | Export Licence Number/Date                         |   |   |                          |                      | X                                  |                                  |                                   | ?                         | ?                            |
| 13 | Export Authorisation from                          |   | ?   |                          |                      | ?                                  |                                  |                                   |                           |                              |
| 14 | Import Authorisation Certificate                   |   | ?   |                          | X                    | ?                                  |                                  |                                   | ?                         | ?                            |
| 15 | Contract Date                                      |   |   | ?                        | O                    |                                    |                                  |                                   |                           |                              |
| 16 | Contract No./Reference                             |   |   | ?                        | O EU                 |                                    |                                  |                                   |                           |                              |
| 17 | Delivery Verification Certificate                  |   |   |                          |                      |                                    | X                                |                                   |                           |                              |

This flow-sheet compares the documentation flow against:

i) three standards for the control of SALW shipments:

- the Wassenaar Arrangement's *Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport*;
- the OSCE's *Standard Elements of End-User Certificates and Verification Procedures for SALW Exports*;<sup>6</sup>
- the EU Code of Conduct's *Users Guide*.<sup>7</sup>

and

ii) European and international documentation standards for transport and customs documentation, including:

- the IATA universal waybill;
- the *SITPRO Limited*<sup>8</sup> Standard Shipping Note;

<sup>6</sup> OSCE FSC Journal No. 442, Agenda item 6, *Decision No. 5/04: Standard Elements of End-User Certificates and Verification Procedures for SALW Exports* (17 November 2004) ([www.osce.org/documents/fsc/2004/11/3809\\_en.pdf](http://www.osce.org/documents/fsc/2004/11/3809_en.pdf))

<sup>7</sup> Council of the European Union, *User's Guide to the EU Code of Conduct on Arms Exports* (as amended, 29 February 2008)

- the Single Administrative Document (SAD), used for customs declarations in the European Union and several nearby States (Switzerland, Norway and Iceland).

Broadly, the Annex 4 document flow-sheet illustrates:

 The **information gaps** at any one stage in the process. Reading the flow-sheet vertically, it is clear that at no point is information brought together in one place regarding: the authorised supplier, consignee and end-users of the SALW; the shipment's transport methods, routes and transport actors; and the precise specifications of the SALW being shipped. Customs declarations have the potential to come closest to uniting information regarding export control, transport and cargo in one place, yet gaps remain at this stage too.

 The **overlaps** in information provided to different authorities. Reading the flow-sheet horizontally shows the opportunities that already exist for revealing discrepancies in the information provided about the shipment, which can indicate an illicit shipment or the diversion of an authorised shipment. These opportunities for cross-checking and verification can be enhanced by filling 'vertical' gaps in information (regarding export authorisation, transport details and cargo specification) provided at different stages.

### Authority mismatch

Each authority (export control, customs and civil aviation) also has varying powers to prevent potentially illicit or destabilising shipments from taking place.

**Arms transfer licensing authorities** are typically tasked with prohibiting shipments based upon *policy* or *risk assessment* (shipments destined for an undesirable end-user, organised by a company with a record of illicit activity, or suspected of being destined for diversion). But they may not have full information regarding the nature and route of the cargo being shipped.

**Customs authorities**, conversely, may receive more detailed information regarding the nature and destination of the cargo, but in many States they may only be empowered to interdict a shipment in a much narrower set of circumstances. If the goods being exported do not match those being declared, for example, or if customs documentation and procedures contain material irregularities.

Similarly, **civil aviation authorities** may have more detailed information than transfer licensing authorities about whether the route of the shipment includes destinations of concern or presenting a risk of diversion. Yet in the absence of other irregularities - tangential to the transfer of arms - such as non-compliance with aviation safety or noise standards, they are often unable to stop flights they suspect may be diverted.

 The document and information flow-sheet indicates a mismatch between those authorities with most information about the risk of diversion or undesirable destinations, and those authorities with the greatest powers to prevent a shipment from taking place on these grounds.

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<sup>8</sup> SITPRO Limited is a [UK non-departmental public body](#), focused on the removal of barriers to international trade through the simplification and harmonisation of trade procedures.

The WA *Best Practices* seek to correct this mismatch by enabling arms transfer licensing authorities to demand greater information about how the arms are to be transported. However, Section 2.2 below shows that only in a comparatively small number of WA States is this extra information systematically being made available to licensing authorities. Furthermore, in some national export licensing processes – particularly ‘open licensing’ procedures discussed below – such information may not be available to licensing authorities at all.

### 2.1.i Arms transfer licensing authorities

Of all the authorities involved in a shipment of SALW by air, arms transfer licensing authorities typically have the widest mandate to consider risk and policy considerations in authorising a shipment. Throughout the EU they can consider a range of policy considerations: from national security interests to the human rights record of the proposed end-user; the likely destabilising effect of the transfer; and the track record of the exporter or intermediary involved in the transfer.<sup>9</sup> They may deny transfer licences based upon an assessment of *risk*, rather than on narrower technical or documentary irregularities.

Nonetheless export licensing processes tend to focus upon the proposed consignee and end-user of the equipment, seeking principally to assess the risk of the undesirable use or diversion of the arms by those actors *at the stated destination*. **En-route diversion involving transport actors, by contrast, does not currently form part of EU best practice in assessing diversion risks at the licensing stage.**<sup>10</sup> The WA *Best Practices* seek to fill this gap by requesting that export licensing authorities require that exporters supply information on air carriers and flight routes. As will be shown in Section 2.2 and Section 4, a number of States, particularly in Western Europe, maintain that integrating the collection of information on transport modalities into their licensing procedures is not practical.

#### Limited documentary information

An export, transit or brokering licence application will typically be submitted along with:

- an End-User Certificate; *and / or*
- an Import Licence/Certificate; *and*
- authorisations for transit from other States (where the shipment is transiting through those States)

Intermediaries in a SALW trade deal and its shipment (commercial brokers and agents, but also freight forwarders and other transport service providers), may never appear in these documents. Some States' licensing authorities do require additional information (See Section 2.2). In addition, the OSCE *Handbook of Best Practices* recommends that exporters should be required to submit commercial documentation, at least for brokering licensing, and some States do demand this for export licences (see Section 2.2).<sup>11</sup> Nonetheless, commercial contracts are still unlikely to include information about the transport actors involved in the shipment.

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<sup>9</sup> EU Code of Conduct on Arms Exports ([http://ec.europa.eu/external\\_relations/cfsp/sanctions/codeofconduct.pdf](http://ec.europa.eu/external_relations/cfsp/sanctions/codeofconduct.pdf)).

<sup>10</sup> Council of the European Union, *User's Guide to the EU Code of Conduct on Arms Exports* (as amended, 29 February 2008) pp.85-89. The word 'transport' only appears twice in the *User's Guide*: both in the preliminary definitions and nowhere in the body of the guide itself.

<sup>11</sup> OSCE, *Best Practice Guide on National Control of Brokering Activities* (2003), p.16.

## Delivery verification

Without information regarding the transport agents involved in a shipment, the risk of en-route diversion or concealment of the cargo is difficult to assess. In place of such prior risk assessment of transport actors, licensing authorities may instead require the licensee to return a delivery verification certificate from the customs authority or licensing authority at the shipment's destination, verifying that the shipment reached its consignee or end user.

### 2.1.ii Customs authorities

Of all the authorities involved in a SALW shipment by air transport, customs authorities are probably those most directly concerned with preventing the unauthorised *physical* movement of goods. In addition, they are the regulatory actors within a SALW shipment which most frequently bring together information in one place regarding transfer authorisation and transport.

As the flow-sheet in Annex 4 illustrates, the standard customs declaration document of the European Union (the Single Administrative Document) unites information about transport service providers and transport methods, including the “nationality and identity of the means of transport” as it leaves a State's territory; some routing information (but not necessarily information about

interim stops and transit points of the goods); the quantity, type and value of the goods being shipped; and some details of the necessary export or transit authorisations.<sup>12</sup>

| 23. IMPUTATIONS<br>Indiquer dans la partie 1 de la colonne 25 la quantité disponible et dans la partie 2 la quantité imputée |   | 27. Document douanier<br>(protocole et numéro),<br>date d'imputation | 28. Office,<br>nom et signature,<br>cachet |
|--|---|--|--|
| 24. Quantité nette (masse nette ou autre unité de mesure avec indication de l'unité)   | 25. En chiffres                         | 26. En lettres pour la quantité imputée                              |  |
| 11.000   | deux mille huit                         | EX1/16054  | [Signature] [Cachet]                       |
| 2.808  | Cent et huit euros                      | 160905   | [Signature] [Cachet]                       |
| 8.192  | mille cinq cent                         | EX1/16055  | [Signature] [Cachet]                       |
| 1.512  | douze euros                             | 160905   | [Signature] [Cachet]                       |
| 6.680  | EX1                                     | QUATRE MILLE DEUX CENT QUATRE-VINGT QUATRE                           | [Signature] [Cachet]                       |
| 4.284  | S-16384<br>DU<br>30-09-05               |  | [Signature] [Cachet]                       |
| 2.396  | mille deux cent soixante-six cartouches | EX1/16482<br>du 23.09.05   | [Signature] [Cachet]                       |
| 1.166  |   |  | [Signature] [Cachet]                       |
| 1.130  | neuf cartouches                         | EX1/16568  | [Signature] [Cachet]                       |
| 9  |   | du 11.11.05  | [Signature] [Cachet]                       |
| 1.121  |   |  | [Signature] [Cachet]                       |

Nonetheless the typical focus of customs declarations, including the Single Administrative Document, is fiscal rather than security-oriented. Thus, while customs may check goods to ascertain whether they have been accurately declared, they may not systematically check goods against export authorisations to determine whether they have been fully licensed for export, or whether their consignee and end-user actually match the export licence.

In some States (particularly those where customs declarations and export licence applications are submitted electronically) this verification process takes place automatically, as in the UK's Automatic Licence Verification (ALV) process.<sup>13</sup> In others, verifying customs declarations against export licences may be assisted by the obligation of customs authorities to

<sup>12</sup> Or T5 transit document, in the case of the transit of cargo through the European Union. Beyond the EU, the Single Administrative Document is also used in Switzerland, Norway and Iceland.  
[http://ec.europa.eu/taxation\\_customs/customs/procedural\\_aspects/general/sad/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/procedural_aspects/general/sad/index_en.htm) (accessed 25 November 2008).

<sup>13</sup> UK Revenue and Customs (HMRC), *Customs Information Paper (08) 22* (April 2008),  
[http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?\\_nfpb=true&\\_pageLabel=pageLibrary\\_ShowContent&propertyType=document&id=HMCE\\_PROD1\\_028532](http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ShowContent&propertyType=document&id=HMCE_PROD1_028532).

enter 'decrements' on export licences covering multiple shipments, to record how much of the authorised amount on the export licence has been shipped ("*Decrements entered by customs authorities on reverse of Luxembourg export licence for small arms ammunition*" see illustration above).<sup>14</sup>

### **2.1.iii Civil aviation authorities (CAA)**

#### The Chicago Convention

Under the 1944 Chicago Convention on International Civil Aviation (ratified by all the States in this study) national civil aviation authorities (CAAs) are responsible for ensuring that aircraft registered within their jurisdiction adhere to certain safety standards. These standards are laid down by the International Civil Aviation Organisation (ICAO), a subsidiary body of the UN that administers the Chicago Convention.<sup>15</sup> CAAs are typically responsible for issuing a number of flight-related authorisations and Operating Licences (OL), Air Operator Certificates (AOC) and Security Approvals, as well as authorising individual flights themselves. Aviation authorities, airport authorities or airport staff may also be involved in authorising or inspecting an aircraft and its cargo.

#### **(a) authorisations relating to carriage of goods**

Civil aviation control systems focus on aviation safety rather than on trade control or counter-proliferation. There are detailed international standards on the description and transport authorisation of dangerous goods (which includes SALW ammunition, but not SALW *per se*) but no corresponding standards for arms carrying flights.<sup>16</sup> Parts of the Chicago Convention that consider transportation of dangerous good are as follows:

*Annex 18* of the 1944 Chicago Convention deals with the "Safe Transport of Dangerous Goods by Air". According to the Annex, States are required "to have inspection and enforcement procedures to ensure that dangerous goods are being carried in compliance with the requirements."<sup>17</sup> Dangerous goods are classified according to nine hazard classes determined by the United Nations Committee of Experts and used for all modes of transport, including air transport. Class 1 includes "explosives of all kinds, such as sporting

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<sup>14</sup> See example of such decrementing at <http://www.aml-lux.com/English/ExpLic17151p2.html> (accessed 25 November 2008).

<sup>15</sup> Hugh Griffiths and Mark Bromley, 'stemming destabilizing arms transfers: the impact of European Union air safety bans', SIPRI Insight No. 3, p. 3.

<sup>16</sup> See, for example, the limited guidance in JAR-OPS 1, the aviation requirements for commercial aeroplanes produced by the European Joint Aviation Authorities (<http://www.jaa.nl/publications/jars/jar-ops-1.pdf> accessed 25 November 2008), Section 1.065 of JAR-OPS 1 covers the carriage of weapons of war, but does not define weapons of war (as opposed to sporting or 'civil' weapons), nor establishes procedures for assessing and issuing authorisations for their carriage. In July 2008, JAR-OPS was replaced by a EU-wide standard, EU-OPS, in accordance with EC Regulation 1899/2006. EU-OPS sections on the carriage of weapons of war, however, replicate the JAR-OPS standards.

<sup>17</sup> URL <<http://www.icao.int/anb/FLS/DangerousGoods/Annex18/>>

ammunition, fireworks and signal flares" and covers most SALW ammunition.<sup>18</sup>

Detailed guidelines concerning which goods are covered by *Annex 18* and how they should be transported are contained in the ICAO *Technical Instructions for the Safe Transport of Dangerous Goods by Air* (the *Technical Instructions*).<sup>19</sup> In lieu of the *Technical Instructions*, many operators use the IATA's "Dangerous Goods Regulations", which are occasionally stronger, but never weaker, than the ICAO standards.<sup>20</sup> The ICAO and IATA regulations mandate the completion and submission of a "Dangerous Goods Transport Document" (sometimes referred to as a "Shipper's Declaration" or a "Dangerous Goods Declaration Form") prior to the shipping of listed goods and the maintenance of certain safety standards.<sup>21</sup>

*Article 35* of the 1944 Chicago Convention allows States to deny the over-flight or landing of flights carrying "munitions of war or implements of war". Unlike dangerous goods, there is no internationally standardised system to determine what constitutes a 'weapon of war', and in contrast to the near-universal implantation of Annex 18, only a small number of states in this study have introduced flight authorisations of this kind based upon Article 35. Meanwhile, it appears from national practices surveyed in this study, that some export-licensable types of SALW do not fall under many national definitions of 'weapons of war' for the purposes of civil aviation controls (see 2.2.iv).<sup>22</sup>

Systems to issue civil aviation authorisations to carry 'dangerous goods' or 'weapons of war' may also operate entirely separately from systems of export or transit control. Several States in the study require requests to be submitted in advance for any flights carrying 'dangerous goods' or 'weapons of war'. However, since these categories are not harmonised with categories for export or transit licence authorisations, it may not be possible for civil aviation authorities to verify whether licensable military goods are being carried; and certainly not possible to determine whether the goods declared in these flight requests match those described in accompanying export authorisations.

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<sup>18</sup> Any ammunition containing an explosive charge. "ANNEX 18 to the Convention on International Civil Aviation The Safe Transport of Dangerous Goods by Air", ICAO, URL <[http://www.icao.int/eshop/pub/anx\\_info/an18\\_info\\_en.pdf](http://www.icao.int/eshop/pub/anx_info/an18_info_en.pdf)>

<sup>19</sup> e.g. ICAO, *Technical Instructions for the Safe Transport of Dangerous Goods by Air* (<http://www.icao.int/anb/Fls/dangerousgoods/TechnicalInstructions/> accessed 25 November 2008)

<sup>20</sup> "Transport by Air of Dangerous Goods, Munitions of War, Sporting Weapons and Animals", UK CAA, Sep. 2004, URL <<http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=154>>. According to IATA, 'the legal basis for the transport of [Dangerous Goods] are ICAO Annexes 17 and 18. IATA merely establishes best business practices so as to ensure minimum compliance standards.' (Email correspondence, Jens-Thomas Rueckert, Manager Special Cargo Support, IATA, 19 Aug. 2008.)

<sup>21</sup> "Transport by Air of Dangerous Goods, Munitions of War, Sporting Weapons and Animals", UK CAA, Sep. 2004, URL <<http://www.caa.co.uk/application.aspx?catid=33&pagetype=65&appid=11&mode=detail&id=154>>.

<sup>22</sup> For example, the UK Civil Aviation Authority distinguishes between military and sporting small arms for the purposes of 'Article 35' weapons-of-war flight authorisations simply through a list of typical calibres for military and sporting small arms. These bear no direct relation to the categorisation of military weapons in the UK or EU Military Lists. 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* (3<sup>rd</sup> Edition 2004).

**Box 1 - Differing descriptions of SALW on export control, customs and air cargo documentation**

During a SALW shipment, details about the cargo may be submitted to licensing, customs and civil aviation authorities.

In theory, customs and civil aviation authorities should be able to check transported goods against export or transit licences. Yet different systems for describing and categorising the cargo exist at each different stage.

Declaring

Goods declared on customs declarations should be classified in the numerical categories of the **European Union's 'Common nomenclature' (CN)** for trade goods, or the analogous **'Harmonised System' (HS)** in countries outside the EU.<sup>23</sup> These codes may identify the carriage of military weapons (codes between CN 9301 and 9306), and even specifically identify SALW; but CN/HS codes rarely synchronise with the 'military list' categories typically used to describe and categorise goods by export licensing authorities. Nor do they synchronise with the **Dangerous Goods codes** typically used on shipping documents to identify different categories of explosive dangerous goods, some of which cover SALW ammunition and munitions, but which may also cover non-SALW goods. In addition, many types of SALW, if not accompanied by ammunition, will not be declared as dangerous goods at all.

Coding

The following table lists typical codes presented on export control, customs and transport/cargo documentation for small arms ammunition. Although these are the correct codes for small arms ammunition, the customs and dangerous goods codes could also describe a broad and divergent range of goods other than small arms ammunition. This may make it difficult for air transport authorities (given only dangerous goods codes, and possibly limited textual descriptions of the goods) to determine whether flights are carrying SALW; and difficult (without physical inspection) to compare listed cargoes with customs and export licensing authorisations.

| <b>EU Military List category<sup>24</sup></b> | <b>CN Commodity Code<sup>25</sup> (Customs)</b>    | <b>Dangerous Good code / UN Code<sup>26</sup> (shipping handling documentation/dangerous goods authorisations)</b> |
|---|--|--|
| ML3   | 930630   | 1.4S (UN 0014)   |
| Also includes: ammunition for all SALW        | Also includes: All cartridges for military weapons | Also includes: Fireworks, fuse lighters, electric detonators   |

<sup>23</sup> Commission Regulation (EC) No 1031/2008 of 19 September 2008 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.

<sup>24</sup> EU Common Military List.

<sup>25</sup> Commission Regulation (EC) No 1031/2008 of 19 September 2008 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.

<sup>26</sup> Kenneth Barbalace, *USDOT Hazardous Materials Table 49CFR 172.101 - Class 1 Explosives*. <http://EnvironmentalChemistry.com/yogi/hazmat/placards/class1-chemicals.html> accessed 25 November 2008.

## **b) authorisations relating to route**

Aircraft operators must file flight plans, detailing the route to be taken and stops made by a flight, with civil aviation and/or air traffic control authorities. Flight plans may be amended prior to flights, or even during flights themselves: detecting such diversions after the flight has taken off may thus be difficult if the aircraft is operating in regions where air traffic control authorities do not coordinate the tracking of aircraft through airspace.

### Wayward Clues

However, discrepancies between filed flight plans and other documentation, such as the amount of fuel being taken on board, or weather reports for various destinations requested by the flight crew, may provide clues prior to take-off that aircraft operators are planning to divert from the filed flight plan.

Physical documentation regarding the movement of the aircraft and the nature of its cargo may also be generated during the flight. These may include:

- receipts for aircraft landing or handling fees (which will indicate when and where the aircraft landed along its route, and in some cases the nature of its cargo);
- captain's logbook and voyage reports (which will also indicate the timing and geography of the aircraft's route).

Discrepancies between any of these documents, from flight permission requests to voyage reports, may indicate diversions of the aircraft or its cargo. Typically, these will not be systematically inspected by control authorities except during (occasional) ramp inspections of the aircraft.

## **2.1.iv Information and regulation outside of regulatory authorities**

### Commercial Documentation

The most detailed standards and information regarding the routing and nature of a SALW shipment may not exist within the procedures of regulatory authorities at all, but within the regulatory standards and prescribed exchanges of commercial documents between exporters, transport providers and commercial facilitators. Air cargo companies and freight forwarders use a range of standard documentation to verify the ownership and transport of goods. These include:

- air waybills and cargo manifests,
- receipts/invoices, and
- shipping notes detailing the handling of the goods.

Although not intended for export control purposes, these commercial documents may in fact constitute the most detailed available information on the nature of the shipment and the actors involved. Commercial documentation may include greater information than standard official documentation regarding cargo and routing, and provide a key to assessing risks of diversion or destabilising transfers. Examples are given in Box 2.

## Box 2 – Commercial documentation as a key to uncovering destabilising transfers

- *Air waybills and cargo manifests* issued by cargo aircraft operators may provide more detailed information regarding the flight than customs declarations. For example, the IATA universal waybill recommends that transit countries and airports be listed in 'routing and destination' information, which may not appear on SAD customs declarations (see example documents in Box 2a).
- *Commercial invoices* may sometimes accompany air waybills. They may provide much greater detail regarding the quantity and nature of the cargo, and the commercial intermediaries involved in the deal, than customs declarations.
- *Shipping notes* issued by the exporter, detailing the necessary handling of the goods and its consignee, may also include greater detail regarding the quantity and nature of the cargo.

Some of the States surveyed in this study already take advantage of the greater precision of information on these commercial documents. Licensing or customs authorities may require waybills to be submitted prior to authorising a shipment, as in Sweden for transit licences. Although, since these documents are only generated shortly before a shipment takes place, this may only be possible for transit authorisations rather than export licensing.<sup>27</sup> Export licensing authorities may also require copies of the commercial contracts for SALW shipments, as in Ukraine.<sup>28</sup> Similarly, commercial documentation regarding an aircraft's cargo may be checked by customs authorities, or by aviation authorities during ramp inspections on aircraft.

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<sup>27</sup> See Swedish case study.

<sup>28</sup> See details of information provided to Ukraine's State Service for Export Control and its Civil Aviation Administration for authorisations of weapons-carrying flights: <http://avia.gov.ua/eng/index.htm> (last accessed 28 November 2008).



Below: Single Administrative Document (customs declaration): only includes country of destination.

| EUROPÄISCHE GEMEINSCHAFT Nr. UU 8893467   |  |                          |  | 1 ANMELDUNG                                       |                           |
|---|--|--------------------------|--|---|---------------------------|
| 3<br>Exemplar für den Versender/Ausführer | 2 Versender/Ausführer Nr.  |                          | 3 Vordrucke                                    |   | 4 Ladelisten              |
|   | 8 Empfänger Nr.  |                          | 5 Positionen                                   |   | 6 Packst. insgesamt       |
|   | 14 Anmelder/Vertreter Nr.  |                          | 9 Verantwortlicher für den Zahlungsverkehr Nr. |   | 7 Bezugsnummer            |
|   | 18 Kennzeichen und Staatszugehörigkeit des Beförderungsmittels beim Abgang                   |                          | 19 Cl.   | 20 Lieferbedingung                                |                           |
|   | 21 Kennzeichen und Staatszugehörigkeit des grenzüberschreitenden aktiven Beförderungsmittels |                          | 22 Nährung u. in Rechnung gestellter Betrag    |   | 24 Art des Geschäfts      |
|   | 25 Verkehrszeit an der Grenze  |                          | 26 Inländischer Verkehrszeit                   | 27 Ladort   | 28 Bankangabe             |
|   | 29 Ausgangszollstelle  |                          | 30 Warenort                                    |   | 31 Positionennummer       |
|   | 34 Besondere Vermerke/Vorgelagte Unterlagen/Bescheinigungen u. Genehmigungen                 |                          | 40 Zahlungsaufschub                            |   | 49 Bezeichnung des Lagers |
|   | 47 Abgabenberechnung   |                          | 48 Zahlungsüberschub                           |   | 49 Bezeichnung des Lagers |
|   | 50 Hauptverpflichteter Nr.   |                          | 51 Unterschrift                                |   | c ABGANGSSTELLE           |
| 52 Sicherheit nicht gültig für            |  | 53 Bestimmungsort (Land) |  | 54 Ort und Datum                                  |                           |
| 0 PRÜFUNG DURCH DIE ABGANGSSTELLE         |  | 54 Ort und Datum         |  | 54 Unterschrift und Name des Anmelders/Vertreters |                           |

MUSTER

**Durchschrift der Ausfuhranmeldung**

Zollstelle der ergänzenden Anmeldung

Bezeichnung:

Anschrift:

0733 Einheitspapier (Versendung/Ausfuhr) - III B 1 - (2004)



## 2.2 Understanding the reality of States' practices

This part of the report is based on desk research, questionnaire responses and case study interviews. It outlines different States' views on controlling air transport of SALW; the key problems they identified to improving standards; and national practices among arms transfer licensing authorities, customs authorities and civil aviation authorities with regards to the control of SALW transfers by air transport. (Full responses by each State can be found in Annex 2).

### 2.2.i States' views on controlling SALW transfers by air transport

#### WA Best Practices

Responses to the questionnaire indicate that the *WA Best Practices* are not yet widely adopted or used to review and strengthen national controls. No respondents indicated that their national regulations or controls for SALW transfers had changed since their adoption in 2007.

The **UK** pointed out their understanding that the intention of the *WA Best Practices* was to 'work smarter within the current legislative framework' and not to alter the framework.<sup>29</sup> The **Estonian** authorities stated they were working "to amend national legislation in order to make the implementation of the *WA Best Practices* possible."<sup>30</sup> **Finland** noted that in 2009 they would begin a major effort to improve and update their current legislation on the export on military goods, including in areas touched on by the *WA Best Practices*.<sup>31</sup> The **Bulgarian** authorities stated that their legislation was already fully compliant with the *WA Best Practices* at the time they were adopted and did not therefore require any modification.<sup>32</sup> The **Romanian** authorities stated that the *WA Best Practices* included several elements of existing Romanian control mechanisms, including an insistence on direct flights for all transfers of SALW by air and oversight of the shipping companies involved in this area of activity.<sup>33</sup> Romania is also in the process of drafting new regulations in this area which will include provisions for the registration of all transporters of defence articles, including air carriers and SALW.<sup>34</sup>

#### Importance of air transport of SALW

13 of the 20 States that responded to this section of the questionnaire indicated that the control of air transport of SALW was 'an important issue' (Box 3). A number of States indicated that they did not have significant SALW industries or felt that the industries they did have dealt exclusively with reputable air cargo carriers. They therefore felt that the air transport of SALW was not a big concern.

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<sup>29</sup> UK government's response to the questionnaire.

<sup>30</sup> Estonian government's response to the questionnaire.

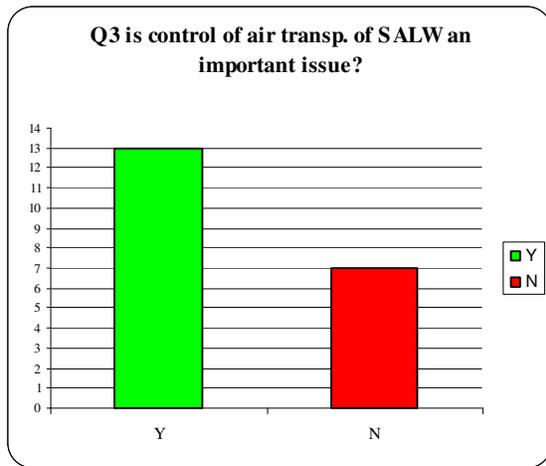
<sup>31</sup> Finnish government's response to the questionnaire.

<sup>32</sup> Bulgarian government's response to the questionnaire.

<sup>33</sup> Romanian government's response to the questionnaire.

<sup>34</sup> *ibid.*

**Box 3 - States which indicated that the control of air transport of SALW was 'an important issue'**



Key:  
Black: Yes  
Dark Grey: no

Taking individual State responses, **Sweden** reported that the government has not made any 'specific statements that has pinpointed the control of air transport of SALW to be a specific important issue.'<sup>35</sup> Many of the States who indicated that the air transport of SALW was not a major concern for them did not dismiss the matter, instead indicating that it was simply not so relevant to their national situation. For instance, **Estonia** noted that 'We do not consider the issue of air transportation of SALW as a major concern. However, we take the issue seriously.'<sup>36</sup> In many cases, states which did not consider the issue to be a major concern did not request information on transport modalities in exporters' licence applications, nor did they take such issues into account when weighing up diversion risks.

In contrast, several States in Central and Eastern Europe which are exporters of SALW, either of newly built weapons or surplus stockpiles, did identify the air transport of SALW as a significant concern.

For example, **Romania** noted that "an important percentage of Romania SALW exports is made by air" and that preventing their diversion was one of the key elements of its export control system.<sup>37</sup> **Bulgaria** and **Croatia** both stated that the control of air transportation of SALW was 'very important'.<sup>38</sup> Many of these States professed to have detailed mechanisms in place for obtaining information on transport modalities during the licensing stage. However, the specific mechanisms in place for taking this information into account when weighing up the risks of diversion were not always apparent.

Other States described the air transport of SALW as an important issue, in spite of not having

<sup>35</sup> Swedish government's response to the questionnaire.

<sup>36</sup> Estonian government's response to the questionnaire.

<sup>37</sup> Romanian government's response to the questionnaire.

<sup>38</sup> Bulgarian government's response to the questionnaire; and Croatian government's response to the questionnaire.

significant SALW industries themselves, usually because of the State's position as a transit hub or the involvement of companies registered on their territory in transfers of SALW between third countries.

For example, the **Netherlands** indicated that they were concerned about the air transport of SALW due to the State's position as an important transit route for international cargo flights. They noted that this creates "potential risk that the Netherlands is somehow perceived to be involved in or at least considered to be facilitating unwanted SALW transactions"<sup>39</sup> The **UK** described itself as a small-scale exporter of SALW but was concerned about the provision transport services between third countries transit and transshipment issues.<sup>40</sup>

### Complexity and sharing/responsibility difficulties

The survey and case studies also underlined the sheer complexity of the different overlapping national mechanisms of control in this area. As laid out in 2.1, the air transport of SALW falls between three different national mechanisms of control, each of which has access to different sets of information, and each of which has differing priorities in terms of the issues they are focussing on: export licensing (which is often seeking to identify and prevent potential cases of diversion); customs controls (which are seeking to identify undeclared weapons transfers); and civil aviation controls (which are seeking to maintain standards in air safety).

Several States cited problems associated with the coordination of responsibility between different government departments who did not share the same priorities. For example, **Estonia** noted that their Civil Aviation Administration "is more concerned about the air safety than controlling what the companies are transporting."<sup>41</sup>

### Difficulty with detection

Another concern highlighted by several States, was the detection of undeclared or mis-declared shipments. For example, **Poland** listed the 'detection of potential illegal shipment (without licence)' to be one of the main obstacles to the effective implementation of better controls on SALW transfers on air transport.<sup>42</sup> Similarly, the **Netherlands** also pointed to the failure of many shippers to make full declarations to the relevant authorities as a key concern. In particular, the Netherlands' authorities noted that 'the amount of information received on the transit of arms and ammunition that remain on board an aircraft during its stopover on Netherlands' territory is limited.'<sup>43</sup>

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<sup>39</sup> Netherlands government's response to the questionnaire.

<sup>40</sup> UK government's response to the questionnaire.

<sup>41</sup> Estonian government's response to the questionnaire.

<sup>42</sup> Polish government's response to the questionnaire.

<sup>43</sup> Netherlands government's response to the questionnaire.

## 2.2.ii Licensing procedures

The WA *Best Practices* are primarily focused on encouraging States to request more detailed information from companies applying for licences to export SALW. The suggested categories of information requested include:

- the shipping companies that will be employed during the transfer; and
- the routes they will take during the delivery.

The WA *Best Practices* also encourage States to use this information to support their own decision-making processes for the issuing of export licences and to share information with other states on exporters, air carriers or agents that fail to provide the information required or who are denied export licences. One of the primary aims of this study was to determine what standards States currently employ in this area. In doing so, focusing particularly on the extent to which information on transport modalities is factored into the process of applying for and evaluating licences for the export of SALW by air transport. Beyond this, the study also examined States' practices in the field of transit / transshipment and brokering licences along with other tools of preventing the diversion of SALW, such as through post-shipment delivery verification.

### Box 4 - Key points on licensing procedures

#### Licensing procedures in relation to the air transport of SALW

- The discussion of 'SALW transfers' masks the **complexity** of licensing procedures at the national level. Many States have different mechanisms in place for applying for exports of SALW for civilian and military end-users.
- States **differ widely** vis-à-vis the amount of information that licensing authorities demand on transport modalities.
- Many States, particularly those without significant SALW industries, **request no transporter information** at all. These States often emphasised the practical difficulties of requesting this information, as well as the existing utility of end-user certificates or other mechanisms of delivery verification as tools of diversion prevention.
- Other States, including several in Central and Eastern Europe, said that detailed information on transport modalities was requested. However, it was often unclear how this information was **collected** and, more importantly, how it was **used** in the process of assessing whether to grant or deny a licence.

#### Transit / transshipment and brokering licences

- Several States have **different mechanisms** in place for transit / transshipment licences as compared to export licences. In certain cases, this means that more information is submitted on transport modalities for transit / transshipment licence applications than for export licences.
- Certain States indicated that it would be very **difficult to include information** on

transport modalities into their assessment of brokering licence applications.

- At least one State (the UK) is preparing to introduce a new mechanism under which UK air cargo carriers will themselves have to **apply directly for brokering licences** prior to engaging in SALW transfers between third countries.

#### **Intra- and inter-governmental information sharing**

- Several States have well developed systems of **national cooperation and information sharing** between the licensing and customs authorities. However, there was much less evidence of strong lines of communication between licensing officials and CAA.
- **Inter-governmental information exchange is limited** in this area. While many States noted the importance of information sharing, either through WA or EU Code mechanisms, no licensing authority provided concrete examples of information being specifically shared on air cargo carriers that had been involved in illicit SALW transfers.

#### **Delivery verification**

- A number of States have mechanisms of delivery verification in place but **standards are very different** among the States covered by the study. A number of States called for a greater pooling of resources in this area to ensure higher standards and prevent cases of diversion.

### **a) Licensing procedures in relation to the air transport of SALW**

The licensing of SALW exports is a complicated process which often falls under the responsibility of several different national authorities. Several States have separate mechanisms in place for applying for exports of SALW for civilian and military end-users, or of small arms categorised as ‘civilian’ or ‘military’. For example:

- in **Estonia**, the Estonian Police Board is responsible for licensing the export of civilian SALW within the EU while the Strategic Goods Commission is responsible for all other transfers.<sup>44</sup>
- in **Sweden** the National Inspectorate of Strategic Products (ISP) is responsible for granting licences for transfers of SALW for military uses. Responsibility for transfers of hunting and sporting rifles to private persons and firearms traders is split between ISP and the police authorities. ISP is responsible for transfers to countries outside the OECD, while the police authorities are responsible for transfers to countries within the OECD.<sup>45</sup>

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<sup>44</sup> Estonian government's response to the questionnaire.

<sup>45</sup> Permanent Mission of Sweden to the United Nations, ‘National Report by Sweden (2008) On the implementation of the International Tracing Instrument and the United Nations’ Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects’, 17 April 2008, URL

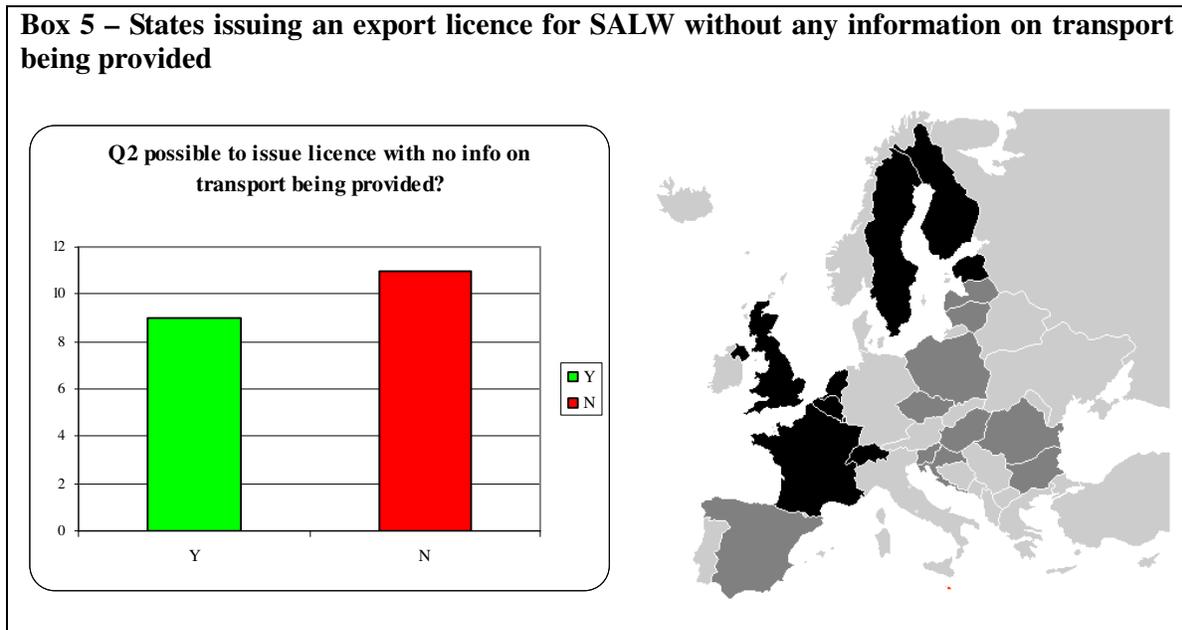
These divisions of labour, with the licensing authority responsible for issuing licences for military SALW and another authority - often the police - responsible for certain transfers to civilian end users, appear to be standard in many of the States covered by the study.

Civilian use

Several States provided detailed information in their questionnaire responses on their procedures for dealing with exports of SALW by civilians, such as those taken on board commercial aircraft by collectors or for hunting purposes. These responses provided interesting information on certain types of best practice in this area. For instance, in **Malta**, the police must always be present when a private individual wishes to transport an SALW by air.<sup>46</sup> However, these types of transfers - of individual or small numbers of SALW by private users – are not sufficiently central to this study to warrant detailed specific research. Instead, we have focussed on substantial transfers of SALW to military end-users.

Differences in detail requests

There are significant differences across Europe in terms of the level of detail demanded by national licensing authorities on the transport modalities of a proposed SALW transfer by air (Box 5).



- 10 out of the 20 States that responded to this section of the questionnaire stated that they take into account the proposed mode or route of transportation when assessing an export licence application covering a transfer of SALW.

<<http://disarmament.un.org/cab/bms3/1BMS3Pages/1National%20Reports%202008.html>>; and Richard Tornberg, Legal Adviser at the Inspectorate for Strategic Products (ISP), Interview with the author, 25 Nov. 2008.

<sup>46</sup> Maltese government's response to questionnaire.

- 9 of the 20 States reported that it was possible to grant an export licence for SALW without any information on transport being provided.

Here the geographic split was very marked. With the exception of **Spain**, only Central or Eastern European States reported that it was not possible to issue a licence without information on the transport provided. With the exception of **Estonia**, only Western European States indicated that the inverse was possible. This division may be due in part to the larger SALW exports coming from Central and Eastern Europe. It could also be a legacy of the more comprehensive and bureaucratic (as opposed, to intelligence-led, for example) processes of export licensing inherited from the period of Soviet or communist rule and the greater level of deregulation and privatisation of the defence and air transport sector in the West.

### End-user

Certain States indicated that focussing on the reliability of the named end-user and ensuring that the goods were actually delivered, was a more effective means of preventing diversion than focussing on transport modalities. For example, some states indicated that they placed a strong emphasis on Post Delivery Onward Diversion (PDOD) concerns, and had not given a great deal of attention to issues relating to en route diversion. For example, under the **Swedish** system, the proposed mode or route of transportation is not generally taken into account when assessing an export licence application covering a transfer of SALW. Rather, the standard Swedish export licence application form requests detailed information on the final destination of the goods, and places a strong emphasis on authenticating the named end-user.<sup>47</sup>

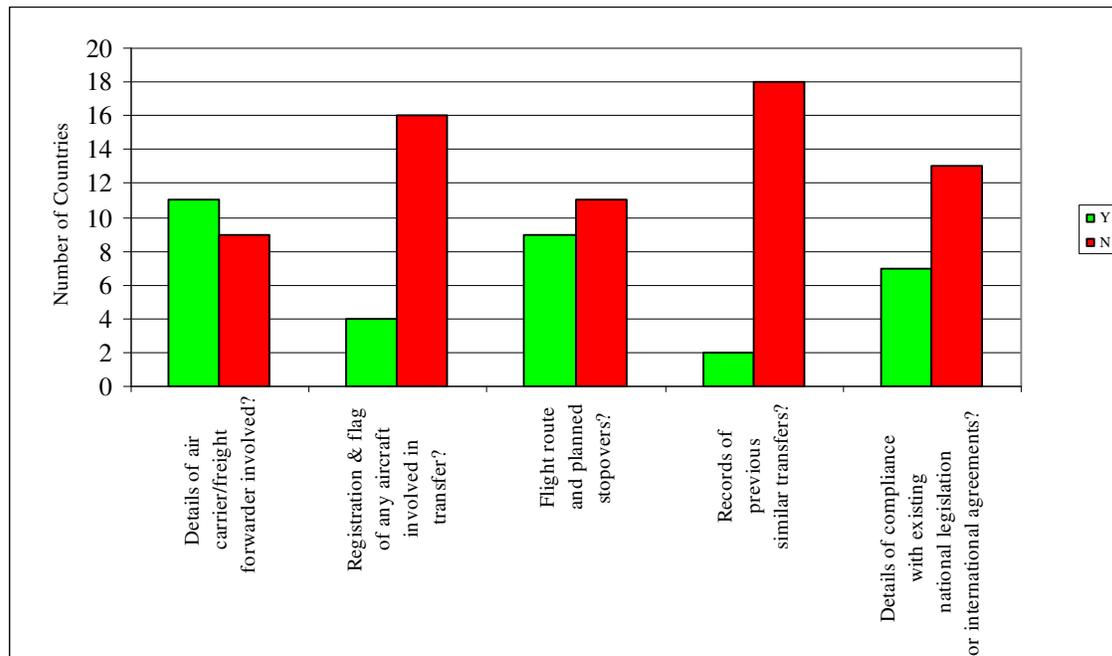
### Transport modalities

The amount of information that is systematically collected by licensing authorities on the different aspects of transport modalities (as identified in the *WA Best Practices*), varies considerably (Box 6).

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<sup>47</sup> See Swedish case study in Chapter 3.

## Box 6 – Transport modalities



- 11 of the 20 States reported that details of any air carrier or freight forwarder involved in the transaction had to be provided.
- 4 out of 20 said that information on the registration and flag of any carrier involved in the transfer had to be provided.
- 2 out of 20 requested records of previous transactions.

Again, the geographic distinction was very marked. **Bulgaria and Romania** were the only States that indicated that information on the registration and flag of any carrier involved in the transfer had to be provided by the exporter.

States which did collect detailed information on transport modalities had different mechanisms in place. For example:

- **Romania** - The exporter must provide the authorities with all elements of the transfer five days before it is due to take place, including the route, the transporter, and serial number of SALW. This notification process must be repeated 10 days after the shipment takes place.<sup>48</sup> Transport modalities could be used as grounds for a licence refusal. Both the mode and route of the transport were part of the licence assessment process.<sup>49</sup>
- **Poland** - The transfer application includes information on the mode of transportation. Meanwhile, licence-holders are obliged to inform the licensing authorities about any

<sup>48</sup> Romanian government's response to questionnaire.

<sup>49</sup> *ibid.*

subsequent change of mode of transportation, trade partners, air carriers or exit points.<sup>50</sup>

- **Bulgaria** - When the information is available, export licence applications must be accompanied by a document, verifying the participation in the transaction of persons other than the foreign importer and / or end-user of the equipment. This includes any freight forwarder and air carrier involved in the transfer.<sup>51</sup>

Certain States, including **Poland and Ukraine**, also require applicants to submit commercial documentation. Such documentation could for example be a contract for the deal, which may detail some of the commercial intermediaries involved, such as brokers acting for the end-user or agents acting for the exporter.<sup>52</sup> The process by which the information collected was used in the assessment of whether or not to grant an export licence, was not always apparent.

#### Feasibility of relying on transport modalities

Of the States which did not demand systematic information on transport modalities, several argued that instituting such a mechanism would be unfeasible. States pointed out that such transport information is usually not available to exporters at the time they are applying for an export licence. For example:

- The **Estonian** government pointed out that at the “time when the application is made ... the transportation might not yet be fixed”.<sup>53</sup>
- **Switzerland** argued that, “Often, the details relating to transport are not fixed at the moment of applying for an authorisation”.<sup>54</sup>

The WA *Best Practices* allow for this possibility by suggesting that states may put in place a system whereby exporters could be required to provide information on air carriers and flight routes after a licence has been provisionally granted, but constituting a condition of its use. Several States already issue licences conditional to further (non-transport) documentation being provided prior to export. For example:

- Under the **Netherlands** system, exporters can be told that will be granted a licence once a valid End User Certificate (EUC) has been produced.<sup>55</sup>

Certain States indicated that, while they do not systematically demand information on transport modalities in the licence application form, they can and do demand it for certain transfers where there appear to be relatively high risks of diversion or undesirable transfer. For example:

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<sup>50</sup> Polish government’s response to questionnaire.

<sup>51</sup> Bulgarian government’s response to questionnaire.

<sup>52</sup> Ukrainian export permits may be accompanied by a commercial contract for the goods. Applications for flight authorisations submitted to the Flight Coordination Department of the State Aviation Administration for flights carrying military cargoes, must include particulars of the “contract details as to its [the cargo's] delivery”. <http://avia.gov.ua/eng/index.htm> (last accessed 25 November 2008).

<sup>53</sup> Estonian government’s response to questionnaire.

<sup>54</sup> Switzerland government’s response to questionnaire.

<sup>55</sup> George Bontenbal, Export Control Unit, Netherlands Ministry of Economic Affairs, Interview with the author, 5 Dec. 2008.

- The **Finnish** government noted that although information on transport modalities is not demanded as a routine part of the licence application, information on transit countries is requested. If the route or destination is deemed to be sensitive in nature, then “more detailed information/documentation can be asked from the applicant.”<sup>56</sup>
- Similarly, in the **Netherlands**, information on both the consignee and end-user is always provided and this can sometimes provide details of intermediate destinations en route to the final destination.<sup>57</sup> Depending on the information provided, licensing officials might request additional information, particularly if the application related to an export of SALW.<sup>58</sup>

Perhaps more challenging to the system envisaged by the *WA Best Practices* is the fact that certain European States issue so-called 'open licences' that are not specific to a particular shipment, or even a particular quantity of goods to be shipped. For example:

- In **the UK** Open Individual Export Licences (OIELS), including those issued for SALW, may be valid for up to five years, cover several destinations and end-users, and generally do not specify a maximum quantity of goods which may be exported.<sup>59</sup>

It may still be possible for exporters to provide licensing authorities with a list of air carriers and routes to be used under the licence prior to shipments taking place. However, it is still difficult for users of open licences to be prevented from shipping quantities of arms much larger than those needed by the ostensible end-user (often a key indicator of post-delivery diversion), since an open licence will cover an unlimited quantity of arms.

Clearly there is strong difference of opinion vis-à-vis the reasonableness and feasibility of exporters providing information on transport modalities. Many States, particular those in Western Europe, argue that it is not possible on a systematic basis.

## **b) Transit / transshipment and brokering licences**

Most States answering the questionnaire stipulated that an authorisation process was required for transshipment or brokering activities (Box 7).

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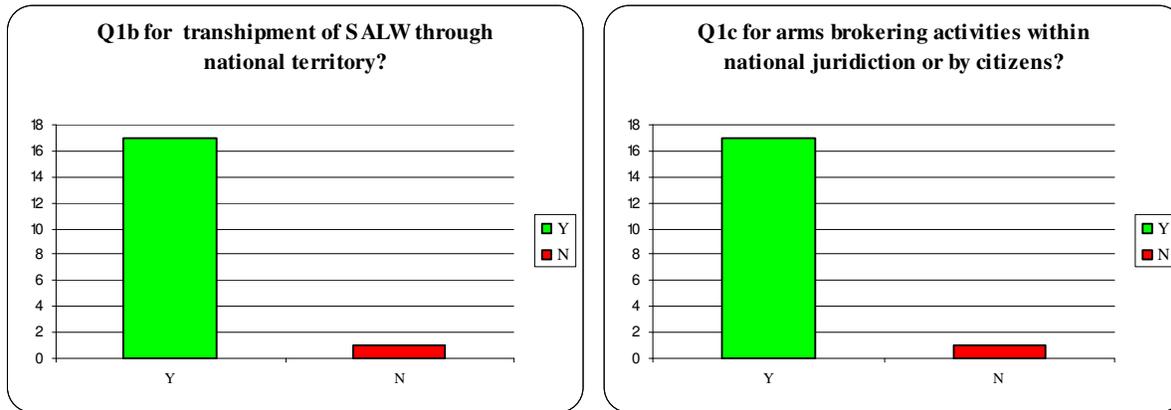
<sup>56</sup> Finnish government's response to the questionnaire.

<sup>57</sup> George Bontenbal, Export Control Unit, Netherlands Ministry of Economic Affairs, Interview with the author, 5 Dec. 2008. If you ask for this information with the export licence application, 'Very often the answer will be: 'I don't know yet.'"

<sup>58</sup> George Bontenbal, Export Control Unit, Netherlands Ministry of Economic Affairs, Interview with the author, 5 Dec. 2008.

<sup>59</sup> See <http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/licences/oiel/index.html> (accessed 25 November 2008).

## Box 7 - Transit / transshipment and brokering licences



- 17 of the 18 States said that a licence or similar authorisation was required for the transit and transshipment of SALW through their national territory.
- 17 of the 18 States said that a licence or similar authorisation was required for the brokering of SALW by their national citizens.

The specific mechanisms through which transit and transshipment licences are handled by states varies considerably.

- The **Czech Republic** was the only State that responded to this section of the questionnaire which did not have transit and transshipment licence requirements in place.
- **Luxembourg** was the only State that responded to this section of the questionnaire which did not have brokering requirements in place.
- The **Finnish** authorities require a transit licence for goods which are being shipped from a non-EU Member State to another non-EU Member State via Finland. For equipment being exported from a non-EU Member State to an EU Member State via Finland, the transfer is treated as an import to Finland and a transfer from Finland to another EU Member State, and vice versa.<sup>60</sup>
- In the **Netherlands**, a licence is required for the transit of all military goods that neither originate from nor are destined for EU Member States, NATO Member States, Australia, Japan, New-Zealand, or Switzerland. For all other transactions there is a notification requirement and certain transactions are exempted from both the licensing and notification requirement.<sup>61</sup>
- **The UK** is currently in the process of modifying its transit and transshipment controls.

<sup>60</sup> Finnish government's response to the questionnaire.

<sup>61</sup> Femke Kramer, Policy advisor, Netherlands Ministry of Economic Affairs, Department of Trade Policy and Globalization, Response to Questionnaire, 16 Jan. 2009.

From April 2009, a licence will be required for "the transit/transshipment of SALW to any of 72 destinations which are either embargoed or considered to be of raised sensitivity."<sup>62</sup>

In certain cases, the information collected on transport actors via transit and transshipment licences applications on air cargo carriers, can be more detailed than that collected via export licences applications. For example:

- **Swedish** licensing authorities require air waybills (issued by the air cargo carrier) to be submitted prior to authorising a transit licence.<sup>63</sup>
- In the **Netherlands**, companies need to apply for a so-called 'consent' licence, giving them permission to bring controlled goods into the country, prior to applying for a transit or transshipment licence. The information submitted during a 'consent' licence application will usually include information on the air carrier or freight forwarder involved in the transfer.<sup>64</sup>

Clearly, there is some scope for using transit and transshipment licence applications as a tool for identifying illicit or destabilising SALW transfers. However, this is undermined by the great variety in licensing practices; the exceptions that apply in many States - particularly when one of the parties to the transfer is located in a EU Member State or 'ally' State; and the fact that these procedures only apply when the plane touches down in the State concerned. There was no indication that any State required transit or transshipment licences for transfers that overflew their territory.

We have been unable to identify any States which demand information on transport modalities in brokering licence applications. Certain States indicated that it would be very difficult to include such information.<sup>65</sup> Interestingly, the **UK** is introducing a new mechanism which would integrate nationally registered air cargo carriers into domestic brokering legislation. Under the UK's proposed new system, air cargo carriers would themselves have to apply for brokering licences prior to engaging in SALW transfers between third countries.<sup>66</sup>

### **c) Intra-governmental and inter-governmental information sharing**

As previously discussed, a main challenge with air transport is the coordination of information sharing (Box 8).

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<sup>62</sup> UK government's response to the questionnaire. For more information, see the UK case study.

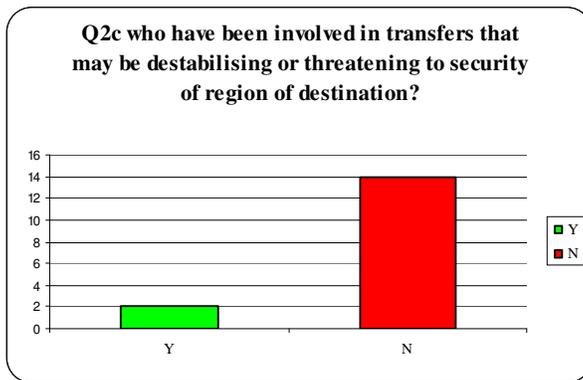
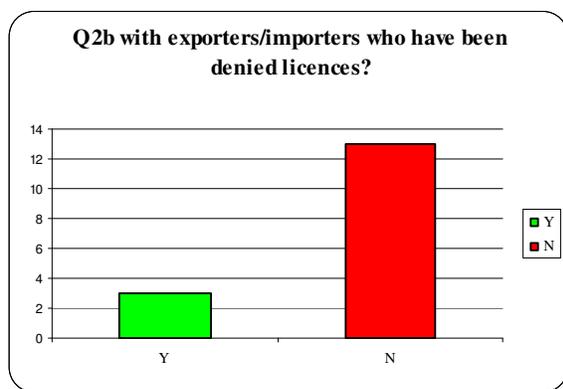
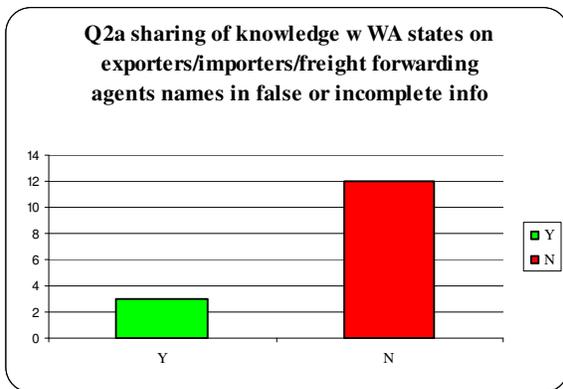
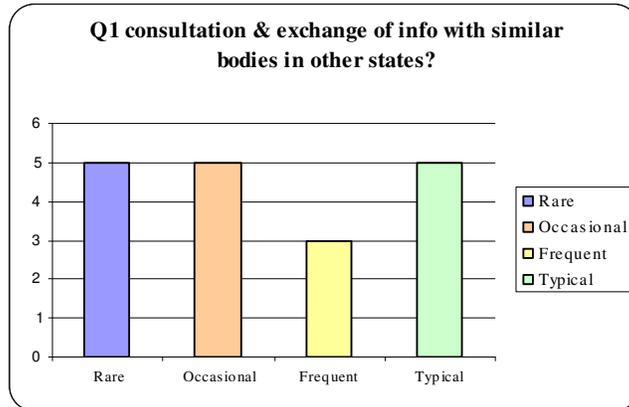
<sup>63</sup> See Swedish case study.

<sup>64</sup> See the Netherlands case study.

<sup>65</sup> See the Netherlands case study.

<sup>66</sup> UK government's response to the questionnaire.

**Box 8 – Consultation and exchange of information for air transport procedures**



- 8 of the 18 States that responded to this section of the questionnaire said that their relevant national agencies exchange information or consult with similar bodies in other States in order to enhance regulation and control of transfers of SALW and munitions involving air transport. Of these states: 5 said it was rare; 5 said it was occasional; 3 said it was frequent; and 5 said it was typical/normal.
- Only 3 out of the 15 States that responded to this section of the questionnaire said they had shared information with other Wassenaar Arrangement States about exporters / importers, air carriers or freight forwarding agents that have been denied licences involving the

transfer of SALW by air. None of these States provided specific details on the substance of this information exchange.

Several States have well-developed systems of cooperation and information sharing between the licensing and customs authorities (see 2.2.ii 'Customs procedures' below). However, few States have similar systems of cooperation between the licensing and civil aviation authorities.

- The **Finnish** government noted that one of the biggest challenges in the control of SALW by air transport, was to keep the different authorities involved informed and in close cooperation.<sup>67</sup>

In many cases, lack of communication affected the completion of the study's questionnaire results, as officials were unclear about who was responsible for what piece of legislation. One exception worth mentioning is **Ireland**, where authorisations for the landing or overflight of any weapons or 'munitions of war' are issued by the Department of Transport in consultation with the Department of Foreign Affairs, Department of Justice, the Irish Aviation Authority, and the Department of Defence (see 2.2.iii 'National Civil Aviation Authorities' below).

At the same time, officials also noted that the act of responding to the questionnaire had enabled them to build up a clearer picture of the overall systems of control in place at the national level.<sup>68</sup> Other States indicated that they are in the process of building better connections between the licensing authorities and the CAA. The **Estonian** licensing authorities stated that they have initiated a dialogue with the Estonian CAA about the possibility of creating a compulsory SALW air transportation declaration.<sup>69</sup>

☞ A number of States indicated that there was **a clear need to improve mechanisms of inter-governmental information sharing in this area**, and provided specific recommendations for how such measures could be put in to place. For example:

- The **Bulgarian** authorities stated that a common information information system should be established under the auspices of the Wassenaar Arrangement.<sup>70</sup>
- The **Netherlands** licensing authorities indicated that they would welcome an exchange of information on air cargo carriers that are suspected of being involved in illicit SALW transfers.
- The **Netherlands** also emphasised that this exchange of information should not be confined to licensing authorities, but should also include customs and CAA officials.<sup>71</sup> Concretely, the Netherlands also suggested that governments could consider presenting actual cases in the framework of the Licensing and Enforcement Officers' Meeting (LEOM) of the Wassenaar Arrangement.<sup>72</sup>

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<sup>67</sup> Finnish government's response to the questionnaire.

<sup>68</sup> For example, See Netherlands case study.

<sup>69</sup> Estonian government's response to the questionnaire.

<sup>70</sup> Bulgarian government's questionnaire response.

<sup>71</sup> See Netherlands case study.

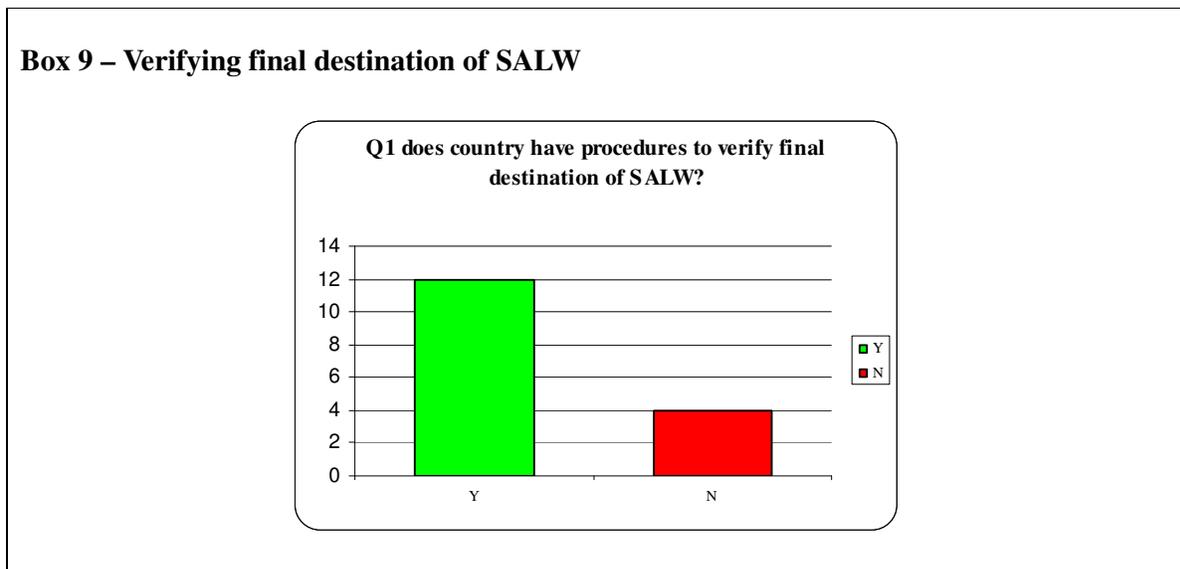
<sup>72</sup> Femke Kramer, Policy advisor, Netherlands Ministry of Economic Affairs, Department of Trade Policy and Globalization, Reponse to Questionnaire, 16 Jan. 2008.

- **Estonia** also specifically called for the sharing of actionable, indicative, information on the activities of particular individuals, companies and transporters.<sup>73</sup>
- **Romania** indicated that a first, necessary, step would be to increase the “level of confidence” among WA Participating States.<sup>74</sup>
- **The UK** rejected the idea of formal information exchange procedures, but suggested that the Wassenaar Arrangement General Working Group’s General Information Exchange procedure, and the EU’s Ad-Hoc Group of Security and Intelligence Experts “would be the most suitable fora should they have information they wished to share to a wide audience. Information of an operational nature would normally be shared between security agencies and customs authorities. By its very nature such exchanges are not high visibility exercises.”

Possible steps for improving inter-governmental information exchange in this area are discussed in Part 4 of the study.

#### d) Delivery verification

The actual procedures of verifying final destination of SALW that are in place, and the extent to which they are consistently applied, vary considerably between States (Box 9).



- Systems of delivery verification are fairly widely applied: 12 of the 16 States that responded indicated that they had mechanisms in place to ensure that SALW transported by air have reached their approved destination.
- In **Romania and Bulgaria**, exporters are obliged to provide a DVC (Delivery Verification Certificate) within 4 months of a transfer taking place.<sup>75</sup>

<sup>73</sup> Estonian government's questionnaire response.

<sup>74</sup> Romanian government's questionnaire response.

<sup>75</sup> Romanian and Bulgarian governments' questionnaire response.

A number of States indicated the need for greater coordination amongst states in the implementation of delivery verification procedures. For example:

- **Malta** noted that the bureaucratic procedures are set in place at the national level. “(L)imited financial resources do not permit Malta to carry out post shipment verification” themselves, relying instead upon the efficacy of recipient States issuing DVCs.<sup>76</sup>

### 2.2.iii Customs procedures

Of all the authorities involved in a SALW shipment by air transport, customs authorities are probably those most directly concerned with preventing the unauthorised *physical* movement of goods. In addition, they are the regulatory actors within a SALW shipment which most frequently bring together information in one place regarding transfer authorisation and transport. This section examines the information that exporters are required to provide to customs authorities both prior to the shipment and at the point the shipment takes place, as well as the involvement of customs authorities in intra-governmental and inter-governmental information sharing.

#### Box 10 - Key points in customs procedures

##### Customs procedures in relation to the air transport of SALW

- In many cases, **customs authorities** have a greater access to information on transport modalities than the licensing authorities. Hence, customs authorities might well have better access to the type of information which the WA *Best Practices* emphasise.
- As already noted, in many European States, customs authorities are **not tasked with making risk based** analyses of whether or not a shipment should go ahead. Rather they are tasked with identifying wrongly-declared or undeclared goods.

##### Intra- and inter-governmental information sharing

- In many cases, customs authorities have greater access to information on transport modalities than the licensing authorities. There are several examples of **best practice** among the States covered by the survey vis-à-vis the cooperation and information sharing between licensing authorities and customs authorities. Such mechanisms can have an important role to play in improving customs authorities' mechanisms of risk profiling and the process of preventing diversion.
- There are also interesting **cases of cooperation and information sharing** between customs authorities and civil aviation authorities, including the performance of joint aviation (ramp) inspections. Such mechanisms have clear benefits when it comes to identifying **non-declared or mis-declared** SALW shipments.
- Customs authorities may **benefit from greater access to nominal information** on air

<sup>76</sup> Maltese government's questionnaire response.

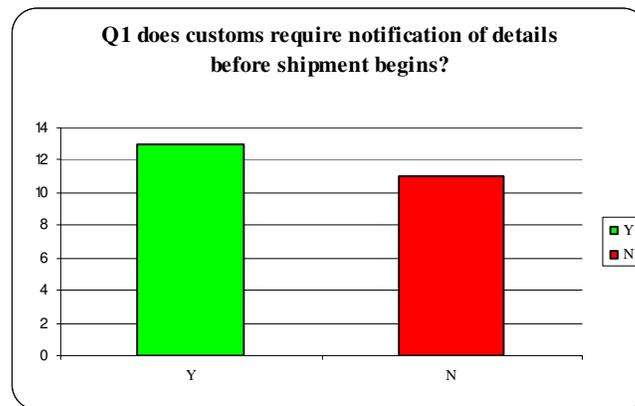
cargo carriers that have been engaged in illicit or destabilising SALW transfers. Particularly in those States where the customs authorities are integrated into processes of air safety control, such as ramp inspections.

- There already exist a number of mechanisms of information which could provide **models** for such activities, or have the potential to be adapted for this purpose. These include the Customs Information Network (CEN) run by the World Customs Organisation, and the Risk Information Form (RIF) used by EU Member States.

### a) Customs procedures in relation to the air transport of SALW

Pre-shipment notification to customs authorities is a common but not universal requirement for transfers of SALW by air transport (Box 11).

#### Box 11 – Requirement of customs notification



- 13 of the 24 States that have responded to this section of the questionnaire reported their national customs control systems require notification of details of licensed SALW exports or imports before shipment commences.

For example:

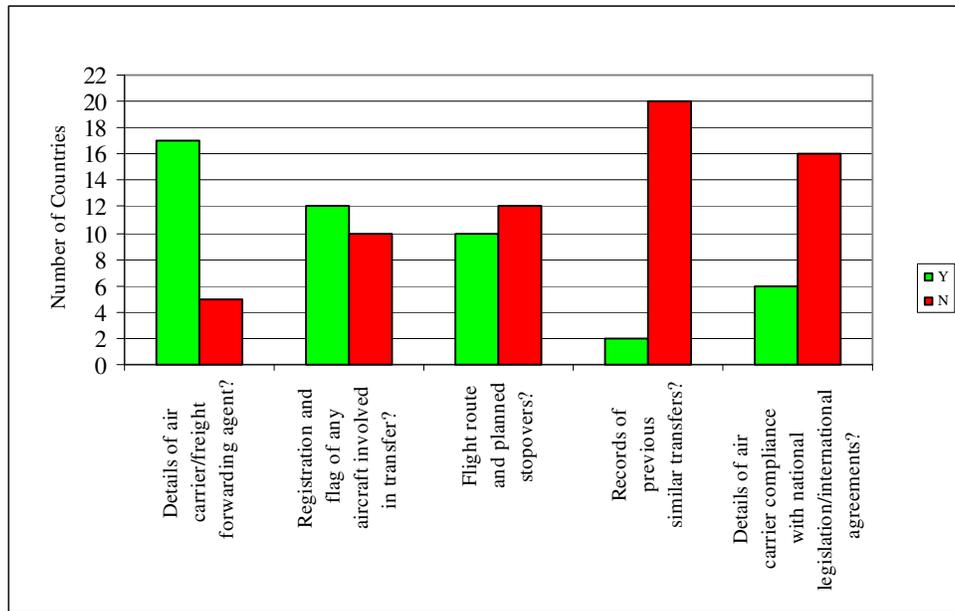
- In **Estonia** exporters must notify the customs authorities 24 hours before the transaction takes place, providing the specifics of the transaction. If there are any concerns about the transportation mode and route, the goods can be stopped, and both goods and documentation checked. If there is a risk of diversion or if illegal activity is detected, the licence can be revoked by the Strategic Goods Commission.<sup>77</sup>
- The **Spanish** customs authorities require pre-notifications to include a detailed description of the goods being transferred, the route and any security measures adopted.<sup>78</sup>

<sup>77</sup> Estonian government's response to questionnaire.

<sup>78</sup> Spanish government's response to questionnaire.

The amount of information that shippers are required to submit to the authorities, either prior to the shipment taking place, or at the point when the shipment occurs, appears relatively high, and often includes more information on transport modalities than that available to the licensing authorities (Box 12).

**Box 12 – Details of customs procedures: agent, registration, route, records, compliance**



- 17 out of the 22 States responded that details of the air carrier and freight forwarding agent(s) involved had to be provided by the licensee or shipper.
- Far less common was the provision of other types of information highlighted in the WA Best Practices, including the flight route and planned stopover, records of previous similar transactions, and details of the air carriers' compliance with national legislation and relevant international agreements.

It was assumed, prior to the start of the study, that the use of the Single Administrative Document (SAD) by States would provide a level of uniformity in the type of information that States required from shippers, either at the pre-departure or point of departure stage. However, while most States use the SAD, there was variance in its use prior to departure. For example:

- In **Sweden**, exports of goods which are covered by Swedish licensing procedures require a pre-notification to customs 48 hours before the transfer takes place.<sup>79</sup> The information contained in this pre-notification form is the same as the information contained in the

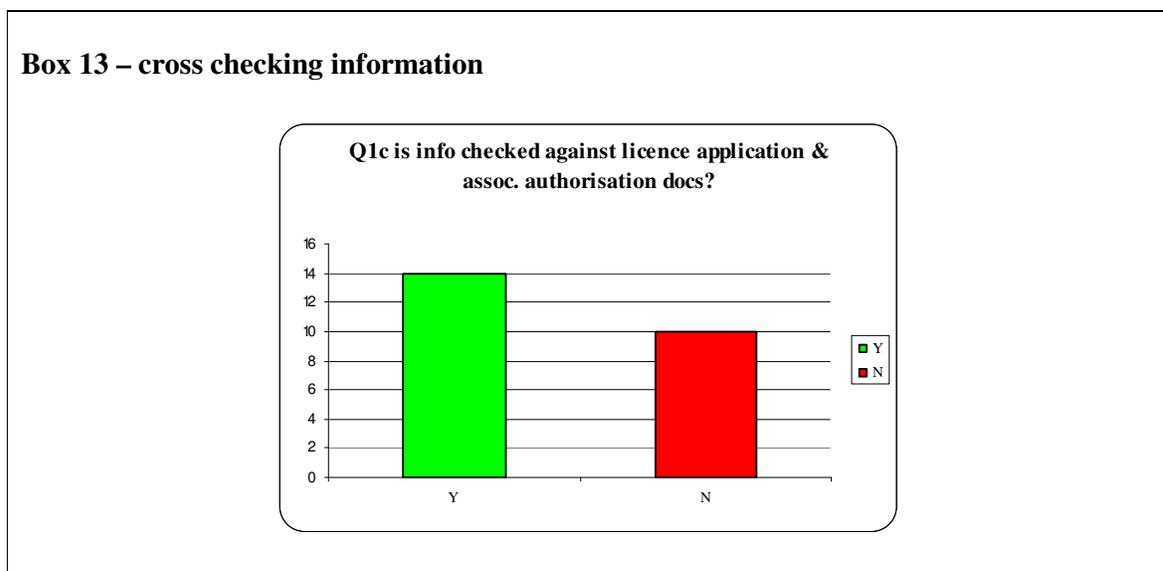
<sup>79</sup> Fredrik Persson, Manager International Affairs, Swedish Customs, Response to Questionnaire, Submitted 29 Oct. 2008.

Single Administration Document (SAD).<sup>80</sup> However, the information in Box 18 of the SAD (Identity and nationality of means of transport at departure) and Box 21 of the SAD (Identity and nationality of active means of transport crossing the border) is optional.<sup>81</sup> Hence, submission of the pre-notification form in Sweden does not include systematic collection of information on transport modalities.<sup>82</sup>

In other States, far more information is demanded by the customs authorities than that which is contained in the SAD. For example:

- In **Malta** the information demanded by the customs authorities includes a copy of the bill of landing or air waybill, invoice and accompanying transfer licence.<sup>83</sup>

Cross-checking of information against licence applications and associated authorisation documentation also revealed marked differences between States (Box13).



- 14 out of the 24 States indicated that the information submitted was systematically checked against the licence application and associated authorisation documents.

These responses clearly demonstrate the differences across States with procedures. For example:

- In **Poland** “The original individual licence certificate shall be enclosed with the customs declaration with the customs destination form.”<sup>84</sup>
- In some States (particularly those where customs declarations and export licence

<sup>80</sup> Fredrik Persson, Manager International Affairs, Swedish Customs, Response to Questionnaire, Submitted 29 Oct. 2008.

<sup>81</sup> Jan Persson, Customs Adviser, Email correspondence with the author, 19 Jan. 2009.

<sup>82</sup> Fredrik Persson, Manager International Affairs, Swedish Customs, Response to Questionnaire, Submitted 29 Oct. 2008.

<sup>83</sup> Maltese governments response to the questionnaire.

<sup>84</sup> Law of 29 November 2000 concerning international trade in goods, technologies and services of strategic significance for state security and maintenance of international peace and security, and amending selected laws, available at <<http://www.sipri.org/contents/expcon/law001129.html>>

applications are submitted electronically) this verification process takes place automatically, as in **the UK's** Automatic Licence Verification (ALV) process.<sup>85</sup>

- In others, verifying customs declarations against export licences may be assisted by the use of customs decrements on export licences (discussed above in 2.1.ii).<sup>86</sup>

## **b) Intra- and inter-governmental information sharing**

### Best practice

A number of States have well developed systems of information sharing between licensing authorities and customs authorities. One of the most developed systems of information sharing is in the **Netherlands**. As discussed in more detail in Part 3, the Netherlands customs authorities are the central conduit for a large array of different types of information from other government agencies, which it uses to build profiles and identify possible illegal activities. For example, the Customs Information Centre (DIS) has access to a central database containing information on all licence approvals and licence denials. The information is entered in to a risk profiling system, managed by the DIS and accessible by all branches of the customs authorities.<sup>87</sup> In the years ahead, the Netherlands customs authorities intend to improve the deployment of intelligence in its supervision and investigation activities. In 2007, they launched the Intelligence Project which concentrates on the further development of data analysis techniques and methods.<sup>88</sup> These risk indicators can be used to target inspections on a particular shipper.<sup>89</sup>

### Challenges

A number of States cited the identification of *undeclared* SALW shipments as one of the biggest challenges facing efforts to tackle the illicit spread of SALW via air transport. For example, **Poland** cited the "detection of potential illegal shipments" as one of the biggest challenges facing attempts to tackle illicit transfers of SALW by air transport. Given this level of concern, there is a clear need to develop mechanisms for exchanging nominal information on air carriers that have been involved in illicit or destabilising SALW transfers among customs authorities so that they can use the information in their risk profiling. However, customs officials who were interviewed in the course of this study were not aware of any existing mechanisms that were used for this purpose.

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<sup>85</sup> UK Revenue and Customs (HMRC), *Customs Information Paper (08) 22* (April 2008).

<sup>86</sup> See example of such decrementing at <http://www.aml-lux.com/English/ExpLic17151p2.html> (accessed 25 November 2008).

<sup>87</sup> Leo Van Veen, Co-ordinator International Affairs, Customs Intelligence Centre, Netherlands Tax Administration – Customs. Interview with the author, 4 Dec. 2008.

<sup>88</sup> 'Annual Report Netherlands Tax and Customs Administration 2007', p. 36.

<[http://download.belastingdienst.nl/belastingdienst/docs/jaarverslag\\_bld\\_2007\\_eng\\_bjv0011z71pleng.pdf](http://download.belastingdienst.nl/belastingdienst/docs/jaarverslag_bld_2007_eng_bjv0011z71pleng.pdf)>.

<sup>89</sup> J. A. Hoppers, Netherlands Tax Administration – Customs. Interview with the author, 4 Dec. 2008.

## Potential models

Officials within the **Netherlands** customs authorities did point to a number of other mechanisms which could provide models for systems that could play the role of information exchange. These included:

- CEN (Customs Enforcement Network), run by the World Customs Organisation (WCO);
- The RIF (Risk Information Form), used by EU member states;<sup>90</sup>
- EU-TWIX (European Union - Trade in Wildlife Information eXchange); and
- Involving customs authorities in ramp inspections.

Both the CEN and RIF mechanisms allow for the exchange of information on seizures and *modus operandi* but focus on non-nominal intelligence. EU-TWIX, set up in 2005, is an online database for sharing of information on seizures, smuggling methods and smuggling routes relating to the illegal wildlife trade.<sup>91</sup> The advantage of this system is that involves real-time information sharing among officers working at the operational level who specialise on the issue.<sup>92</sup>

Using ramp inspections to tackle this problem is exemplified in the **Netherlands**, where customs authorities are jointly responsible for carrying out air safety (ramp) inspections. Coupled with the access they have to other forms of documentation, this makes them ideally situated to identify air carriers carrying SALW or ammunition that are flying without the necessary export, transit or transshipment licences.<sup>93</sup>

### **2.2.iv National Civil Aviation Authorities**

Controls over *aircraft* (on national registries) or *flights* (in national territory/airspace) may be crucial in preventing unauthorised or destabilising transfers of SALW. At present, an uneven patchwork of systems exists across Europe for:

- authorisation of SALW-carrying flights;
- SALW-carrying aircraft operators;
- the physical inspection; and
- interdiction of SALW-carrying flights.

Some of these systems overlap with aviation *safety* inspection/authorisation systems. 'Arms flight' aviation controls could thus be valuably systematised and integrated with safety inspection/authorisation systems. But to be effective, this would require aviation authorities to liaise with customs authorities capable of identifying potential cases of illegal or undeclared arms shipments, or with trade and foreign affairs ministries capable of undertaking *risk assessments* of destabilising or illicit arms transfers. Main points to consider in the structure of National Civil Aviation Authorities are outlined in Box 14.

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<sup>90</sup> Piet Poldermans, Coordinator, Mutual Assistance, Customs Information Centre (DIC) Rotterdam, Netherlands Tax Administration – Customs. Interview with the author, 4 Dec. 2008.

<sup>91</sup> See <<http://www.libertysecurity.org/article745.html>>

<sup>92</sup> Ger Stavast, Netherlands Tax Administration – Customs. Interview with the author, 4 Dec. 2008.

<sup>93</sup> Information from interviews with the Netherlands Civil Aviation Authorities.

## Box 14 – Key Points on National Civil Aviation Authorities

### Flight authorisations

- The **formal role of aviation authorities** in regulating the air transport of SALW remains uneven across Europe, despite the original provision for such powers in the 1944 Chicago Convention.
- **Article 35 of the Chicago Convention**, allowing States to require authorisation for landings and overflights of aircraft carrying 'weapons of war', is in many countries perceived as placing responsibilities on export licensing authorities and not upon the national CAA. This *division of responsibility makes it difficult to apply controls* to landings and overflights. Even where CAAs have the right to grant or deny flight-specific authorisations for SALW-carrying flights, the information gathered on the flight and cargo is often insufficient to make a judgement on the authorisation based upon the assessment of the *risk* of destabilising or illicit transfers, rather than on narrower grounds of aviation safety or documentary irregularity.
- **Annex 18 of the Chicago Convention**, whose Technical Instructions governing the safe transport of dangerous goods and authorisations for their flight and overflight are widely applied, will apply to some SALW shipments but *not to small arms transported without ammunition*. The application of Annex 18 authorisations is generally done with regard to aviation safety rather than in consideration of the cargo's military nature, destination or diversion.
- Consultation with other departments is not uncommon where flight-specific or carrier-specific authorisations for the SALW-carrying flights are issued by civil aviation authorities. However in several States, the departments consulted are **enforcement departments**, and **not tasked with assessing risk** in the authorisation of arms transfers.
- Powers given to CAAs to prevent the movement of SALW-carrying flights or aircraft are more commonly available in **instances of concrete breaches** of regulations (for example, the submission of incorrect documentation, or direct breaches of international arms embargoes). The authority to prohibit a SALW flight based upon **risk factors is less prevalent** (such as the delivery of SALW to a country near a conflict zone, or the perceived risk that the operator might divert the cargo).

### Regulation of national aircraft registries

- While not specifically mandated by the Chicago Convention, several States (including UK and Ukraine) require aircraft on their national registries to **apply for authorisations** (general or flight-specific) to carry weapons or munitions of war, wherever they are operating.

### Flight/cargo inspections

- Many European States may **not inspect the cargo of transiting/refuelling aircraft** except on aviation safety grounds, or on suspicion that a criminal offence has taken place. There is a need for greater coordination between customs authorities (who may be able to detect undeclared shipments of SALW) and Civil Aviation Authorities (whose physical role in detecting violations of air safety regulations may assist in detecting undeclared SALW shipments).

## Transnationality

The importance of aviation authorities in preventing the illicit air transport of SALW, derives from the *transnationality* of most detected cases of illicit SALW transfers by air. Few transfers have been flown directly from their point of origin to their intended destination or diversion point. It is more typical that aircraft overfly several other countries, often to make intermediate landings to refuel or load further cargo.<sup>94</sup> As a result, trafficking routes - particularly from Eastern Europe or Central Asia to Africa, the Middle East or South America - have often passed through European States. They have also frequently used aircraft registered on national registries outside of any of the States involved in the transfer.<sup>95</sup>

Export licensing or customs authorities may prevent unauthorised transfers of SALW undertaken from their State or by their State's citizens. However, controls directly on the operation and passage of *aircraft* through their territories makes it possible for European States to detect and prevent illicit transfers which do not originate in their State, or are not undertaken by their nationals. Equally, controls over the activities of aircraft registered on European national registries, but operating elsewhere, may prevent illicit SALW transfers taking place outside Europe itself.



For these reasons, both the inspection/detection roles of civil aviation and airport authorities, and the regulation of the activities of aircraft on national registries and on national territories, has proved significant in preventing a number of illicit SALW transfers.<sup>96</sup>

### **a) SALW flight permissions**

The formal role of aviation authorities in regulating the air transport of SALW remains uneven across Europe. This is despite the original provision for such powers in Article 35(a) of the 1944 Chicago Convention on International Civil Aviation. The maps in Box 15 indicate requirements for transporters (air carriers and freight forwarders) to have general or flight-specific licences to transport SALW or their ammunition.

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<sup>94</sup> At least one country in the study (Romania) has sought to reduce this transnationality by imposing a requirement that all SALW-carrying flights leaving Romania must fly directly to the cargo's destination: Questionnaire Responses from Conventional Arms Division, Romania, Section 1 Question 4.

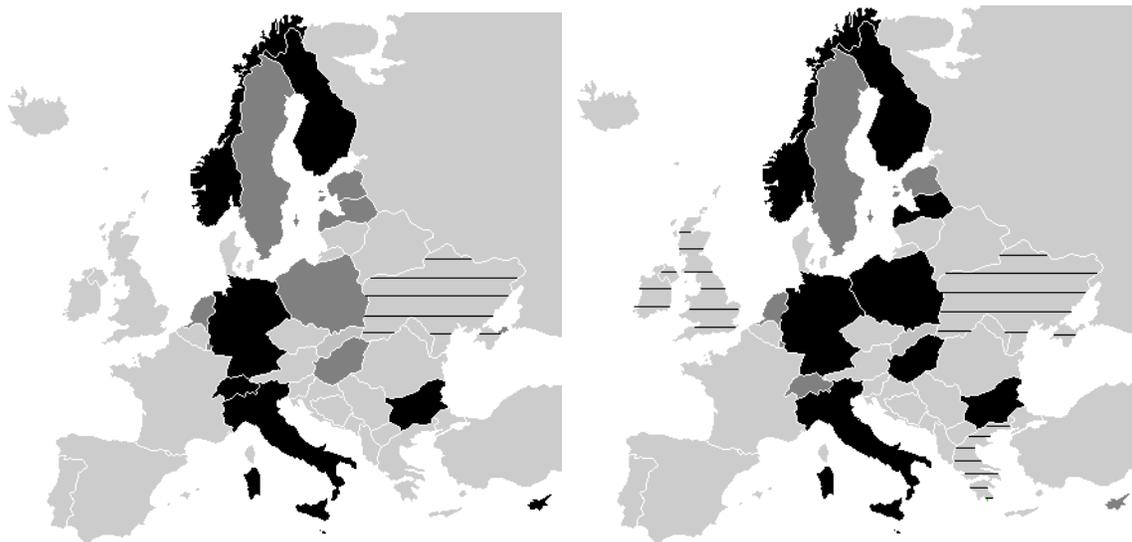
<sup>95</sup> Amnesty International, *Dead on Time: Arms Transportation, Brokering and the Threat to Human Rights* (ACT 30/008/2006, 10 September 2006)

<sup>96</sup> Examples in Amnesty International, *ibid.*

### Box 15 – general and individual licence requirements for SALW transport

*Left: Countries requiring air carriers and freight forwarders to have a general licence to transport SALW or ammunition*

*Right: Countries requiring air carriers and freight forwarders to have a licence on a case-by-case basis to transport SALW or ammunition*



**Key:**

Dark Grey: Licence not required (information from questionnaire);

Black: Licence required (information from questionnaire);

Horizontal lines: Licence required (information from desk survey of national laws and regulations).

The requirements given by questionnaire respondents for individual or general licences for the air transport of SALW reflect the explicit implementation of Article 35(a) of the Chicago Convention in a few cases.<sup>97</sup> However, as stated in the Key Points in Box 14, in other States, authorities consider Article 35(a) to be under the exclusive purview of the export licensing authorities and not the responsibility of the national CAAs. Several other national CAAs, however, appear to implement controls over the carriage of SALW and munitions through wider regulations covering the air transport of dangerous goods.<sup>98</sup> Carriage regulations for dangerous goods are standardised

<sup>97</sup> 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)

<sup>98</sup> E.g. Questionnaire responses by Finnish Civil Aviation Department: “Q2: In what ways are civil aviation authorities and airport authorities expected to contribute to the implementation and effectiveness of national controls on SALW transfers involving air transport? A. By implementing and applying strictly ICAO Annex 18, and TI and EC regulations concerning transportation of controlled goods.”

Questionnaire responses by the Civil Aviation Authority of Luxembourg:

“Q: What are the actions expected by the civil aviation authorities and the airport authorities in the implementation and effectiveness of national controls in the transfers of SALW involving air transport? A: In the Annex 18 of the OACI (dangerous goods) and the regulation of 12 December 2005 include particular dispositions in the field... the regulation does not mention air freight in general and the air carriers are responsible for the safety missions. No specific disposition or national specification deals with arms transport”.

internationally by Annex 18 of the Chicago Convention and ICAO's *Technical Instructions for the Safe Transport of Dangerous Goods*, as discussed in Section 2.1.iii above. Civil Aviation Authorities (CAA" However, the dangerous goods *Technical Instructions* do not cover SALW transported without ammunition, a fact not acknowledged by many respondents when asserting that Annex 18 controls adequately cover the transport of SALW.<sup>99</sup>

Even where systems of permissions for weapons-carrying flights exist, their implementation relies upon aircraft coming into contact with civil aviation, airport or customs authorities. This is not certain in large territories with numerous small airports which may not have permanent civil aviation authority or customs presence.<sup>100</sup> Some countries (notably, two with large airspaces) have introduced additional measures to require aircraft to come into contact with aviation and customs authorities. For example:

- Since 2000, aircraft carrying SALW “may not cross the territory of the **Russian Federation** without landing for border and customs formalities”.<sup>101</sup>
- In **Ukraine**, aviation regulations require more broadly that non-Ukrainian aircraft operators must land in Ukraine only at designated international airports, and in some circumstances must be physically accompanied on onward flights within Ukraine by a designated Ukrainian aviation official.<sup>102</sup>

#### **b) Risk assessment and information sharing**

The degree to which flight authorisations or aviation inspections of SALW-carrying flights can be used to assess the risk of diversion or detect unauthorised transfers, depends upon:

- which authorities are involved in the authorisations and inspections;
- the information available to these authorities.

The involvement and coordination of authorities varies across States. Consultation with other departments is not uncommon where flight-specific or carrier-specific authorisations for the SALW-carrying flights are issued by civil aviation authorities. However, as **Table 1** shows, in several States, the departments consulted are enforcement departments, rather than those involved with *risk assessment* in the authorisation of arms transfers (generally export licensing authorities).

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Questionnaire responses by German Ministry of Transport, Building and Urban Affairs "Q3: 3. *Is the air transportation of SALW by non-governmental air carriers and freight forwarders permitted under national legislation? A. Yes, In accordance with ICAO TI for the safe transport of dangerous goods*".

<sup>99</sup> e.g. Questionnaire Section 8 response from Polish Civil Aviation Authority: “All air carriers need an individual permission of CAO for transporting of SALW and munitions in compliance with IATA regulations and instruction : Dangerous Goods Regulations and Home regulations in this matter.”

<sup>100</sup> Several civil aviation authority interviewees in the study related growing security concerns - both in terms of fears of terrorist attacks using private aircraft, and the illicit movement of persons and goods - regarding General (i.e. Private, non-military, non-commercial) Aviation, often using small, relatively unsupervised or even wholly private airfields. In this context the US government appears to be seeking to develop security-oriented controls over General Aviation in other countries, and the US Embassy in Poland recently coordinated a 2-day meeting on General Aviation security with several Eastern European CAAs.

<sup>101</sup> 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*.

<sup>102</sup> Ukraine State Aviation Administration, information on 'Entry, Transit and Departure of Aircraft' <http://avia.gov.ua/eng/index.htm> accessed 10 January 2009.

**Table 1: Departments consulted by CAA on SALW flight authorisations, compared with departments responsible for risk-based export controls.**

| Country  | Departments consulted by CAA on SALW flight authorisations  | Department primarily responsible for export control   |
|----------|---|---|
| Bulgaria | Interministerial Council on the Military-Industrial Complex   | Interministerial Council on the Military-Industrial Complex   |
| Hungary  | National Police, Customs and Excise (Central Airport Headquarters) ( <i>for inspection of weapons cargoes</i> ) | Hungarian Trade Licensing Office (HTLO), Ministry of Economy  |
| Ireland  | Ministry of Foreign Affairs   | Department of Enterprise, Trade and Employment  |
| Italy    | Ministry of Interior  | <i>Weapons of War</i> : Unità per le Autorizzazioni di Materiali d' Armamento (UAMA), Ministry of Foreign Affairs;<br><i>'Non-military firearms'</i> : Police |
| Malta    | Police  | Trade Services Directorate, Commerce Division   |
| Ukraine  | State Service for Export Control ( <i>contacted by CAA during issuing of departure permit</i> )                 | State Service for Export Control  |

In addition, the information available to CAAs and other consulted authorities is often too limited to enable effective risk assessment of the cargo's possible diversion, or the lawfulness of the shipment. **Ireland** provides a valuable example as outlined in Box 16 below.

**Box 16 - Landing and overflight permissions for weapons-carrying flights: the example of Ireland**

Ireland exports few arms in its own right, but its position on Atlantic flight paths between Europe and North/South America makes it a significant site for the refuelling and overflight of aircraft, including those carrying weapons. Approximately 250,000 flight plans are filed each year for flights in and through Irish controlled airspace.

Authorisation requirements

Landing or overflight of any “weapons” and “Munitions of War” in Ireland, regardless of whether they constitute Dangerous Goods, requires authorisation from the Irish Department of Transport, an explicit application of Article 35 of the Chicago Convention.<sup>103</sup> These applications 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.<sup>104</sup> This allows policy-based refusals of flights to be made, rather than simply safety-based refusals.

<sup>103</sup> Air Navigation (Carriage of Munitions of War, Weapons and Dangerous Goods) Order 1973, Section 6 and 7

<sup>104</sup> Letter from Department of Transport to Amnesty International Ireland, 23 November 2006, obtained by authors.

## Refusals

Between January 2003 and October 2006, at least 356 civilian flights requested permission to carry weapons or munitions through Irish airspace, 56 of which landed in Ireland, mainly at Shannon airport.<sup>105</sup> During the same period eight weapons-carrying flights were refused overflight or landing: four on the grounds that they were carrying landmines, whose conveyance through Ireland is prohibited on humanitarian grounds;<sup>106</sup> two carrying “helicopters”, refused for unspecified reasons, which may be related to previous political pressure over the refuelling at Shannon Airport of Antonov-124 cargo planes carrying Mi-17 helicopters from Russia to Venezuela, and Apache AH-64 attack helicopters from the USA to Israel; and two, carrying “anti-tank rocket grenades”, on the grounds of their “cargo and flight path”.<sup>107</sup>

This system evidently allows Irish authorities to intervene over transfers that would not otherwise come within the remit of Irish export licensing or customs, and to interdict them on policy grounds. Although refusing overflight and landing to a flight may not prevent it from occurring, the position of States like Ireland on major Atlantic flight routes makes its permission financially significant for aircraft operators, and material provided by the Irish Department of Transport indicates that in a number of cases flights were cancelled after both Irish and US overflight permission were refused.<sup>108</sup>

## Detail of information

However, the information available to the Irish authorities in considering weapon flight permissions arguably makes it difficult, if not impossible, to properly assess the risk of diversion or destabilising transfer.

The level of detail of the goods descriptions appears to vary considerably:

- some flights submit detailed cargo lists containing descriptions such as “*Ammunition, Smoke G982 Grenade Hand SMK white AN-M18*” or “*Cartridges for Weapons, Inert Projectile B584 CTG, 40mm TP M918 Linked*”, alongside detailed quantity and packing information;<sup>109</sup>
- some flights (especially overflights) submit sparse cargo descriptions such as “*Grenades*”, “*Spare Parts for Security Material*” or “*Explosive Fuses, Detonating*”, which may not even be discernible as military material at all.<sup>110</sup>

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<sup>105</sup> Amnesty International Ireland, *Controlling a Deadly Trade* (September 2007) ([http://www.amnesty.ie/amnesty/upload/images/amnesty\\_ie/campaigns/controlarms/Controlling%20a%20Deadly%20Trade.pdf](http://www.amnesty.ie/amnesty/upload/images/amnesty_ie/campaigns/controlarms/Controlling%20a%20Deadly%20Trade.pdf)).

<sup>106</sup> Explosives (Land Mines) Order 1996, Government of the Republic of Ireland.

<sup>107</sup> “Now Russia flies arms through Shannon airport”, *Irish Independent*, 15 April 2006.

<sup>108</sup> Information released by Department of Transport to Amnesty International Ireland, 23 November 2006, obtained by authors. We are grateful to Amnesty International for access to this information.

<sup>109</sup> Cargo list for flight permission MW/2006/645, 13 May 2006: Information released by Department of Transport to Amnesty International Ireland, 23 November 2006, obtained by authors.

<sup>110</sup> Cargo information for flight permissions MW/2005/953 (30 September 2005), MW/2006/933 (30 July 2006) and MW/2006/863 (7 July 2006). All these flight permissions were granted. Information released by Department of Transport to Amnesty International Ireland, 23 November 2006, obtained by authors.

<sup>111</sup> Letter from Department of Transport to Amnesty International Ireland, 23 November 2006, obtained by authors.

In assessing diversion risks, the Department does not possess or request information on:

- “the flag states of the aircraft involved”;
- “the purpose and final destination of the munitions carried”;
- “the origin and destination states of the flight” (the Department only requests “the preceding State the flight departed from and the next State in which it will land”).<sup>111</sup>

Without complete cargo, aircraft or flight route information, it is difficult to see how the risk of diversion or destabilising transfer can be adequately assessed. Indeed, even if a weapons flight landing in Ireland was ultimately destined for an UN-embargoed destination, this information might not be available to Irish authorities as long as it was landing in another State first.

### c) Control of aircraft on national registries

As well as permitting States to authorise or refuse weapons-carrying flights in national airspaces, the Chicago Convention also places obligations on States for aircraft registered on their national aircraft registries, wherever they operate.<sup>112</sup> Analysis of air cargo carriers previously implicated by UN or other credible investigative sources in illicit transfers of SALW, suggests that the majority of their aircraft are registered to national registries then overseen by weak or non-compliant authorities, including the Democratic Republic of Congo, Liberia, Kyrgyzstan and Sao Tome and Principe.<sup>113</sup> Such 'registries of convenience' have not typically included States included in this study. Nonetheless, of the 80 air cargo carriers identified by a recent SIPRI study as having been named in a UN or other arms trafficking-related report, at least five had planes registered on four national registries included in this study (see **Table 2**). In most of these cases the alleged transfers did not themselves pass through the country of registration.

**Table 2 – Instances of air cargo carriers with aircraft registered in countries included in this study which have been cited in credible reports of illicit or destabilising SALW transfers**

| Company   | Aircraft Registration | National registries (included in study) | Alleged transfers  |
|-----------|-----------------------|---|--|
| Air Sofia | Various               | <b>Bulgaria</b>                         | Weapons for Angola transported from Burgas and Sofia ( <b>Bulgaria</b> ) to Catumbela ( <b>Angola</b> ), April 1996 ( <i>Human Rights Watch, 1998</i> )<br><br>Weapons, ammunition and explosives from Burgas ( <b>Bulgaria</b> ) to Asmara ( <b>Eritrea</b> ), July 1998 ( <i>New York Times,</i> |

<sup>112</sup> e.g. 1944 Chicago Convention on Civil Aviation, Chapter II Article 12: Each contracting State undertakes to adopt measures to insure that every aircraft flying over or manoeuvring within its territory and that every aircraft carrying its nationality mark, wherever such aircraft may be, shall comply with the rules and regulations relating to the flight and manoeuvre of aircraft there in force.

<sup>113</sup> Hugh Griffiths and Mark Bromley, *Stemming destabilizing arms transfers: the impact of European Union air safety bans* (SIPRI Insights No. 2008/3, October 2008).

|                       |                                    |                        |  |
|-----------------------|------------------------------------|------------------------|--|
|                       |                                    |                        | 1998)  |
| Atlant-Soyuz          | various                            | <b>Russia, Belarus</b> | Destabilising transfers of SALW from <b>Bosnia-Herzegovina</b> to <b>Iraq</b> , 2004-5 ( <i>Amnesty International</i> 2006)  |
| Aviacon Zitotrans     | Various                            | <b>Russia</b>          | Aviacon aircraft photographed at Mwanza airport ( <b>Tanzania</b> ) in cargo transfer cited as “suspicious” by UN Panel of Experts on <b>DRC</b> ( <i>UN Panel on DRC</i> , 2005)  |
| Ukrainian Airways     | Cargo<br>UR-UCK (An-12) and others | <b>Ukraine</b>         | Anti-tank munitions from Bratislava ( <b>Slovakia</b> ) to <b>Angola</b> via <b>Israel</b> in 2001 on aircraft UR-UCK ( <i>Human Rights Watch</i> , 2004)<br><br>Suspected of involvement in undeclared arms shipments to <b>Tanzania</b> , 2001 ( <i>Human Rights Watch</i> , 2004)<br><br>Arms from <b>Uganda</b> to Ugandan forces in <b>DRC</b> , 1999 ( <i>International Crisis Group</i> , 1999) |
| Volare/Albatross Avia | Various                            | <b>Ukraine</b>         | Il-76 from Ostrava ( <b>Czech Republic</b> ) detained in 2001 during re-fuelling at Burgas ( <b>Bulgaria</b> ) with arms suspected as being destined for <b>Eritrea</b> . ( <i>Amnesty International</i> , 2006)   |

Data compiled by SIPRI's CIT-MAP Air Cargo Carriers Database.

([www.sipri.org/contents/armstrad/Air\\_Cargo\\_Operators/air\\_carrier\\_database.html](http://www.sipri.org/contents/armstrad/Air_Cargo_Operators/air_carrier_database.html) accessed 19 January 2009); aircraft data taken from Aerotransport Data Bank ([www.atdb.aero](http://www.atdb.aero) accessed 19 January 2009).

### Authorisation requirements

While not specifically mandated by the Chicago Convention, several States in the study require aircraft on their national registries to apply for general or (less-commonly) flight-specific authorisations to carry weapons or munitions of war, wherever they are operating. For example:

- All aircraft registered on the **United Kingdom** registry must submit flight-specific applications to carry dangerous goods or munitions/weapons of war to the UK's Civil Aviation Authority Dangerous Goods Office. All States involved in the flight (origin, transit, overflight and destination) must in theory agree to the flight.<sup>114</sup>
- Operators of **Ukrainian**-registered aircraft must have either general or 'one-time' permits to carry dangerous goods in leased Ukrainian aircraft operated outside of Ukraine. Reportedly, Ukrainian Civil Aviation Authority inspectors often travel to inspect leased Ukrainian-flagged aircraft operating in other countries.<sup>115</sup>

<sup>114</sup> See Air Navigation Order 2000, Article 59; and UK Civil Aviation Authority, *CAP 668: Transport by Air of Dangerous Goods, Munitions of War, Sporting Weapons and Animals: Guidance Material on the Operator's Responsibilities*, September 2004. [www.caa.co.uk/docs/33/CAP668.PDF](http://www.caa.co.uk/docs/33/CAP668.PDF) accessed 19 January 2009.

<sup>115</sup> Interview with ICAO Institute staff member, Kiev, 11 December 2008.

#### **d) Enforcement powers**

Even where systems of authorisation for SALW-carrying flights or aircraft exist, they are only directly effective if they are able to prevent flights or aircraft from flying in circumstances conducive to diversion or destabilising transfer, rather than simply in narrower instances of safety breaches or incorrect documentation. **Box 17** gives a good example from the **Ukraine**.

##### **Box 17 – Enforcing authorisation: an example from Ukraine**

An example involving several States in this study illustrates both the potential of European aviation controls on SALW flights to interdict illicit shipments; and the limits of those powers at present. On 24 April 2001 an Il-76 aircraft operated by Ukrainian air cargo carrier Volare was reportedly detained at Burgas Airport in Bulgaria, where it had stopped for re-fuelling en-route from Ostrava (Czech Republic) to Georgia; it was suspected that some of the 30 tons of arms it carried (including AK-47s, howitzers and ammunition) were destined for then-embargoed Eritrea.

According to reports the shipment only had export licence documentation for the six howitzers and their spare parts, and not the SALW and ammunition. The pilots had reportedly hand-corrected the destination of the flight from Aspara (in Georgia) to Asmara (in Eritrea).

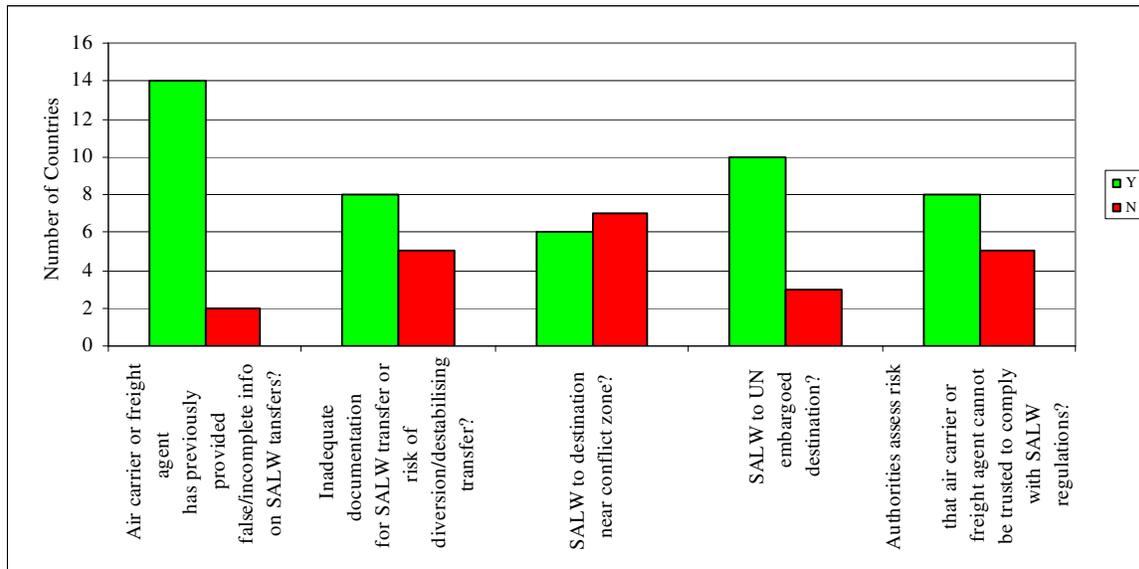
Thus a potentially illicit shipment of arms was not prevented by the exporting State (Czechoslovakia), but was only halted by the State in which the aircraft landed to refuel (Bulgaria). Yet despite the flight's documentary irregularities, Bulgarian authorities appear only to have had the power at that time to interdict aircraft for explicit breaches of aviation regulations. Thus on 6 June 2001 "the departure of the plane was authorised after a local state attorney's office 'found no evidence of a crime' having been committed."<sup>116</sup>

Our survey has confirmed that, in general, powers given to the civil aviation authorities to prevent the movement of SALW-carrying flights or aircraft are still only typically available in instances of concrete breaches of national regulations (for example, the submission of incorrect documentation, or direct breaches of international arms embargoes). The ability to prohibit a SALW flight based upon *risk* factors (such as the delivery of SALW to a country near a conflict zone, or the perceived risk that the operator might divert the cargo) is far less common – see Box 18.

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<sup>116</sup> Amnesty International, *Dead on Time: Arms Transportation, Brokering and the Threat to Human Rights*, ACT 30/008/2006, 10 September 2006.

**Box 18 – Circumstances in which SALW-carrying flights can be banned from national territory**



Although powers to inspect and interdict aircraft on safety grounds are more prevalent than powers to interdict aircraft due to the nature or destination of its cargo, nonetheless air safety regulations have had some indirect impact in reducing the operation of air operators – including Volare - implicated in illicit or destabilising SALW transfers.<sup>117</sup> The impacts of these EU-level regulations are discussed in more detail in Part 4.

**e) Aircraft and cargo inspections**

Systems of flight authorisation and refusal, of course, cannot prevent air carriers seeking to evade such controls. Physical cargo inspections of aircraft passing through European States are thus an important corollary of a flight-authorisation-based surveillance system. However, if cargo does not leave the aircraft (and thus does not pass through national customs), and does not constitute dangerous goods, not all European States may inspect the cargo of transiting/refuelling aircraft except on aviation safety grounds, or on suspicion that a criminal offence has taken place (by no means certain even in the event of an arms diversion, as the 'Volare' case in Box 18 illustrates). **Table 3** outlines situations where certain States have guidance on inspection of aircraft cargo.

<sup>117</sup> Since July 2007, Volare Aviation has been banned from operating within the European Union on safety grounds: EC Regulation 787/2007 (4 July 2007), amending EC Regulation 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community. Following consultations with the EC, Ukraine reported in April 2008 that the Ukrainian Civil Aviation Authority had revoked the Air Operating Certificate of Volare (now operating as Albatross Avia). See SIPRI CIT-MAP Air Cargo Carriers database ([http://www.sipri.org/contents/armstrad/Air\\_Cargo\\_Operators/Volare.html](http://www.sipri.org/contents/armstrad/Air_Cargo_Operators/Volare.html) accessed 19 January 2009)

**Table 3 - Circumstances in which national authorities may inspect an aircraft and its cargo located on national territory**

| Country    | Circumstances in which authorities may inspect an aircraft and its cargo  |
|------------|---|
| Cyprus     | “Suspicion – Information – spot checks”   |
| Finland    | <p>Customs may inspect aircraft in non-EU traffic whenever needed; but require specific reason for search of aircraft in EU traffic. Physical inspections based on risk analysis and intelligence.</p> <p>Police may search vehicles if grounds exist to suspect an offence has been committed, or if necessary to detect an offence.</p> |
| Germany    | (Safety-based) ramp checks based on “suspicion” or if an accident has occurred.   |
| Hungary    | Customs and Excise and National Police may inspect weapons being transferred (but thus requires prior knowledge of presence of weapons?)  |
| Italy      | Customs and law enforcement officials may inspect an aircraft in order to verify arms transportation (but thus requires prior knowledge of presence of weapons?)  |
| Latvia     | Authorities may inspect aircraft at any time and place.   |
| Luxembourg | Inspections on grounds of aviation safety or documentation irregularity.  |
| Norway     | Suspicion of a criminal offence being committed   |
| Poland     | Suspicion of a criminal offence being committed, or threat to security of flight/aircraft   |

## Summary of Part 2

Assessments of transport modalities at export licensing stage – the system envisaged by the Wassenaar Arrangement *Best Practices* - are not widely undertaken on a systematic basis across the States in this study.

A marked geography of different systems is apparent across Europe, with States which rigidly gather information on transport modalities of SALW transfers being concentrated in Eastern Europe, often in States which have nonetheless been subject to allegations of illicit or destabilising SALW transfers by air. In most other States in this study, a complex set of overlapping national systems of control currently play a role in regulating the air transport of SALW, including actors and authorities concerned with:

- arms control,
- trade security and fiscal control,
- transport safety, and
- the verification of payment and goods ownership.

These varying objectives dictate the different categories of information gathered at each stage, the different checks made on the shipment, and the powers which the authority will have to prevent or intercept an illicit or destabilising transfer of SALW.

On the evidence so far available to us, **the Netherlands** constitutes the only example in which risk-based assessments of both aircraft safety and cargo/customs issues are combined in physical ramp inspections of aircraft. **Ireland** is the only clear example in which specific authorisations for weapons-carrying flights passing through national territory are assessed against the risk of diversion or destabilising transfer.

While the complexity of these overlapping systems creates serious challenges to the prevention of illicit and destabilising transfers of SALW, the analysis of existing national control mechanisms in this area also highlights a broad range of best practices which States are already pursuing in this area. These will be further discussed and elaborated in the conclusions..



### 3 - The role of relevant international mechanisms and organisations<sup>118</sup>

International mechanisms have the potential to play a valuable role in providing licensing, customs and civil aviation authorities with the information and capacities needed to control air transport of SALW effectively. In particular they can contribute to processes of risk-assessment at the licensing and customs stages by either generating or sharing information on the activities of air cargo carriers that have been involved in illicit or destabilising SALW transfers. In addition, international mechanisms can also play a role in limiting the activities of air cargo carriers that may be involved in illicit or destabilising transfers of SALW. In particular, they can help to increase international air safety standards or place limits on which air cargo carriers are permitted to carry SALW.

#### 3.1 Facilitating inter-governmental information exchange

The *WA Best Practices* place a strong emphasis on the utility of information sharing between governments in order to prevent cases of SALW diversion, as well as to combat illicit or destabilising SALW transfers. If information can be shared between the relevant authorities on the activities of suspect air cargo carriers, this will assist in the identification and prevention of potential cases of diversion. **3.1.i** examines mechanisms which are specifically targeted at sharing information between transfer licensing authorities, as well as more general activities in this area.

##### 3.1.i Information sharing among national licensing authorities

There are already a number of regional and international mechanisms in place for sharing information between national licensing officials that could help to *prevent cases of SALW diversion as well as to combat illicit or destabilising SALW transfers*. These mechanisms have the potential to be adapted and expanded to include information on air cargo carriers that are suspected of being involved in illicit SALW transfers. They include the Wassenaar Arrangement and the EU Code of Conduct.

##### Wassenaar Arrangement

The Wassenaar Arrangement (WA) was designed to promote transparency and responsibility in transfers of arms and dual-use items in order to prevent 'destabilising accumulations'.<sup>119</sup> The 40 WA Member States exchange information in confidence on the export of seven categories of major conventional weapons to non-participating States. These seven categories are based on the seven categories reported to the UN Register, although a breakdown into subcategories has created greater detail.<sup>120</sup> Information on transfers of SALW and man-portable air defence systems

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<sup>118</sup> Hugh Griffiths contributed to the drafting of this part of the report. Certain of the themes discussed in this section will be further developed in an upcoming SIPRI Policy Paper, which will be published in May 2009.

<sup>119</sup> Wassenaar Arrangement, 'Introduction', <<http://www.wassenaar.org/introduction/>>.

<sup>120</sup> Swedish Ministry of Foreign Affairs, 'Strategic Export Control in 2007 – Military Equipment and Dual-Use Products', Government Communication 2007/08:114, 13 March 2008, p. 32.

(MANPADS) are also shared.<sup>121</sup> Member States exchange information on these categories of goods on a twice yearly basis, but may include further information on a voluntary basis.<sup>122</sup> States also exchange information on their denials of export licences for certain categories of dual-use goods.<sup>123</sup>

The WA *Best Practices* are an attempt to tackle the threat posed by the illicit transfer of SALW by air transport. In particular, the WA *Best Practices* are focused on encouraging States to request more detailed information from companies applying for licences to export SALW relating to shipping companies that will be employed during the transfer, and the routes they will take during the delivery. The WA *Best Practices* also encourage States to use this information to support their own decision-making processes for the issuing of export licences and to share information with other States on exporters, air carriers or agents that fail to provide the information required or who are denied export licences.

The amount of information shared in practice among WA Member States is difficult to judge from the outside. However, from what is available in open sources, it seems apparent that the sharing of nominal information on export licence denials, or particular shippers or air cargo carriers that have been involved in illicit transfers of SALW, is limited:

- Only 3 out of the 16 states that responded to the relevant section of the questionnaire said they had shared information with other WA Member States about exporters / importers, air carriers or freight forwarding agents that have been denied licences involving the transfer of SALW by air.
- None of these States provided specific details on the substance of this information exchange.

Information is also exchanged periodically within the framework of WA General Consultation procedures, including some reportedly useful consultations highlighting particular risk associated with shipment routes or country destinations.

In 2006, the WA Transparency Task Force examined several possibilities for enhancing the exchange of information among WA Member States. Proposals included:

- adding small-calibre ammunition to the mutual information exchange on arms exports, and
- introducing formal mechanisms for exchanging information on licence denials, as already practiced by EU Member States.

However, the proposals reportedly met strong opposition and were not adopted.<sup>124</sup> A number of states provided concrete recommendations (via the questionnaire) on how the exchange of nominal information via WA channels could be improved (see **2.2.ii**). However, such proposals

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<sup>121</sup> *ibid.*

<sup>122</sup> *ibid.*

<sup>123</sup> US Department of State, 'Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies' Fact Sheet, Bureau of Non-proliferation, 31 Aug. 2001.

<sup>124</sup> The Netherlands Ministry of Economic Affairs and the Netherlands Ministry of Foreign Affairs, 'Annual report on the Netherlands arms export policy 2007', 9 Sep. 2007, pp. 12-13.

may well remain difficult to implement in practice. As **Romania** indicated, a first necessary step would be to increase the “level of confidence among WA Participating States”.<sup>125</sup>

### EU Code of Conduct

Under the EU Code of Conduct (EU Code), EU Member States have agreed to share information on any export licence denial, giving details of the proposed transaction and the reasons for the refusal. If a Member State is considering granting an export licence for a transaction which it believes might be ‘essentially identical’ to one that has previously been denied, then it is obliged to consult the State that previously issued the denial in order to clarify the situation. Member States have also put in place separate arrangements for exchanging information on registered brokers and approved brokering licences.<sup>126</sup>

Although it was devised as a tool for harmonising European arms export controls in general, there is some evidence that one of the key ways in which the EU Code is being utilised is in assisting Member States in preventing and reducing exports of SALW that are likely to be diverted. Criteria 7 of the EU Code, which requires Member States to deny an export licence if there is a risk “that the equipment will be diverted within the buyer country or re-exported under undesirable conditions”, is the criterion that States most frequently cite when denying an export licence. Meanwhile, ML 1<sup>127</sup>, which covers SALW, is the category of weapon for which States most frequently deny export licences.<sup>128</sup> In interviews, European export licensing officials stress the usefulness of the EU Code in providing guidance on certain types of exports, specifically of SALW, and identifying potential risks of diversion.<sup>129</sup>

In addition to sharing information amongst themselves, EU Member States have also declared willingness to share information on denials and other licensing decisions with States in South Eastern Europe (SEE).<sup>130</sup> Hence, the information generated by EU Member States’ export licence denials has the potential to inform decision making not just within other EU Member States, but also among States in the European Neighbourhood, where the authorities may be more likely to be dealing with export licence applications that involve potentially illicit or destabilising transfers

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<sup>125</sup> Romanian government's questionnaire response.

<sup>126</sup> EU 10th Annual Report, p. 6.

<sup>127</sup> Military List of the EU Full reference at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:065:0001:0034:EN:PDF>

<sup>128</sup> In 2006, criterion 7 was cited 167 times as a reason for denying an export licence, more than any other criteria. Of the denials issued, 120 (out of a total of 365) related to SALW, more than any other category of weapon. 88 of these denials were issued, either in whole in part, because of concerns relating to the risk of diversion. (Ninth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, Official Journal of the European Union, C253 (26 Oct. 2007), p. 312).

In 2007, criterion 7 was cited 180 times as a reason for denying an export licence, more than any other criteria. Of the denials issued, 98 (out of 420) related to SALW, more than any other category of weapon. 68 of these denials were issued, either in whole in part, because of concerns relating to the risk of diversion. (Tenth Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports, Official Journal of the European Union, C300 (22 Nov. 2008), p. 353).

<sup>129</sup> See Bromley, M., ‘The Impact on Domestic Policy of the EU Code of Conduct on Arms Exports: The Czech Republic, the Netherlands and Spain’, SIPRI Policy Paper No. 21, May 2008.

<sup>130</sup> EU 10th Annual Report, p. 2

of SALW by air transport.<sup>131</sup> There have been discussions in the past about developing similar exchanges with States in other regions, through inter-regional cooperation measures. However, the research did not find any specific information to indicate that these have yet been followed-up in practice.

Although EU Code procedures may facilitate information sharing relating to air transport, there is currently no specific reference to diversion via air transport in any of the documents relating to the implementation of the EU Code, and no explicit mechanisms for sharing information on air carriers among the participating States. The minimum level of information that States are requested to provide with their denial notifications includes:

- the country of destination;
- a short description of the goods;
- the stated end-use;
- the name and country of consignee;
- the reasons for denial; and
- date of the denial.<sup>132</sup>

The User's Guide also requests that information on the 'Consignee and end-user' should be "as detailed as possible" including 'Name/address/country/telephone number/fax number/e-mail address'. There is also an open request for 'Additional remarks'. However, there is no specific request for information on the mode of transport or any air cargo carriers or freight forwarders to be involved in the deal.

### **3.1.ii Other relevant mechanisms of generating and sharing information**

There have been various other public and inter-governmental attempts to generate and share information on issues relating to illicit or destabilising transfers of SALW. These mechanisms either include information on air cargo carriers, or could be adjusted to include this type of information. The sources of the information used in these mechanisms vary considerably and include open source intelligence, along with information generated by national customs and law enforcement agencies. Some of these mechanisms include: the "brokering Group of Governmental Experts"; the EU Joint Situation Centre; the UN Panel of Experts; and various NGO reports.

#### Discussions in the "brokering GGE"

The report of the 2007 Group of Governmental Experts (GGE) on brokering activities makes frequent references to the value of information sharing as an effective means of combating illicit brokering. Most of the focus of the document is on sharing information on systems of control, authenticating end-user-certificates and cooperating on criminal investigations. However, in his forward to the report, the UN Secretary-General states:

'I attach great importance to the fact that the present report contains concrete

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<sup>131</sup> See Griffiths, H. and Wilkinson, A., *Guns, Planes, Ships - Identification of Clandestine Arms Transfers* (UNDP/SEESAC: Belgrade, Aug. 2007).

<sup>132</sup> Council of the European Union, 'User's Guide to the EU Code of Conduct on Arms Exports', Brussels, 29 Feb. 2008, p. 14.

recommendations for effective international cooperation to curb illicit brokering in small arms and light weapons, namely through the provision of assistance for capacity-building; enhanced information-sharing among States; and mutual assistance arrangements for the *identification*, investigation and prosecution of illicit brokers.<sup>133</sup>

Developing mechanisms for sharing nominal information on illicit air carriers or brokers amongst UN Member States would pose significant challenges given the number of States involved and the difficulties associated with achieving consensus on these types of issues. However, there might be certain limited activities which would help to build confidence and inform States' practices in this area, such as an exchange of information on individuals convicted of arms trafficking related offences.

#### EU Joint Situation Centre list of air cargo carriers

In 2007, as part of the fight against the illicit trafficking of SALW by air-transport, the EU Joint Situation Centre (SitCen) prepared a list of air cargo carriers for distribution to Member States. Delegations provided national points of contact to which the list of air-transport carriers was to be circulated.<sup>134</sup> As SitCen had no field intelligence-gathering capability, they relied primarily on intelligence supplied by EU Member States, which was then synthesized with other intelligence to provide an EU Watch List.<sup>135</sup> A total of 46 air cargo carriers, the majority of which appear in open source reporting, were featured on a final list which was circulated within the General Secretariat of the Council of the European Union as a classified document with an individual watermark to prevent unauthorised dissemination.<sup>136</sup>

The air carriers included on the list and the information on the distribution of this document are not publicly available. EU officials have stated that the list was not distributed widely amongst the Member States and, in some cases, not at all.<sup>137</sup> In addition, several licensing, customs and civil aviation officials from EU Member States that were interviewed in the course of this study, indicated that they were not aware of the existence of the list.<sup>138</sup> It therefore stands as a potential, rather than an actual, source of information for most relevant national officials.

EU officials state that French officials requested an updated list during the French Presidency of the EU. However, at the time of writing, SitCen have been unable to compile a second list, the only task they were assigned in 2008 which they did not complete. A further Request For Information (RFI) is due to be sent to Member States but, at the time of writing, neither the State which had requested the updated list, nor any other, had submitted an updated list of air cargo carriers for SitCen review and synthesis.<sup>139</sup> Similarly a proposal submitted to the EU Council Working Party on Global Disarmament and Arms Control (CODUN) to strengthen SitCen

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<sup>133</sup> UN General Assembly, '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 Aug. 2007. Emphasis added.

<sup>134</sup> Council of the European Union, "Fourth Progress Report on the implementation of the EU Strategy to Combat Illicit Accumulation and Trafficking of SALW and their Ammunition (2007/II)", Brussels, 11 December 2007, p. 2.

<sup>135</sup> Interviews with government and EU officials in Paris and Brussels.

<sup>136</sup> *ibid.*

<sup>137</sup> Interview with EU officials, Brussels, January 2009.

<sup>138</sup> See Swedish and Netherlands case studies.

<sup>139</sup> Interview with EU official, Brussels, January 2009.

capacities through an outreach programme involving seminars, training and NGO involvement, appears to be blocked at the consultation stage.



Clearly there would be great utility in an air cargo carrier ‘watch list’ compiled using the intelligence and assets available to EU Member States and institutions. If the appropriate priority is given - in terms of tasking, assets and coordination - this would result in a first class intelligence product to help national officials to take responsible licensing and transit control decisions. The list would have great value for the screening of operations in EU airspace and beyond, as well as at airports belonging to the 27 Member States. It could also have added value if promoted and sensitised in the context of ESDP mission training and operations in the field, as well as in other, multi-lateral peace support or peace-keeping operations.

In maintaining such a list, the EU may benefit from experiences gained in the production of UN and NGO reports on illicit arms trafficking (see sub-section below) as well as the utilisation of available open source information.

In addition, there is also a clear need to ensure that the list is sent to officials with an understanding of the issue at hand and an awareness of how the information can be used within the context of their national control system. For example, export licensing officials will only be able to make use of the list if information on transport modalities is routinely collected as part of the licensing process, something which many States do not have (see **2.2.ii**). Conversely, civil aviation authorities, will only be able to make use of the list if they view the interception and prevention of illicit or destabilising transfers of SALW as something that falls within their remit, something that many States do not do (see **2.2.iv**). One potential option would be to send the list to national customs authorities, who may find it a useful source of information in their risk profiling systems.

#### UN Panel of Experts and NGO reports

The most effective means by which open source intelligence has been generated on the activities of air cargo carriers involved in illicit or destabilising SALW transfers, has been the production and dissemination of UN and NGO reports on illicit, illegal and destabilising transfers of SALW.

Perhaps most important in this regard are the independent panels and groups of experts that have been charged with monitoring UN arms embargoes and investigating allegations of violations. Since 1999, 10 independent panels and groups of experts have been created, presenting their findings and recommendations to the UN sanctions committees which administer the embargo itself.<sup>140</sup> These reports are also made public and often include detailed information on air cargo carriers that have been involved in violating the arms embargo in question. While the quality of the reports being produced has improved in recent years, there is still a need for greater scrutiny of the information that is being furnished. In addition, many independent panels and groups of experts have reported that they lack the authority and powers to fully investigate breaches of

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<sup>140</sup> Fruchart, D. et al, United Nations Arms Embargoes: Their Impact on Arms Flows and Target Behaviour, SIPRI and Uppsala University, 2007, p. 36.

particular embargoes.<sup>141</sup>

Also important are the reports produced by a range of different NGOs (including Amnesty International, Human Rights Watch and others) on illicit and destabilising arms transfers. These reports also include detailed information on the air carriers that have been involved in particular transfers.<sup>142</sup>

According to a recent SIPRI survey, a total of 186 air cargo carriers have been named in UN arms embargo panel of experts' reports or NGO reports on illicit and destabilising arms transfers between 1998 and 2008, making the reports the primary openly available source of information.<sup>143</sup> However, this information is not being systematically analysed and compiled in a single place for use by policy-makers and researchers. For example, there is no single website where all of the UN sanction panel reports produced since the mid-1990s can be accessed.

In 2008, a database was created through the Countering Illicit Trafficking-Mechanism Assessment Project (CIT-MAP) at SIPRI. The database contained information on all of the air cargo carriers which have been listed in both the European Commission (EC) air safety regulations (banning them from entering EU airspace) and either named in a UN or other arms trafficking-related report or supplied, owned, leased or acquired aircraft to/from a company named in a UN or other arms trafficking-related report.<sup>144</sup>

The CIT-MAP database was the first effort to systematically extract available open-source information in order to compile a publicly accessible database on air carriers that have been involved in illicit or destabilising SALW transfers. However, there is clear scope for this effort to be expanded on a larger scale. The CIT-MAP database is confined to air cargo carriers which have been listed in EC air safety regulations. An obvious next step would be to repeat the process for all air cargo carriers that have been involved in illicit or destabilising SALW transfers.

### 3.1.iii Assessment

**In order for this information to be of use, it needs to contain relevant, timely information that can be used to identify air cargo carriers and freight forwarders that have been involved in illicit SALW transfers. However, this raises the question of where this information should come from.**

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<sup>141</sup> Vines, A., 'Monitoring UN sanctions in Africa: the role of panels of experts', ed. T. Findlay, *Verification Yearbook 2003* (ERTIC: London, 2003), pp. 247-263; and Vines, A., 'Can UN arms embargoes in Africa be effective?', *International Affairs*, Vol. 83, No. 6, Nov. 2007, pp. 1107-1122.

<sup>142</sup> For example, see also Griffiths, H. and Wilkinson, A., *Guns, Planes, Ships—Identification and Disruption of Clandestine Arms Transfers* (UNDP/SEESAC: Belgrade, Aug. 2007); and Amnesty International, 'Dead on Time: arms transportation, brokering and the threat to human rights', (Amnesty International, UK, 2006).

<sup>143</sup> Hugh Griffiths and Mark Bromley, 'Stemming destabilising arms transfers: the impact of European Union air safety bans', SIPRI Insights No. 2008/3, p. 13.

<sup>144</sup> See [http://www.sipri.org/contents/armstrad/Air\\_Cargo\\_Operators/air\\_carrier\\_database.html](http://www.sipri.org/contents/armstrad/Air_Cargo_Operators/air_carrier_database.html). The database contained detailed information on 109 air cargo carriers. In each case, information is provided on: the relevant EC regulation and the restrictions that it imposes; whether or not the carrier's air operation certificate (AOC) has been withdrawn or revoked; at least one of the UN or other arms trafficking-related reports naming the carrier; and at least one of the assets which have been supplied, owned, leased or acquired aircraft to or from a company named in a UN or other arms trafficking-related report.

WA *Best Practices* are based on exchanges of information drawn from export licence denials. However, if States aren't asking for information on air carriers as part of the export licence application process, they will not be generating this type of information to exchange with other States. Clearly, intelligence on the activities of air carriers needs to be based on more than just export licence denials with other sources of intelligence being utilised and shared. In this regard, States should seek to apply certain lessons learned from the experiences of NGO and UN-led investigations into violations of UN arms embargoes, since these have proved to be the most reliable source of information in this field over the years. States could also devote greater resources to the extraction of available open source information in order to compile a publicly accessible database on air cargo carriers that have been involved in illicit or destabilising SALW transfers.

**In order for this information to have an impact it needs to be made available to officials within the relevant national agencies that have the ability use it effectively. Depending upon the export control procedures in place at the national level, in addition to licensing authorities, this could also include CAAs and national customs authorities.**

#### **Options for improving use and impact of information**

- Encourage States to reorganise their licensing and control systems to embody the 2007 WA *Best Practices*.
- A revision of the WA *Best Practices* themselves, and their revised implementation at the national level.
- Integrate elements of the WA *Best Practices* document into the User's Guide of the EU Code of Conduct.
- Include a separate category in the EU Code denial notification form giving information on the air carriers or freight forwarders involved in the proposed deal when their involvement played a role in the issuing of the denial.
- Use the mechanisms of outreach that have been established under the EU Code to engage in discussions with the States of South Eastern Europe regarding their policies on the air transport of SALW.
- Perform an in-depth analysis of the mechanisms through which reliable open-source intelligence is collected on the involvement of air cargo carriers in illicit SALW transfers.
- Develop a publicly accessible open-source database containing all available information on the activities of air cargo carriers that have been involved in illicit or destabilising SALW transfers.
- Develop mechanisms for sharing this information among licensing authorities but also with customs and civil aviation authorities.

### 3.2 Limiting the activities of air cargo carriers involved in illicit or destabilising SALW transfers

A number of regional and international organisations could also play a role in limiting the activities of air cargo carriers that are involved in illicit or destabilising SALW transfers. International organisations can play an *indirect* role in this process, by helping to enforce established air safety standards. They could also play a *direct* role in this process, by helping to establish regulatory systems that would ensure that only certain air carriers are allowed to engage in the transport of SALW and related ammunition.

#### 3.2.i Indirectly, by tightening the application of rules relating to air safety

Available evidence indicates that air carriers involved in illicit or destabilising arms transfers consistently operate in violation of international air safety regulations. Examples of air safety violations that have been highlighted in relevant UN reports include the falsification of aircraft registrations, cargo manifests and flight plans and the shipping of munitions without the required dangerous goods licence.<sup>145</sup> Hence, targeting air carriers that violate air safety standards, or improving air safety standards in general, is likely to have an impact on the activities of air carriers involved in illicit or destabilising SALW transfers.<sup>146</sup>

The link between improving air safety standards and tackling illicit or destabilising SALW transfers has been widely recognised since the late-1990s. In March 2000, the report of the Panel of Experts focusing on the sanctions on UNITA in Angola stated that the strict enforcement of air safety regulations was potentially the most effective tool in the face of the sustained violations of the arms embargo. The panel noted:

“In the broader context of the use of air cargo aircraft for sanctions busting purposes, the panel recommends that member states pay special attention to the strict application and enforcement of air safety regulations. Countries without an adequate regime should develop one.”<sup>147</sup>

Several other UN reports have also highlighted the crucial role that improving standards in air safety could play in preventing illicit or destabilising SALW transfers. For example, this correlation was noted by the Panels of Experts focusing on the UN Sanctions on Sierra Leone and the Democratic Republic of the Congo (DRC).<sup>148</sup>

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<sup>145</sup> See, Hugh Griffiths and Mark Bromley, ‘Stemming destabilising arms transfers: the impact of European Union air safety bans’, SIPRI Insights No. 2008/3.

<sup>146</sup> See, Hugh Griffiths and Mark Bromley, *ibid.* Also see, Hugh Griffiths, ‘Use of EC air safety regulations to reduce the number of air cargo companies involved in arms trafficking’ Presentation to DEVE Committee meetings, 20 Jan. 2009, URL

<<http://www.europarl.europa.eu/activities/committees/publicationsCom.do?language=EN&body=DEVE>>

<sup>147</sup> United Nations, Security Council, Report of the Panel of Experts on violations of Security Council sanctions against UNITA, S/2000/203, 10 March 2000, para. 74.

<sup>148</sup> United Nations, Security Council, Report of the Panel of Experts appointed pursuant to Security Council resolution 1306 (2000), paragraph 19, in relation to Sierra Leone, S/2000/1195, 20 Dec. 2000, para. 33; and United Nations, Security Council, Letter dated 26 January 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council, S/2006/53, 27 Jan. 2006, Annex, p. 29.

In recent years, the EU has taken an active role in the coordination and enforcement of air safety standards among Member States, mainly out of concern for the safety of EU citizens flying on airlines registered outside the EU. In particular, the EU has created a system of coordinated air safety inspections, carried out by Member States and backed up by community-wide flight bans, the so-called 'blacklist.' The blacklist can be applied to an individual air carrier, part of an individual carrier's fleet or to an entire State's registry. It is compiled by the European Commission Directorate-General for Transport and Energy of the European Commission (DG TREN) in consultation with the Air Safety Committee (ASC) comprised of experts from EU Member States. One of the main sources of information in the compiling of the blacklist are air safety inspections carried out by Member States, reports of which are forwarded to the European Aviation Safety Agency (EASA).

In 2008, CIT-MAP carried out a study examining the impact that these EU air safety regulations have had on the activities of air cargo operators that are suspected of being involved in destabilising arms transfers. The research showed that the impact has been profound.<sup>149</sup> Of the 172 air cargo carriers that have been listed in EC air safety regulations, barring them from entering EU airspace, or targeted as a result of EU technical inspection missions, 80 have been named in United Nations Security Council or other arms trafficking-related reports. Fifty-three of these companies have subsequently been reported as officially decertified while a further four have had their operations restricted.

The CIT-MAP study demonstrates two key points:

**First**, it underlines the close correlation between air cargo carriers that violate air safety standards and which are involved in illicit or destabilising SALW transfers. By targeting air carriers that violate air safety standards, the EU has also indirectly captured a significant number of air carriers that have been involved in illicit or destabilising SALW transfers. Most significantly, of the 13 air carriers that have been included in the blacklist -due to specific safety concerns relating to that air carrier, and not as part of registry-wide ban - all 13 have also been involved in illicit or destabilising SALW transfers.

**Second**, it demonstrates that the powers at the disposal of the EU can prove remarkably effective in terms of their impact upon the activities of air carriers involved in illicit or destabilising SALW transfers. These powers are based on a combination of the strength of Community Law, upon which the blacklist is based, and the EU's position as the world's largest economy and a major external trading partner for States in Africa, Central Asia, Central and Eastern Europe and the Middle East.

However, in order for this impact to be sustained, proactive steps will be needed to alter the way the EU air safety regulations are designed and implemented.

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<sup>149</sup> Hugh Griffiths and Mark Bromley, 'Stemming destabilising arms transfers: the impact of European Union air safety bans', SIPRI Insights No. 2008/3.

### Options for strengthening application of air safety rules

- Mechanisms could be created to ensure that companies do not simply re-register their assets and continue to operate under a different name;
- The EU could formally recognise the value of EU air safety regulations as a means of tackling illicit or destabilising SALW transfers, and take steps to adjust the EU coordinated inspection process accordingly;
- Steps could be taken to ensure that the standards of air safety that apply within the EU also apply in other parts of the world where these air cargo carriers continue to operate<sup>150</sup>.

### 3.2.ii Directly, by limiting the involvement of certain air carriers in the transport of SALW

A more direct mechanism would be to place limitations on which air cargo carriers are permitted to carry SALW. All States are legally obliged under the Chicago Convention to place controls on which air carriers registered with the national authorities are able to engage in the transport of dangerous goods (see **2.2.iv**). However, dangerous goods categories only cover SALW ammunition and not SALW themselves. Moreover, the standards which national CAAs apply in this area typically cover only air safety issues and not issues relating to the diversion of SALW transfers.

To create a system where some kind of internationally binding standards on which air cargo carriers are allowed to ship SALW, would require the cooperation of either the ICAO or IATA.

The ICAO has already been involved in a number of initiatives that are of relevance to preventing illicit and destabilising transfers of SALW. For example, the ICAO has identified MANPADS as a major threat to international civil aviation and has urged its members to pay close attention to the export of these weapons. In particular, in late 2004, the ICAO Assembly urged contracting states 'to exercise strict and effective controls on the import, export, transfer or retransfer, as well as storage of MANPADS'.<sup>151</sup>

In 2006, the ICAO issued the so-called 'Antonov blacklist' containing information on 436 aircraft no longer considered airworthy on the grounds that no manufacturer inspection had been carried out within the stipulated time limit.<sup>152</sup> One of the motivations behind the production of the Antonov blacklist were the reports of the Panel of Experts focusing on the UN Sanctions on the Democratic Republic of the Congo (DRC). The Panel of Experts highlighted how weak enforcement of air safety regulations facilitates violations of UN arms embargos.<sup>153</sup> In particular,

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<sup>150</sup> These issues will be further discussed and developed in an upcoming SIPRI Policy Paper, which will be published in May 2009.

<sup>151</sup> Small Arms Survey, *Small Arms Survey 2005*, Oxford and Geneva, Oxford University Press, 2005, p. 129.

<sup>152</sup> Lacagnina, M., 'Antonov blacklist', *Aviation Safety World* (Flight Safety Foundation: Alexandria, VA, Dec. 2006), p. 18–23.

<sup>153</sup> 'The lack of civil aviation oversight made it impossible to identify specific flights that might be transporting weapons.' United Nations, Security Council, Letter dated 26 January 2006 from the Chairman of the Security

the panel noted that air carriers which violate the Chicago Convention work with militia groups that issue invalid or fake air operating certificates and are engaged in other forms of illegal trafficking.<sup>154</sup> Many of the known operators of Antonov aircraft included in the blacklist have been named in trafficking-related reports.<sup>155</sup>

IATA is currently examining the possibility of developing mechanisms that would audit and accredit complete air cargo supply chains.<sup>156</sup> The long term vision is a single 'quality mark' for air cargo operators. To be qualified for that mark the operator would have to be compliant with a number of different criteria covering issues relating to e-freight, Cargo 2000, safety, security, and environmental concerns. The main aim of the scheme, from the security perspective would be to ensure that explosive devices are not being concealed in cargo. However, the long term vision includes concerns relating to the carriage of SALW and valuable cargo e.g. diamonds, bullion and other commodities that either have an impact on conflict situations or may be used by criminal, especially terrorist groups.<sup>157</sup> The development and implementation of the quality assurance scheme has been affected by the global economic downturn and its scope has been scaled down for 2009.<sup>158</sup>

The biggest challenge facing the inclusion of SALW in the quality assurance scheme will be the development of measurable criteria and effective assessment mechanisms that ensure that the system adds value. This is particularly important in light of the fact that air carriers involved in illicit or destabilising SALW transfers are unlikely to be IATA members.<sup>159</sup> One IATA official noted that a potentially more effective means of tackling the illicit or destabilising transfers of SALW would be to focus not on SALW themselves, but instead take steps to ensure that the existing systems of enforcement work more effectively. For example, improving the detection of mis-declarations and other non-compliant type behaviour would have a strong deterrent effect.<sup>160</sup>

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Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council, S/2006/53, 27 Jan. 2006, Annex, p. 29.

<sup>154</sup> *ibid* pp. 32–33

<sup>155</sup> Hugh Griffiths and Mark Bromley, 'Stemming destabilizing arms transfers: the impact of European Union air safety bans', SIPRI Insights No. 2008/3, p. 6.

<sup>156</sup> URL <[http://www.iata.org/whatwedo/cargo/gacsitf\\_newsbrief1.htm](http://www.iata.org/whatwedo/cargo/gacsitf_newsbrief1.htm)> Have asked for a copy of the presentation 18 Aug. 2008.

<sup>157</sup> John M. Edwards, Head of Cargo Security, IATA, Interview with the author, 15 Jan. 2009. In January 2009, IATA reported a 22.6 per cent fall in year on year cargo in global international cargo traffic. 'Cargo plummets 22.6% in December', IATA Press Release, 29 Jan. 2009. URL <<http://www.iata.org/pressroom/pr/2009-01-29-01.htm>>.

<sup>158</sup> John M. Edwards, Head of Cargo Security, IATA, Interview with the author, 15 Jan. 2009

<sup>159</sup> John M. Edwards, Head of Cargo Security, IATA, Interview with the author, 15 Jan. 2009

<sup>160</sup> John M. Edwards, Head of Cargo Security, IATA, Interview with the author, 15 Jan. 2009

### **Options for limiting the activities of air carriers involved in illicit or destabilising SALW transfers**

- Formal recognition on the part of EU institutions of the utility of air safety regulations as a means of targeting unsafe air cargo carriers involved in illicit or destabilising SALW transfers.
- An increase in the level of resources allocated to the Commission services and European agencies charged with these tasks.
- Amendments to EC regulations to specifically target the evasion tactics of unsafe air cargo carriers involved in illicit or destabilising SALW transfers. These amendments would place an emphasis on targeting aircraft and not just companies that operate them.
- Consideration of extending the air safety ‘blacklist’ concept to certain key African States’ airspace via the development of cross pillar and transport partnerships. Such a project would boost air safety. At the same time it would reduce the number of air cargo carriers engaged in illicit or destabilising SALW transfers that are prepared to transfer SALW and other illicit conflict economy commodities.
- Further development of national controls on which air carriers are permitted to engage in the transport of SALW.
- Development of measurable indicators, tied to diversion risks, for assessing which air carriers should be granted such permits.



#### 4 - National Case Studies of Controls on Air Transport of SALW

The five case studies were selected to deepen understanding of how regulations, procedures and practices are designed, and how they operate in practice in a variety of situations in selected States. Case studies were not selected on the understanding that they were in any way a model example or demonstrated specific ‘types’ of national control system, but rather to provide a geographical spread, and a mix of SALW trade and export contexts. The differences between case study countries, as well as the common challenges and problems, prove interesting and instructive for learning lessons and developing priorities for future control of air transport of SALW.

The five case studies represent a cross section of different contexts and responses vis-à-vis controlling SALW transfers by air transport:

- At one end of the spectrum, **Sweden** has both limited SALW exports and transshipments and has a limited engagement with transport modalities at licensing stage.
- At the other end of the spectrum, **Ukraine** has significant SALW exports and longstanding and detailed engagement with transport modalities at licensing stage.
- In between these two cases, States with limited SALW domestic industries like the **UK and France**, even though involved in occasionally large-scale SALW transfers, have pursued different approaches. France developing some integration of transport modalities in export licensing assessment (as envisaged by the WA Best Practices) and the UK attempting to draw transporters themselves into the licensing regime as separate licensees.
- The **Netherlands** presents something of a special case, constituting a limited SALW exporter but a major transportation hub within Europe. Its transfer controls demonstrate limited engagement with the *WA Best Practices*, but institutional aspects of controls – particularly cooperation between customs and civil aviation authorities – offer strong opportunities for informally enforcing SALW trafficking controls through air transport controls.

Beyond national licensing systems, these case studies illustrate a range of institutional, practical and informational strategies for the enforcement of controls, and the detection of illicit or undesirable SALW transfers. Mindful of the transnationality of SALW transfers, and their complex, international contracting chains, the case studies also illustrate differing strategies aimed at:

- Controlling different types of transport actors: from SALW brokers to air cargo carriers and freight forwarders;
- Implementing different levels of extraterritoriality: from transport service providers registered on States’ national territory or operated by their nationals, to foreign transporters operating within, or passing through national territory;
- Controlling *aircraft themselves* rather than just transport and logistics companies, either through controls on flights operating within the national territory of States, or on aircraft registered on States’ national aircraft registers.

Each case study is presented individually. In the final part of this section of the report, a broad typology of approaches towards the design and implementation of effective national controls on air transport of SALW is developed, based not only on the five case studies, but also on the information collected in the wider survey, discussed in Part 2.

## Case Study: France

### 1) Introduction

At an international level, the French government has played a leading role in promoting attention and action to prevent and combat illicit and destabilising transfers of SALW by air. One focus of this role has been successfully to promote guidelines on SALW air transport within the WA and the OSCE.<sup>161</sup>

At a national level, however, there remains a conceptual and systemic separation between aviation regulation (whose controls are principally concerned with safety) and the arms export control system (concerned with ensuring responsible arms transfer controls and preventing illicit or destabilising arms transfers). In general, interviewees within both the French Ministry of Foreign Affairs and the Civil Aviation Department reported that French controls on “the SALW problem” were of limited priority amongst enforcement authorities - in comparison, for example, to issues of WMD proliferation, drug and counterfeit trafficking, or aviation security.

### 2) Licensing procedures

#### **General information**

**National legislation:** *Décret-loi du 18 avril 1949 fixant le régime des matériels de guerre, armes et munitions; Arrêté du 2 octobre 1992 relatif à la procédure d'importation, d'exportation et de transfert des matériels de guerre, armes et munitions et des matériels assimilés; Ordonnance do. 2004-1374 du 20 décembre 2004 relative à la partie législative du Code de la défense.*

**Licensing authority for SALW transfers:** *Agrément Préalable (AP)* [contract licence] issued by la Commission interministérielle pour l'étude des exportations de matériels de guerre (CIEEMG), chaired by the Secrétaire général de la défense nationale.

*Autorisations d'Exportation de Matériels de Guerre (AEMG)* [export authorisations] and transit licences (ATMG) are issued by the Direction Générale des Douanes et Droits Indirects (DGDDI) on the instructions of the Ministry of Defence, liaising with the Ministry of Foreign Affairs.

#### **Export Licences and application forms:**

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<sup>161</sup> European Council, *Special Meeting of the Forum for Security Co-operation: EU Statement on combating the illicit trafficking of SALW by air transport* (21 March 2007); Wassenaar Arrangement, *Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport* (2007); OSCE Forum for Security Co-operation, *Decision No. 11/08 introducing Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons Through Air Transport* (5 November 2008).

Application form (contract – AP): [www.defense.gouv.fr/das/dossiers/formulaire\\_de\\_demande\\_d\\_agrement\\_prealable](http://www.defense.gouv.fr/das/dossiers/formulaire_de_demande_d_agrement_prealable)  
Application form (export - AEMG): [www.bercy.gouv.fr/formulaires/douanes/11191.pdf](http://www.bercy.gouv.fr/formulaires/douanes/11191.pdf)  
Application form (transit): [www.bercy.gouv.fr/formulaires/douanes/11193.pdf](http://www.bercy.gouv.fr/formulaires/douanes/11193.pdf)

*N.B. Intra-EU transfers: Dealers or exporters can obtain authorisation for transfers of firearms and munitions to other EC Member States by form Cerfa n°11287\*01, submitted to Customs and must detail: transporter name; departure date; e, Departure Date, estimated date of arrival; EC Member-States transited.*

**Consultation procedures:** CIEEMG includes representatives from Ministries of Foreign Affairs, Defence and Economy. In sensitive cases, the Prime Minister arbitrates disagreements within CIEEMG and makes the final decision on the issuance of licences. CIEEMG is assisted by the Délégation aux affaires stratégiques (DAS), Direction Générale de l'Armement (DGA) and the Contrôle Général des Armées (CGA), all within the Ministry of Defence.

Licensing officials within Secrétariat Général de la Défense Nationale (SGDN) meet regularly with Intelligence Services.<sup>162</sup>

**Relevant international agreements:** Wassenaar Arrangement; OSCE Documents and Decisions (Document on SALW, Document on Conventional Ammunition Stockpiles, Decision on MANPADS, Decision on End-User Certificates); public (but non-legal) commitment to adhering to EU Code of Conduct on Arms Exports; UN Programme of Action on SALW.

France's two-stage licensing process – involving licences for both signing contracts and physical exportation – provides transfer licensing authorities considerable prior knowledge of intended exports and exporters. In particular, it allows licensing authorities to review commercial contracts before they are signed (at the 'Agrément Préalable' stage), generally providing information on the intermediaries involved in a deal.<sup>163</sup>

This two-stage process also overcomes the problem, commonly cited by other States' licensing authorities, that transport details are unavailable at the time of a licensing process which may take place months or even years prior to actual deliveries taking place.<sup>164</sup> In the French system, transport details are only required to be provided by exporters at the second stage of the licensing process at which export authorisations are issued by Customs authorities following authorisation from the Ministry of Defence (consulting with other relevant Ministries).

The transport information provided at this stage of licensing, however, appears to fall short of the WA *Best Practices*. Although the names of the

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<sup>162</sup> Interview with Secrétariat Général de la Défense Nationale (SGDN), Paris, 17 December 2008.

<sup>163</sup> *ibid.*

<sup>164</sup> *ibid.*

transporter and freight forwarder are required, the registration and flag of aircraft to be used, as well as details of previous transfers by air, are not. Route details to be submitted are similarly incomplete, consisting only of origin and destination countries, and the customs office at which the goods will exit French territory.<sup>165</sup>

## Delivery verification

The French licensing system relies predominantly upon risk assessment prior to export. Delivery Verification Certificates can be requested from exporters, but the authors were informed that in practice these are usually requested only for sensitive goods such as MANPADS (for which a range of other safeguard measures are also required, such as only authorising transfers between government suppliers and customers).<sup>166</sup> If breaches of export licences are detected, an inter-ministerial investigation may be conducted after the export by the Ministries of Defence and Foreign Affairs. The authors were informed, however, that in practice, very few sanctions have been enacted in such cases, and these have consisted generally of administrative sanctions (cancelling licences).<sup>167</sup>

### Summary of licensing procedures as they apply to controls on the air transport of SALW\*:

|  | Export licence  | Transit licence   | Brokering licence |
|--|---|---|-------------------|
| Required for SALW transfers?   | Y   | Y   | N/A               |
| If involving air transport, information is required on:                          |   |   |                   |
| - Details of the air carrier?  | Y (transporteur)  | N   | N/A               |
| - Details of the freight forwarder(s)?   | Y (transitaire)   | Y (transitaire)   | N/A               |
| - Registration and flag of any aircraft involved in the transfer?                | N   | N   | N/A               |
| - Flight route and any planned stopovers?  | Only origin and destination countries, and customs office of exit | Only origin and destination countries, and customs office of entry and exit | N/A               |
| - Records of previous similar transfers by air?                                  | N   | N   | N/A               |
| Possible to grant a licence without any information on transport being provided? |   |   | N/A               |

<sup>165</sup> Application form (export - AEMG): [www.bercy.gouv.fr/formulaires/douanes/11191.pdf](http://www.bercy.gouv.fr/formulaires/douanes/11191.pdf)

<sup>166</sup> Interview with Secrétariat Général de la Défense Nationale (SGDN), Paris, 17 December 2008.

<sup>167</sup> *ibid.*

|   |   |                 |
|---|---|-----------------|
| Requirement to provide a certificate of unloading, or any other relevant document, confirming delivery? | Can be required<br>(Arrêté du 2<br>octobre 1992,<br>Article 12) | N/A             |
| Systems in place for sharing information with customs authorities and CAA?                              |   | With<br>Customs |

*\*Information compiled by authors from this study's questionnaires, interviews and other official sources.*

### **Brokering and transit**

The transit of a SALW cargo through France – where the goods change vessel, aircraft or transport<sup>168</sup> - requires an authorisation similar to the second-stage exportation licence, similarly administered by customs, consulting the Ministry of Defence in sensitive or problematic cases.<sup>169</sup> As with second-stage exportation licences, risk assessment of diversion or destabilising transfers is limited by the fact that the authorisation only includes:

- i) routing information regarding the origin and destination countries (but not intermediate locations which might indicate diversion risks);
- ii) the French customs office of entry and exit; and
- iii) includes details of the freight forwarder [transitaire] involved, but not the transporters themselves.

French controls on brokering [courtage] remain poorly developed. Since 2002, the Contrôle Général des Armées (CGA) within the Ministry of Defence has operated a register of authorised arms 'intermediaries', whose activities are reported a posteriori to CGA bi-annually [comptes rendus d'activité semestriels], but are not individually authorised prior to transactions taking place.<sup>170</sup> A draft law to institute prior licensing of arms brokering transactions has been before the French Senate since 5 June 2007, but has not yet been passed.<sup>171</sup>

<sup>168</sup> Interview with Secrétariat Général de la Défense Nationale (SGDN), Paris, 17 December 2008

<sup>169</sup> *ibid.*

<sup>170</sup> Ministère de la Défense, *Rapport au Parlement: Les Exportations d'armement de la France en 2007* (Octobre 2008), p. 40; Décret 2002-23 du 3 janvier 2002.

<sup>171</sup> Interview with Ministry of Foreign Affairs, Paris, 16 December 2008; Ministère de la Défense, *Rapport au Parlement: Les Exportations d'armement de la France en 2007* (Octobre 2008), p. 40

### 3) Customs procedures in relation to the air transport of SALW

*NB: The authors' ability to gather detailed information regarding customs procedures and practices was severely limited by the fact that we were unable to secure agreement from Douanes either to participate in an in-person interview or to respond to written questions. We nonetheless gained some information about the role of customs in the arms transfer process through responses to our main questionnaire, interviews with personnel from the Direction Générale de l'Aviation Civile and the Ministry of Defence, and interviews with commercial freight forwarders.*

**Customs declaration forms:** *Document Administratif Unique* (extra-EU) or *Déclaration d'Échanges de Biens entre États Membres de la Communauté Européenne* (intra-EU).

Summary of customs procedures as they apply to controls on the air transport of SALW\*:

|   | Extra-EU  | Intra-EU  |
|---|---|---|
| Prior notification required for SALW transfers?   | N   | N   |
| If involving air transport, information is required on:                                 |   |   |
| - Details of the air carrier?   | Y (flight number)   | N (only 'method of transport')  |
| - Details of the freight forwarder(s)?  | Y ('transitaire')   | N   |
| - Registration and flag of any aircraft involved in the transfer?                       | Can be established through flight number                                | N (but may be established through flight number)                                      |
| - Flight route and any planned stopovers?   | Y (only origin and destination airports)                                | N   |
| - Records of previous similar transfers by air?   | N   | N   |
| Possible for a transfer to proceed without any information on transport being provided? | N   | N   |
| Submitted information systematically checked against the approved export licence?       | AEMG compared with APD (but APD does not include transport information) | Customs declaration should be accompanied by intra-EU firearms transfer authorisation |

*\*Information compiled by authors from this study's questionnaires, interviews and other official sources.*

As in other EU countries, Customs Declarations take the form of the Standard Administrative Document (SAD) [Document Administratif Unique – DAU] and standard European transit documents, of which the adequacy to assess the reliability of transport actors and modalities is discussed in Part 2. Transfers within the EU use a simplified French Customs Declaration Form, which does not necessarily incorporate transport information beyond the mode of transport being used.<sup>172</sup> If dangerous goods are being transported, Customs Declarations must be accompanied by a Dangerous Goods Declaration,<sup>173</sup> although this will not be the case for small arms transported without ammunition.

However, unusually amongst States within the study, customs authorities are themselves responsible for issuing second-stage export and transit licences (AEMG and ATMG), in consultation with the Ministry of Defence. This should allow customs to co-ordinate and verify information within export/transit licences and Customs Declarations: a process which results in the issue of an “Attestation d’exportation” (APD) by customs at the point of export. This document, signed by the exporter, contains information about the goods actually exported which can be compared with the export/transit licence.<sup>174</sup> Although transporters authorised in export/transit licences may be checked against customs documentation in this way, the APD does not contain information about the actual transport modalities of a shipment. This makes it difficult for risk-assessment departments outside of customs that review the APD (including the Direction de la Protection et de la Sécurité de la Défense) to verify that the authorised transporter and route has been used.<sup>175</sup>

Sharing the risk assessment of the actual transport modalities of shipments with other agencies should also be facilitated by the fact that the French transport industry is already moving towards systems of prior information exchange regarding planned shipments. It is also facilitated by the relatively small (legitimate) number of transport service providers for military goods in France. Although (unlike with Dangerous Goods) freight forwarders and cargo carriers do not require specific authorisation to transport military goods,<sup>176</sup> there appears to be a relatively small number of transport service providers involved in arranging (authorised) SALW transfers from France. Freight forwarder industry representatives estimated that 3-4 freight forwarders (two of which merged during 2008) organise the vast bulk of military exports.<sup>177</sup> All are large, established cargo carriers or freight forwarders, likely to be attached to France’s e-Customs system (‘Delta’) via the Electronic Data Interchange (EDI) system. Other companies can in any case submit transport and customs documents electronically via the customs website, although Dangerous Goods declarations must still be submitted in paper format.<sup>178</sup> French freight forwarders are already working towards implementing IATA’s ‘e-Freight’ initiative and the C2K standard - a standardised system of information for describing and tracking shipments. Freight forwarder representatives stated that implementation

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<sup>172</sup> *Déclaration d’Échanges de Biens entre États Membres de la Communauté Européenne* ([www.bercy.gouv.fr/formulaires/douanes/10838.pdf](http://www.bercy.gouv.fr/formulaires/douanes/10838.pdf))

<sup>173</sup> Interview with freight forwarder industry representative, Le Bourget, 17 December 2008.

<sup>174</sup> This procedure is automated in some countries, such as the UK, which operates an ‘Automatic Licence Verification’ system.

<sup>175</sup> Ministère de la Défense, *Rapport au Parlement: Les Exportations d’armement de la France en 2007* (Octobre 2008), p. 44. The APD contains “Numéro de l’autorisation, description commerciale des matériels expédiés, valeur, quantité”.

<sup>176</sup> Freight forwarders and air cargo carriers involved in transporting dangerous goods must have two staff members licensed to deal with Dangerous Goods, that undertake a refresher course of IATA training every two years. Interview with freight forwarder industry representative, Le Bourget, 17 December 2008.

<sup>177</sup> Interview with freight forwarder industry representative, Le Bourget, 17 December 2008. The companies’ names were provided by the interviewee.

<sup>178</sup> *Ibid.*

of these should allow the planned Europe-wide system of prior customs declarations of imports and exports to be implemented with relative ease.<sup>179</sup> Such prior notification and shipment tracking might also allow customs to receive information about the transport modalities of shipments prior to them taking place, and thus integrate transport and route information into the point-of-export licensing procedure (AEMG) which already exists.

#### **4) The regulation of air cargo operators and transfers of SALW**

In contrast to the comparatively close integration of Customs authorities with export/transit licensing, France's civil aviation authorities are not formally involved with authorisation, risk assessment or verification of SALW exports. France's civil aviation regulations remain resolutely focussed upon aviation safety. Thus, whilst authorised SALW exports themselves are well controlled, SALW flights passing through France, as well as French SALW air carriers operating elsewhere, remain unregulated.

#### **Regulation of air cargo operators**

Companies registering aircraft on the French aircraft registry are required to have an aviation security programme, meeting Europe-wide standards.<sup>180</sup> This does not, however, include any assessment of their previous record of involvement in illicit activities. Nor does it include reference to formal or informal blacklists, including the EU aviation safety 'blacklist' (which Direction Générale de l'Aviation Civile (DGAC) personnel interviewed by the authors regarded as being relevant only to flight authorisations themselves), or the SitCen list of air carriers reportedly involved in illicit arms transfers.<sup>181</sup> It is possible that the French registry's comparatively stringent aviation safety and security requirements have deterred less scrupulous operators from registering aircraft. For example, of 109 air cargo operators found by SIPRI's CIT-MAP project to have been named in UN or other credible arms trafficking-related reports, or to have supplied, owned, leased or acquired aircraft to or from a company named in such a report, none had aircraft registered on the French registry.<sup>182</sup> Beyond the indirect impact of aviation safety standards, there is no formal mechanism to exclude operators suspected of involvement in illicit SALW transfers from the French aircraft registry.<sup>183</sup>

Equally there appears to be no formal mechanism for excluding air cargo operators suspected of involvement in illicit SALW transfers from carrying military goods in France, or being contracted by authorised exporters (unless the appearance of their name on the exporter's AEMG licence

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<sup>179</sup> Ibid.

<sup>180</sup> Telephone Interview with DGAC personnel, 30 December 2008.

<sup>181</sup> Ibid.

<sup>182</sup> Hugh Griffiths and Mark Bromley, *Stemming destabilizing arms transfers: the impact of European Union air safety bans* (SIPRI Insights No. 2008/3, October 2008). Data compiled by SIPRI's CIT-MAP Air Cargo Carriers Database ([www.sipri.org/contents/armstrad/Air\\_Cargo\\_Operators/air\\_carrier\\_database.html](http://www.sipri.org/contents/armstrad/Air_Cargo_Operators/air_carrier_database.html) accessed 19 January 2009); aircraft data taken from Aerotransport Data Bank ([www.atdb.aero](http://www.atdb.aero) accessed 19 January 2009).

<sup>183</sup> Correspondence between authors and French freight forwarder specialising in military transport, January 2009.

application prevents it from being authorised). While cargo carriers require registration and specific training to carry dangerous goods,<sup>184</sup> there is no system of pre-authorisation for carriers to be permitted to carry military goods (or excluded from carrying them). Nor do information-sharing mechanisms appear to be in place to prevent State agencies or arms exporters from contracting unscrupulous cargo operators to transport SALW exports. Ministry of Foreign Affairs personnel confirmed that the SitCen air cargo carriers blacklist cannot be used by many agencies of the French government (or by French arms exporters) to screen out undesirable contractors for transporting military goods, since the SitCen list includes unconfirmed and sometimes classified information, and is therefore not generally not shared with civilian agencies.<sup>185</sup>

Excluding operators previously involved in SALW trafficking does not, of course, prevent the use of French-registered carriers to *unwittingly* transport illicit goods. DGAC personnel cited a 2007 case in which France's nuclear safety agency found radioactive material on board a French-registered aircraft, and where a subsequent inquiry established that the operator was unaware of the nature of its cargo.<sup>186</sup> Inspections of air cargo are thus of some utility in detecting illicit transfers. However, unannounced safety visits by DGAC Technical Operating Inspectors (CTE) only assess aviation safety and they are not frequently conducted outside France itself.<sup>187</sup> Although each airport has a coordination unit combining customs and DGAC personnel, customs and DGAC inspections are undertaken separately, inspecting cargo and aircraft respectively.<sup>188</sup>

In certain States covered by this study, aircraft safety inspections are coordinated with cargo inspections<sup>189</sup>. In a similar vein, France is examining the possibility of harmonising the security requirements and standards required of Authorised Economic Operators (trusted customs users who may enjoy simplified or facilitated customs clearance procedures or customs safety/security procedures, registered by customs)<sup>190</sup> and Regulated Agents (cargo handling agents, freight forwarders or air cargo consignors from whom French airlines may receive cargo, registered by DGAC).<sup>191</sup> In practice these are often the same entities. DGAC personnel interviewed by the authors suggested that this harmonisation of security standards for cargo service providers across Civil Aviation and customs controls might, with political will, permit some integration of SALW transfer and aviation safety controls.<sup>192</sup>

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184 Interview with freight forwarder industry representative, Le Bourget, 17 December 2008; confirmed in telephone interview with DGAC personnel, 30 December 2008.

185 Interview with Ministry of Foreign Affairs personnel, 16 December 2008.

186 Telephone Interview with DGAC personnel, 30 December 2008.

187 *ibid.*

188 *ibid.*

189 See Netherlands Case Study.

190 Authorised Economic Operators must have an appropriate record of compliance with customs requirements, and a satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls. These standards are established by EC Regulation 648/2005 (13 April 2005), Article 5a.

191 For international standards for Regulated Agent Regimes, see ICAO Annex 17.

192 Telephone Interview with DGAC personnel, 30 December 2008.

## Flight authorisations

Flight authorisations appear to be refused or granted on aviation safety or security grounds, and do not take the carriage of military goods explicitly into account except through informal consultations.

Individual authorisations for flight/overflight plans are issued by the Direction de la Navigation Aérienne.<sup>193</sup> In accordance with ICAO Annex 18, flight and overflight requests must include information on dangerous goods being carried (which may not cover all SALW). There appears to be little formal coordination with other agencies to assess security or diversion risks associated with cargo flights, although informal channels exist. If there is a substantial request for carrying weapons, DGAC will usually consult with the Ministry of Interior or the Ministry of Defence, although this is not formally required.<sup>194</sup> Likewise although regional DGAC centres coordinate flight plans and routing, if security concerns are raised about particular flights, a central military unit (le Centre National Opérationnel Aérien, CNOA) can track all flights in French airspace and beyond (through coordination agreements with Eurocontrol and neighbouring countries).<sup>195</sup> The exclusion of aircraft from French airspace, however, appears to take place on aviation security or safety grounds. For example, DGAC centres will routinely exclude flights requested by air operators listed on the EU aviation safety 'blacklist'. However, DGAC personnel interviewed by the authors were unsure as to whether the SitCen air transporters/traffickers blacklist is given to DGAC centres.

## Authorisations to carry SALW

DGAC does not explicitly authorise air cargo carriers to carry SALW, except where it involves the carriage of dangerous goods (such as SALW ammunition). French companies wishing to transport dangerous goods must have either a general or one-off authorisation to do so, and about 30 companies have such general authorisation. Foreign transport companies carrying dangerous goods in France must present the Civil Aviation General Directorate with similar authorisation from their national authorities, as well as documentation concerning the training of their staff vis-à-vis dangerous goods. For one-off authorisations of this kind, companies *if requested* must make available to DGAC the authorisations from other States through which the flight will pass for the overflight or landing of dangerous goods, but such authorisations are not systematically required for French dangerous goods authorisations.<sup>196</sup>

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<sup>193</sup> See flight plan application form at [http://www2.equipement.gouv.fr/formulaires/fic\\_pdf/47-0199.pdf](http://www2.equipement.gouv.fr/formulaires/fic_pdf/47-0199.pdf)

<sup>194</sup> Telephone Interview with DGAC personnel, 30 December 2008.

<sup>195</sup> *ibid.*

<sup>196</sup> See section 8 of French questionnaire response.

Summary of national regulations on air cargo carriers as they apply to controls on the air transport of SALW\*:

|  |                      |
|--|----------------------|
| General licence required to engage in the transport of SALW and their ammunition?  | No                   |
| Licence required to engage in the transport of SALW and their ammunition on a case-by-case basis?  | Only Dangerous Goods |
| Air carriers can be barred from operating in national territory:   |                      |
| - If customs and/or law enforcement officials determine an aircraft's cargo includes SALW, and that its flight plan includes a destination subject to a UN arms embargo?         | Not systematically   |
| - If customs and/or law enforcement officials determine that one of their aircraft's cargo includes SALW, and its flight plan includes a destination located in a conflict zone? | Not systematically   |
| - If they are suspected of being involved in destabilising transfers of SALW   | Not systematically   |
| Do case-by-case approvals for carriage of SALW and their ammunition include:   |                      |
| - Details of the air carrier?  | Yes (DG flight plan) |
| - Details of the freight forwarder(s)?   | No (DG flight plan)  |
| - Registration and flag of any aircraft involved in the transfer?  | Yes (DG flight plan) |
| - Flight route and any planned stopovers?  | Yes (DG flight plan) |
| - Records of previous similar transfers by air?  | No (DG flight plan)  |
| - Compliance with existing national legislation or international agreements relating to air transport of weapons?  | No (DG flight plan)  |

*\*Information compiled by authors from this study's questionnaires, interviews and other official sources.*

## 5) Conclusions

France operates strong, multi-level and consultative systems to assess the risks of authorised SALW exports, and sophisticated systems for both controlling and monitoring civil aviation. A number of features of these systems should make it easier to integrate risk assessments of transport modalities into controls on SALW exporters, cargoes and transporters. These include a two-stage export licensing process which permits the consideration of transport modalities at a second licensing stage close to the point of export, existing cooperation between customs and Civil Aviation inspectorates, and the widespread adoption of pre-delivery cargo tracking and notification by air cargo carriers and freight forwarders through 'e-Customs' and 'e-Freight' systems.

Yet arms transfer controls and aviation controls have yet to be systematically integrated. This systemic separation is possibly reinforced by the perception amongst the Foreign Affairs, Civil Aviation and commercial freight forwarder personnel interviewed by the authors that enforcement agencies (police, customs and Civil Aviation authorities) did not regard the 'SALW problem' as a priority issue within France, with the exception of areas in which it trespassed directly on local concerns. For example, the impact of SALW trafficking in French overseas territories such as French

Guyana, which is reportedly subject to firearms trafficking from Brazil and Surinam; or the perceived threat to civil aviation from MANPADs, prompting some engagement with the issue within DGAC.<sup>197</sup>

This division between transfer and aviation controls was described by one interviewee as a mismatch between departments concerned with criminality and those concerned with foreign affairs and security. The division is also manifested in inadequate information flows on arms transfer and transport actors between policy and enforcement departments, which might assist detection and risk assessment efforts by enforcement agencies. Whilst personnel of both the Ministry of Foreign Affairs and the Ministry of Defence described coordination between the Ministry of Foreign Affairs and the Ministry of Defence as “good”, Customs and Ministry of Interior (police) authorities do not meet regularly with the Ministry of Foreign Affairs.<sup>198</sup> Information-sharing of intelligence on arms trafficking actors and transporters with ‘civilian’ enforcement agencies also appears limited. For example, personnel from the Direction Générale de l’Aviation Civile - with policy responsibility for the WA *Best Practices* - were not aware of the SitCen air transporters/traffickers ‘blacklist’.<sup>199</sup>

The result is that while SALW exporters and dangerous goods carriers/flights are separately identified and monitored closely, transport modalities are not taken into account as fully as WA Best Practices dictate at the export licensing stage. French air cargo carriers, or SALW flights passing through French airspace, cannot be systematically interdicted even if they are suspected of transporting illicit SALW, or of transporting them to conflict zones or embargoed destinations. In the absence of dangerous goods, such carriers may not be identified as carrying SALW at all. Nor are French commercial intermediaries transferring SALW outside of France regulated on a case-by-case basis.<sup>200</sup>

Several aspects of French export and aviation controls appear conducive to integrating risk assessments of transporters into export licensing procedures, and risk assessments of SALW carriage and diversion into aviation controls.

### Furthering Good Practice

- Existing co-operation between customs and DGAC inspectorates, and the prospective harmonisation of AEO and Regulated Agent security standards, could assist the integration of SALW and aviation safety controls. For example, joint DGAC/Customs security standards might be

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<sup>197</sup> The authors were not able to confirm this assessment of enforcement agencies’ priorities, particularly because we were unable to secure agreement from Douanes either to participate in an in-person interview or to respond to written questions.

<sup>198</sup> Interview with Ministry of Foreign Affairs, 16 December 2008; Interview with Secrétariat Général de la Défense Nationale (SGDN), Paris, 17 December 2008.

<sup>199</sup> Telephone Interview with DGAC personnel, 30 December 2008.

<sup>200</sup> See, for example, reports of French national Pierre Falcone brokering the supply of SALW and heavy weapons platforms from Eastern Europe to the MPLA government of Angola during Angola’s civil war. Global Witness, *All the President’s Men* (March 2002). See also evidence obtained by Amnesty International that a Togo-based company, Darkwood, run by French national Robert Montoya, sought to procure a range of SALW - including AK-47 assault rifles, PKM light machine guns, RPG-7 rocket launchers and grenades, 82mm mortars and ammunition - for the government of Cote d’Ivoire during 2002-4: Amnesty International, *Blood at the Crossroads: Making the Case for a Global Arms Trade Treaty* (ACT 30/011/2008, 18 September 2008).

used as the basis for joint cargo/aircraft inspections by DGAC and customs at airports.

- Customs clearance and air carriage of military goods (in practice already confined in France to a relatively small number of air cargo operators and freight forwarders) might be permitted only to freight forwarders and carriers with AEO/Regulated Agent status, enabling enforcement to focus on other operators, and preventing government agencies and legitimate exporters from using unscrupulous freight forwarders and cargo operators for military goods.

### Challenges

- Fuller transport details – including transport route details, details of the aircraft to be used, and the air carrier’s previous SALW transport record – could be taken into account by customs/MOD when considering AEMG licence applications at the export stage, or issuing “Attestations d’exportation” (APDs) at the point of export. Gathering information on transport modalities by customs authorities prior to export could be assisted by taking advantage of the existing widespread adoption of pre-delivery cargo notifications by air cargo carriers and freight forwarders through ‘e-Customs’ and ‘e-Freight’ systems.

## Case Study: The Netherlands

### 1) Introduction

Over the last 10 years, the Netherlands' once-thriving SALW industry has essentially disappeared. Eurometaal, the largest Dutch ammunition manufacturer, closed in April 2002. According to the company, the closure was motivated by the decline in the demand for military ammunition. Muiden Chemie International (MCI), a company producing ammunition propellants, went bankrupt in 1990 and was acquired by the British company Royal Ordnance. In 2003, Royal Ordnance (then RO Defence, a subsidiary of BAE Systems) announced the closure of MCI.<sup>201</sup> The only company producing SALW products in the Netherlands is a company which produces links for ammunition belts. The only export licences for SALW are from private traders or travelling gun owners exporting one to six guns at a time.

The Netherlands has a well developed set of export licensing procedures and has always maintained strong controls on SALW transfers. However, with its limited SALW industry, Dutch licensing, customs and civil aviation control mechanisms have not paid specific attention to the issue of SALW transfers by air transport and related diversion risks. The Netherlands has not taken any specific steps to implement the 2007 WA *Best Practices* as it considers that the administrative procedures in place fulfil the recommendations of the *Best Practices*.<sup>202</sup> As from the 1st of August 2008 however, the Netherlands has tightened its control on the transit of military goods in general, which also impacts transit controls of SALW.

The Netherlands' main concern with regards to transfers of SALW is in the field of transit and transshipment. As the Netherlands is an important transit State, there is always a potential risk that the State may be perceived to be involved in or at least considered to be facilitating unwanted SALW transactions. Both the existence of these transfers and their political implications are of concern to the Netherlands.<sup>203</sup>

While efforts have been made to tighten up transit and transshipment controls, officials acknowledge that it is not possible to know whether all of the relevant information on the air transportation of SALW and munitions is being provided to the authorities. The amount of information received on the transit of arms and ammunition that remain on board an aircraft during its stopover on Netherlands' territory is often limited.

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<sup>201</sup> Weidacher, R., *Behind a Veil of Secrecy: Military Small Arms and Light Weapons Production in Western Europe*, Occasional Paper 16 (Small Arms Survey: Geneva, Nov. 2005), p. 59.

<sup>202</sup> Femke Kramer, Policy advisor, Dutch Ministry of Economic Affairs, Department of Trade Policy and Globalization, Response to Questionnaire, 16 Jan. 2009.

<sup>203</sup> Ibid.

While there is an obligation to either apply for a licence or submit a notification, there is no certainty that this is always done because customs lacks the physical capacity to check all of the aircraft passing through the Netherlands to ensure that no weapons are on board.<sup>204</sup>

There are, however, strong mechanisms of intra-governmental cooperation in the field of SALW control and all of the parties involved with controls on air transport of SALW regularly share information in order to strengthen and review the controls in place.<sup>205</sup>

## 2) Licensing procedures

### General information on licensing procedures

#### **National legislation:**

**Economic Offences Act (1950)** Contains the punitive measures that are applied in case of infringements of the other laws in the area of export controls.

**General Customs Law (2008)** Permits the issuing of administrative regulations that tie any or all foreign trade (not just arms exports) to licences; the regulations must further the interests of the international legal order and the security and economic needs of the Netherlands.

**Decree on strategic goods (2008)** Gives the Ministry of Economic Affairs the right to issue or deny export licences for strategic goods; many subsequent pieces of secondary legislation have amended this decree.

**Implementation order on strategic goods (2008)** Permits the classification and assessment system of the arms export policy to be extended in certain cases to the transit of military goods across the Netherlands.

**Sanctions Act (1980)** Gives the government the powers needed to enforce European Union, United Nations and OSCE arms embargoes.

**Decree on Financial Involvement Concerning Strategic Goods (1996)** Based on the 1994 External Financial Relations Act; regulates financial involvement (brokering) concerning third party transactions in military goods and arms, on condition that the strategic goods are either outside the EU or within the EU but not in free circulation.

**Arms and Ammunition Act (1997)** regulates the possession and trade in firearms and their related parts within Netherlands' territory.

**Licensing authority for SALW transfers:** The Ministry of Economic Affairs is charged with the implementation of the Decree on strategic goods. The Central Import and Export Service (CDIU), part of the Tax and Customs Service/North of the Ministry of Finance, is mandated by the Minister of Trade to issue licences on his or her behalf. Applications for the export of military goods to EU and NATO member states (other than Bulgaria, Cyprus, Romania and Turkey) and to Australia, Japan, New Zealand and Switzerland are generally processed by the CDIU itself.

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<sup>204</sup> Ibid.

<sup>205</sup> Ibid.

Applications for military exports to all other countries are submitted to the Ministry of Economic Affairs, who consults the MFA. The MFA's advice 'plays an essential role' in the assessment of the applications.<sup>206</sup>

**Export Licences and application forms:**

[http://www.ez.nl/Onderwerpen/Internationaal\\_ondernemen/Exportcontrole\\_strategische\\_goederen/Aanvragen\\_van\\_vergunningen\\_sondages\\_en\\_consenten](http://www.ez.nl/Onderwerpen/Internationaal_ondernemen/Exportcontrole_strategische_goederen/Aanvragen_van_vergunningen_sondages_en_consenten)

**Consultation procedures:** For export applications to developing countries, the MFA consults the minister for development cooperation.

**Relevant international agreements:** European Union principles on arms transfers as currently set out in Common Position 2008/944/CFSP, OSCE principles on arms transfers, The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.

Summary of licensing procedures as they apply to controls on the air transport of SALW\*:

|   | <b>Export lic.</b>    | <b>Transit /<br/>Tranship. lic.</b> | <b>Brokering lic.</b> |
|---|-----------------------|-------------------------------------|-----------------------|
| Required for SALW transfers?  | Y                     | Y                                   | Y                     |
| If involving air transport, information is required on:   |                       |                                     |                       |
| - Details of the air carrier?   | N                     | N                                   | N                     |
| - Details of the freight forwarder(s)?  | N                     | N                                   | N                     |
| - Registration and flag of any aircraft involved in the transfer?                                       | N                     | N                                   | N                     |
| - Flight route and any planned stopovers?   | N                     | N                                   | N                     |
| - Records of previous similar transfers by air?   | N                     | N                                   | N                     |
| Possible to grant a licence without any information on transport being provided?                        | Y                     | N                                   | N                     |
| Requirement to provide a certificate of unloading, or any other relevant document, confirming delivery? | Y ('Fairly standard') | N                                   | Y                     |

<sup>206</sup> The Netherlands Ministry of Economic Affairs and the Netherlands Ministry of Foreign Affairs, 'Annual report on the Netherlands arms export policy 2007', 9 Sep. 2007, p. 3.

|  |                                  |
|--|----------------------------------|
| Systems in place for sharing information with customs authorities and CAA?                           | Y (with customs)<br>N (with CAA) |
| Has shared information with other states about exporters, air carriers or freight forwarding agents? | Y                                |

*\*Information compiled by authors from this study's questionnaires, interviews and other official sources.*

The proposed mode or route of transportation is generally not taken into account when assessing an export licence application.<sup>207</sup> The standard Netherlands export licence application form requests no information on the air carrier or freight forwarder to be used in the transfer, or the proposed flight route.<sup>208</sup> However, information on the consignee and end-user is always provided, and this may provide details of interim destinations en route to the final destination.<sup>209</sup> In certain situations, licensing officials might request additional information than the minimum required in the export licence application form, particularly if the application is related to an export of SALW, although it is unclear to what extent this procedure has been used to assess transport modalities.<sup>210</sup>

Dutch licensing officials argued that a system whereby exporters were expected to provide detailed information on transport modalities would be hard to implement, particularly because such information is often not available to exporters at the time they apply for an export licence.<sup>211</sup> Officials did note that, under the Netherlands system, conditions are sometimes attached to export licence applications, as is envisaged by the *WA Best Practices* for the later supply of transport information. For example, exporters can be told that they will be granted a licence once a valid End User Certificate (EUC) has been produced.<sup>212</sup>

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<sup>207</sup> Femke Kramer, response to questionnaire. op. cit.

<sup>208</sup> See <[http://www.ez.nl/Onderwerpen/Internationaal\\_ondernemen/Exportcontrole\\_strategische\\_goederen/Aanvragen\\_van\\_vergunningen\\_sondages\\_en\\_consenten](http://www.ez.nl/Onderwerpen/Internationaal_ondernemen/Exportcontrole_strategische_goederen/Aanvragen_van_vergunningen_sondages_en_consenten)>

<sup>209</sup> George Bontenbal, Export Control Unit, Dutch Ministry of Economic Affairs, Interview with the author, 5 Dec. 2008. 'If you ask for this information with the export licence application, 'Very often the answer will be: 'I don't know yet.'"

<sup>210</sup> For example, there are applications where, on the strength of information received on the modalities of the transfer, additional information to that contained in the application has been sought. George Bontenbal, Export Control Unit, Dutch Ministry of Economic Affairs, interviewinterviewInterview with the author, 5 Dec. 2008.

<sup>211</sup> George Bontenbal, op. cit.

<sup>212</sup> Ibid.

## Brokering, transit and transshipment licences

Netherlands brokering controls are laid down in *the Decree on Financial Involvement Concerning Strategic Goods Order* of 1996 and the *Arms and Ammunition Act* of 1997. Under Netherlands law, a Dutch citizen or resident company requires a licence to be financially involved in a transaction involving military goods between two third countries. The Netherlands is currently in the process of drafting a new law on 'strategic services' which will ensure that all activities covered by the relevant *Best Practice* documents are covered by Netherlands brokering controls. The information required from the company or individual applying for a brokering licence, however, does not include information on transport modalities, and the Netherlands authorities do not envisage including this requirement in the new law.<sup>213</sup>

Transit is a significant issue for the Netherlands, since it is a major logistics and transportation hub for the rest of Europe. For example, in 2007 the Netherlands issued 1547 arms export licences, but reportedly received 2465 notifications relating to the 'fast transit' of military goods through Dutch seaports and airports: the majority constituting small arms and ammunition transiting through Schiphol Airport. These included ammunition shipments from Spain to Paraguay and from Belgium to Jordan and Nigeria.<sup>214</sup> In previous years there have been allegations concerning the transit of illicit SALW through Schiphol and other Dutch airports.<sup>215</sup>

The Netherlands tightened its control on the transit and transshipment of military goods in 2001 and again in August 2008. Transit transactions of military goods require either a licence or have to be reported to the customs authorities. A licence is now required for the transit of all military goods that either originate from or are destined for EU Member States, NATO Member States, Australia, Japan, New-Zealand and Switzerland. For all other transactions there is a notification requirement. Certain transactions are exempted from both the licensing and notification requirement.<sup>216</sup> The information included in either a transit and transshipment licence application or a notification does not include information on transport modalities.

However, there are additional reporting requirements under *the Arms and Ammunition Act* of 1997, which means that for the transit and transshipment of certain SALW, information is submitted on transport modalities. The Arms and Ammunition Act is the responsibility of the Ministry of Justice and is aimed at regulating the possession and trade in firearms and their related parts within the territory of the Netherlands. It

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<sup>213</sup> Ibid.

<sup>214</sup> See Mark Akkerman and Frank Slijper, *Analysis of Dutch Arms Export Licences 2007*, Dec. 2008, URL <<http://www.stoparmstrade.org/English/publication/analysis2007.pdf>>.

<sup>215</sup> See Amnesty International, *Undermining Global Security: the European Union's Arms Exports*, Chapter 4, <[http://www.iansa.org/regions/europe/documents/undermining\\_security/failures\\_transit.htm](http://www.iansa.org/regions/europe/documents/undermining_security/failures_transit.htm)>.

<sup>216</sup> Femke Kramer, Interview. op. cit.

states that in some cases an authorisation or 'consent' is needed when SALW enter, leave or pass through the Netherlands.<sup>217</sup> The information submitted when applying for a 'consent' usually includes information on any air carrier or freight forwarder involved in the transfer.<sup>218</sup>

### **Intra- and inter-governmental information sharing**

The Netherlands licensing and customs authorities have well-developed mechanisms of cooperation and information sharing (see below). Cooperation between the Netherlands licensing authorities and the Netherlands Civil Aviation Authority (CAA) are not as strong. However, there are ongoing processes of consultation and information sharing which have been further enhanced following the adoption of the *WA Best Practices*.

The Netherlands licensing authority has not participated in any information sharing activities with other EU or WA States on the activities of air cargo carriers involved in illicit SALW transfers as there were no cases to share. They were also not aware of the SitCen information sharing exercise on suspect air carriers (See Part 4).<sup>219</sup> The Netherlands licensing authorities indicated that they would welcome an exchange of information on air cargo carriers that are suspected of being involved in illicit SALW transfers. Information on air carriers is collected when SALW are transiting the Netherlands (see above) so the information could be of use. In addition, such information could be shared with the customs authorities who would be able to feed it in to their risk profiling system (see below).



One suggested improvement to the existing mechanisms of inter-governmental information sharing was that governments could consider presenting actual cases in the framework of the Licensing and Enforcement Officers' Meeting (LEOM) of the WA.<sup>220</sup>

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<sup>217</sup> Ibid.

<sup>218</sup> George Bontenbal, op. cit.

<sup>219</sup> Ibid.

<sup>220</sup> Femke Kramer, Response to Questionnaire. op. cit.

### 3) Customs procedures in relation to the air transport of SALW

**Customs declaration forms:** *For extra-EU transfers, the standard customs form is the Single Administrative Document (SAD)*

Summary of customs procedures as they apply to controls on the air transport of SALW\*:

|  | Extra-EU | Intra-EU |
|--|----------|----------|
| Prior notification required for SALW transfers?  | N        | N        |
| If involving air transport, information is required on:  |          |          |
| - Details of the air carrier?  | N        | N        |
| - Details of the freight forwarder(s)?   | N        | N        |
| - Registration and flag of any aircraft involved in the transfer?                                    | N        | N        |
| - Flight route and any planned stopovers?  | N        | N        |
| - Records of previous similar transfers by air?  | N        | N        |
| Possible for a transfer to proceed without any information on transport being provided?              | Y        | Y        |
| Submitted information systematically checked against the approved export licence?                    | Y        | Y        |
| Has shared information with other states about exporters, air carriers or freight forwarding agents? | N        |          |

*\*Information compiled by authors from this study's questionnaires, interviews and other official sources.*

There is no specific requirement to make a prior notification to customs regarding a transfer of SALW. Instead, at the point of departure, shippers are required to submit the customs declaration form, shipper's declaration, export licence, and 'consent' (see above).<sup>221</sup> Taken together, these documents do not allow for the systematic collection of information on transport modalities on all transfers of SALW, but they do allow for their collection in certain cases. In addition, officials pointed out that while this information is not necessarily requested by customs authorities on a systematic basis, officials are allowed to request additional information if they feel it is necessary.<sup>222</sup>

Under the new Commission guidelines, shippers will soon have to make pre-departure declarations (ECS). However, officials noted that this may lead to an overall reduction in the amount of information submitted to customs. As one official noted 'Now they have all kinds of

<sup>221</sup> J. A. Hoppers, Dutch Tax Administration - Customs, Interview with the author, 26 Nov. 2008.

<sup>222</sup> Femke Kramer, Response to Questionnaire. op. cit.

paperwork with a lot of information and in the future they will have the ECS.' Overall, this may lead to a reduction in the level of detail shippers are required to submit.<sup>223</sup>

### **Intra- and inter-governmental information sharing**

The customs authorities play a central role in the Netherlands export licensing system. As one official described it, Netherlands customs are 'the spider in the web', not in the sense of decision-making, but in the gathering of information.<sup>224</sup> This system made sense because, 'They are the closest to what is actually happening'.<sup>225</sup>

The Netherlands customs authorities are the central conduit for a large array of different types of information from other government agencies which it uses to build profiles and identify possible illegal activities. For example, the Customs Information Centre (DIS) has access to a central database containing information on all licence approvals and licence denials. The information is entered into a risk profiling system, managed by the DIS and accessible by all branches of the customs authorities.<sup>226</sup> In the next few years, the Dutch customs authorities intend to improve the deployment of intelligence in its supervision and investigation activities. In 2007, they launched the Intelligence Project which concentrates on the further development of data analysis techniques and methods.<sup>227</sup> These risk indicators can be used to target inspections on a particular shipper.<sup>228</sup>

Officials at the Netherlands customs authorities were not aware of any international exchanges of information that have focussed on the illicit transfer of SALW by air transport. However, they pointed to a number of other mechanisms which could provide models for the development of systems that could play role in this area. These included CEN (Customs Enforcement Network), run by the World Customs Organisation (WCO) and the RIF (Risk Information Form), used by EU Member States.<sup>229</sup> Both mechanisms allow for the exchange of information on seizures and *modus operandi* but focus on non-nominal intelligence. Another system which could provide a model was EU-TWIX (European Union - Trade

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<sup>223</sup> Piet Poldermans, Coordinator, Mutual Assistance, Customs Information Centre (DIC) Rotterdam, Dutch Tax Administration - Customs, interview with the author, 26 Nov. 2008.

<sup>224</sup> George Bontenbal, op. cit.

<sup>225</sup> Ibid.

<sup>226</sup> Leo Van Veen, Co-ordinator International Affairs, Customs Intelligence Centre, Dutch Tax Administration - Customs, interview with the author, 26 Nov. 2008.

<sup>227</sup> 'Annual Report Dutch Tax and Customs Administration 2007', <[http://download.belastingdienst.nl/belastingdienst/docs/jaarverslag\\_bld\\_2007\\_eng\\_bjv0011z71pleng.pdf](http://download.belastingdienst.nl/belastingdienst/docs/jaarverslag_bld_2007_eng_bjv0011z71pleng.pdf)>, p. 36.

<sup>228</sup> J. A. Hoppers, Dutch Tax Administration - Customs, interview with the author, 26 Nov. 2008.

<sup>229</sup> Piet Poldermans, op. cit.

in Wildlife Information eXchange). Set up in 2005, EU-TWIX is an online database for sharing of information on seizures, smuggling methods and smuggling routes relating to the illegal wildlife trade.<sup>230</sup> The advantage of this system is that involves real-time information sharing among officers working at the operational level who specialise on the issue.<sup>231</sup>

#### 4) The regulation of air cargo operators and transfers of SALW

Summary of national regulations on air cargo carriers as they apply to controls on the air transport of SALW\*:

|  |                    |
|--|--------------------|
|  |                    |
| General licence required to engage in the transport of SALW and their ammunition?  | Y (for ammunition) |
| Licence required to engage in the transport of SALW and their ammunition on a case-by-case basis?  | Y (for ammunition) |
| Air carriers can be barred from operating in national territory:   |                    |
| - If customs and/or law enforcement officials determine an aircraft's cargo includes SALW, and that its flight plan includes a destination subject to a UN arms embargo?         | Y                  |
| - If customs and/or law enforcement officials determine that one of their aircraft's cargo includes SALW, and its flight plan includes a destination located in a conflict zone? | N                  |
| - If they are suspected of being involved in destabilising transfers of SALW?  | N                  |
| Do case-by-case approvals for carriage of SALW and their ammunition include:   |                    |
| - Details of the air carrier?  | N/A                |
| - Details of the freight forwarder(s)?   | N/A                |
| - Registration and flag of any aircraft involved in the transfer?  | N/A                |
| - Flight route and any planned stopovers?  | N/A                |
| - Records of previous similar transfers by air?  | N/A                |
| - Compliance with existing national legislation or international agreements relating to air transport of weapons?  | N/A                |

*\*Information compiled by authors from this study's questionnaires, interviews and other official sources.*

<sup>230</sup> See <<http://www.libertysecurity.org/article745.html>>.

<sup>231</sup> Ger Stavast, Dutch Tax Administration - Customs, Interview with the author, 26 Nov. 2008.

The Netherlands has no legislation or control measures in place that specifically regulate the air transport of SALW and none of the permits issued by the Netherlands CAA explicitly refer to the air transport of SALW.

The Netherlands fully applies Annex 18 of the Chicago Convention - covering the transport of dangerous goods, which covers all SALW ammunition but not SALW themselves.<sup>232</sup> Every Dutch carrier transporting dangerous goods requires approval from the Netherlands CAA and all air carriers are required to fill out shippers' declarations when transporting dangerous goods. The international templates produced by either ICAO or IATA are accepted by the Netherlands authorities. However, all assessments of these permits are made purely on the grounds of air safety. Article 35 of the Chicago Convention - covering the transport of weapons of war - is considered to be under the exclusive purview of the Netherlands export licensing authorities.<sup>233</sup>

Unusually, air carriers that are registered abroad also require permission from the Dutch government to handle dangerous goods within the Netherlands.<sup>234</sup> In applying for this licence, companies have to detail their safety management systems and comply with certain training regulations. All of the standards with which the carriers have to comply are drawn from ICAO guidelines. Again, all assessments of these permits are made purely on the grounds of air safety.

### **Ramp inspections**

In the Netherlands, Customs authorities are jointly responsible for carrying out air safety inspections. Coupled with the access they have to other forms of documentation, this makes them ideally situated to identify a situation in which an air carrier that is carrying SALW ammunition is flying without the appropriate export, transit or transshipment licences.<sup>235</sup>

## **5) Conclusions**

The Netherlands case poses interesting questions regarding the amount of effort States should be expected to invest in tackling the illicit transfers of SALW by air transport when they themselves have well developed export licensing procedures and a limited SALW industry.

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<sup>232</sup> Sikko Oosterhoff, Process Manager, Civil Aviation Authority, Interview with the author, 3 Dec. 2008.

<sup>233</sup> Ibid.

<sup>234</sup> Ibid.

<sup>235</sup> Ibid.

However, the systems of information sharing which the Netherlands has created, and the central role of customs in the export licensing process, do present possible areas of best practice for other States.

#### Good Practice

- By acting as a central hub for information produced from a wide range of different sources, the Netherlands customs authorities are able to produce sophisticated risk profiling systems for identifying and preventing illicit transfers of SALW.
- By being co-responsible for ramp inspections, customs officials are also well placed to spot situations in which an air safety violation has potential implications for export licensing procedures.
- Detailed information is collected on transport modalities for transit and transshipment licences, though indirectly. This indicates that improvements in the *WA Best Practices* could focus on developing systems that states have in place for evaluating applications for transit and transshipment licences.

#### Challenges

- Little information is gathered about transport modalities at the export licensing stage.



## Case Study: Sweden

### 1) Introduction

A small number of companies produce SALW products in Sweden. These include: Eurenco Bofors, which produces propellants for medium- and large-calibre ammunition and military and sporting small arms ammunition;<sup>236</sup> Nammo Sweden, which produces military small arms ammunition;<sup>237</sup> and SAAB Bofors Dynamics, which produces portable anti-tank and anti-aircraft weapons.<sup>238</sup> Sweden also exports a small number of specialised weapons to private users and collectors.<sup>239</sup>

As far as the Swedish national Inspectorate for Strategic Products (ISP) is aware, the shipping companies being used in these exports are 'well known' and the risks of diversion are considered to be minimal.<sup>240</sup> For example, Saab Bofors Dynamics never use commercial air transport for transporting their products. Goods are shipped either by the Swedish Air Force or by the Air Force of the recipient State.<sup>241</sup> Sweden deals with about 10 to 15 transit or transshipment licences a year relating to shipments by air of SALW, the majority of which are submitted by just one or two freight forwarders.<sup>242</sup>

Although, the problems caused by SALW are widely acknowledged, the Swedish licensing authorities have not paid a great deal of attention to the issue of SALW transfers by air transport and related diversion risks. As one official at the ISP, noted, "Sweden has not made any specific statements that (have) pinpointed the control of air transport of SALW to be a specific important issue."<sup>243</sup> Sweden has not taken any specific steps to implement the 2007 WA *Best Practices* as it considers that the administrative procedures in place fulfil the *Best Practices*. However, it is acknowledged that there are areas where extra steps could be taken to enhance national practices.

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<sup>236</sup> Weidacher, R., 'Behind a Veil of Secrecy: Military Small Arms and Light Weapons Production in Western Europe', An Occasional Paper of the Small Arms Survey, Nov. 2005, p. 66.

<sup>237</sup> *ibid* and Swedish Ministry of Foreign Affairs, 'Strategic Export Control in 2007 – Military Equipment and Dual-Use Products', Government Communication 2007/08:114, 13 March 2008, p. 15; and URL <<http://www.nammo.com/templates/BusinessUnit.aspx?id=136>>.

<sup>238</sup> Weidacher, R., *op. cit.*

<sup>239</sup> Swedish Ministry of Foreign Affairs, 'Strategic Export Control in 2007 – Military Equipment and Dual-Use Products', Government Communication, 2007/08:114, 13 March 2008, p. 66.

<sup>240</sup> Richard Tornberg, Legal Adviser at the Inspectorate for Strategic Products (ISP), interview with the author, 25 Nov. 2008.

<sup>241</sup> Per-Arne Mattsson, Director Export Control, SAAB Bofors Dynamics, e-mail Correspondence with the author, 19 Jan. 2009.

<sup>242</sup> Mattias Timrén, Licensing Officer, Inspectorate for Strategic Products (ISP), interview with the author, 25 Nov. 2008.

<sup>243</sup> Richard Tornberg, *op. cit.*



In particular, since the tasks are divided between different authorities, cooperation between the authorities could be enhanced. In taking such steps, officials noted that Sweden would benefit from clearer information about how the *WA Best Practices* were originally intended to be used.<sup>244</sup>

The Swedish customs authorities have addressed the transport of illicit firearms within the Baltic Sea region. In 2005, Swedish law enforcement agencies initiated Project Crossfire, a multidisciplinary project targeting the smuggling of firearms into and between the countries of the Baltic Sea region. Swedish customs led the Project in close co-operation with the Swedish National Criminal Police.<sup>245</sup> The project has involved a range of actors including police, customs, border guards and coast guards and meetings of the group have been attended by representatives from Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Norway, Poland, and Russia.<sup>246</sup> No forms of transport were excluded from the study, but during the course of the project the Swedish authorities have focussed increasingly on shipments by car from the Western Balkans. Air transport as a means of smuggling SALW within the Baltic region has not been identified as a serious threat.<sup>247</sup>

Finally, the air transport of SALW is of 'very little concern' to the Swedish Civil Aviation Authorities.<sup>248</sup> There are less than 10 airlines in Sweden that transport dangerous goods and so long as they abide by the regulations there is no need to apply for additional licences or permissions.<sup>249</sup> Meanwhile, Sweden's exposure to the kind of air carriers that might be involved in illicit activities was "relatively small compared with other countries in the centre of Europe."<sup>250</sup> Sweden does deal with air carriers from Russia and Ukraine which over fly Sweden, sometimes with dangerous goods on board, and permit refusals have taken place in previous years, although only based entirely on air safety concerns.<sup>251</sup>

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<sup>244</sup> *ibid.*

<sup>245</sup> Karin Engstrand, Jurist, Tullverket, Email correspondence with the author, 14 Nov. 2008.

<sup>246</sup> Nationell slutrapport projekt Crossfire [National final report of Project Crossfire], Feb. 2008.

<sup>247</sup> Peter Kröjs, Swedish Customs Law Enforcement, International Mutual Assistance Office, interview with the author, 26 Nov. 2008.

<sup>248</sup> Anders Gradin, Senior Adviser, Civil Aviation Department, Swedish Transport Agency, interview with the author, 13 Jan. 2009.

<sup>249</sup> Göran Svensson, Area Manger Aerodrome Regulations and Dangerous Goods, Civil Aviation Department, Swedish Transport Agency, interview with the author, 13 Jan. 2009.

<sup>250</sup> Anders Gradin, *op. cit.*

<sup>251</sup> Göran Svensson, *op. cit.*

## 2) Licensing procedures

### General information on licensing procedures

**National legislation:** The Military Equipment Act (1992: 1300) and Military Equipment Ordinance (1992: 1303), governs the export of military equipment (as defined in an annex to the Ordinance) A permit is needed in order to produce, export, transit or retransfer military equipment, including SALW. Permission can only be granted if there are security or defence policy reasons, and where there is no conflict with Sweden's foreign policy. The Firearms Act (1996: 67) and the Firearms Ordinance (1996: 70) governs, among other things, licences for private use of fire arms (i.e. hunting and sport weapons).<sup>252</sup>

**Licensing authority for SALW transfers:** Under Swedish legislation, overall policy in the field of export controls is determined by the Government (Ministry of Foreign Affairs), while responsibility for individual licensing decisions is handled by an independent agency, the national Inspectorate of Strategic Products (ISP).<sup>253</sup> ISP is responsible for granting licences for transfers of SALW for military uses. Responsibility for transfers of hunting and sporting rifles to private persons and firearms traders is split between ISP and the police authorities. ISP is responsible for transfers to countries outside the OECD, while the police authorities are responsible for transfers to countries within the OECD.<sup>254</sup>

**Export Licences and application forms:** < [www.isp.se/sa/node.asp?node=628](http://www.isp.se/sa/node.asp?node=628)>;  
< [www.polisen.se/inter/nodeid=4520&pageversion=1.jsp](http://www.polisen.se/inter/nodeid=4520&pageversion=1.jsp)>

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<sup>252</sup> Ibid.

<sup>253</sup> URL <<http://www.isp.se/sa/node.asp?node=530>>.

<sup>254</sup> Permanent Mission of Sweden to the United Nations, 'National Report by Sweden (2008)' op. cit. and Richard Tornberg, op. cit.

<sup>255</sup> Ibid.

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**Export Licences and application forms:** < <http://www.isp.se/sa/node.asp?node=628>>;  
< <http://www.polisen.se/inter/nodeid=4520&pageversion=1.jsp>>

**Consultation procedures:** Ministry of Foreign Affairs, Ministry of Defence.

**Relevant international agreements:** European Union Code of Conduct; OSCE Criteria on conventional arms exports; The Wassenaar Arrangement.

Summary of licensing procedures as they apply to controls on the air transport of SALW\*:

|   | <b>Export lic.</b>   | <b>Transit / Tranship. lic.</b> | <b>Brokering lic.</b> |
|---|--|---------------------------------|-----------------------|
| Required for SALW transfers?                                      | Y  | Y                               | Y                     |
| <b>If involving air transport, information is required on:</b>    |  |                                 |                       |
| - Details of the air carrier?                                     | N  | N                               | N                     |
| - Details of the freight forwarder(s)?                            | N  | N                               | N                     |
| - Registration and flag of any aircraft involved in the transfer? | N  | N                               | N                     |
| - Flight route and any planned stopovers?                         | Y (for transfers of hunting and sporting rifles to private persons and firearms) | N                               | N                     |

<sup>256</sup> URL <<http://www.isp.se/sa/node.asp?node=530>>.

<sup>257</sup> Permanent Mission of Sweden to the United Nations, 'National Report by Sweden (2008)' op. cit. and Richard Tornberg, op. cit.

|   |   |   |                                  |
|---|---|---|----------------------------------|
|   | traders within the OECD)<br>N (for all other transfers) |   |                                  |
| - Records of previous similar transfers by air?   | N   | N | N                                |
| Possible to grant a licence without any information on transport being provided?                        | Y   | Y | Y                                |
| Requirement to provide a certificate of unloading, or any other relevant document, confirming delivery? | N   | N | N                                |
| Systems in place for sharing information with customs authorities and CAAs?                             |   |   | Y (with customs)<br>N (with CAA) |
| Has shared information with other states about exporters, air carriers or freight forwarding agents?    |   |   | N                                |

*\*Information compiled by authors from this study's questionnaires, interviews and other official sources.*

Under the Swedish system, the proposed mode or route of transportation is not generally taken into account when assessing an export licence application.<sup>258</sup> The standard Swedish export licence application form requests detailed information on the consignee and end-user, but not the air carrier or freight forwarder to be used in the transfer or the proposed flight route.<sup>259</sup> However, information on the consignee can provide details of planned stopovers en route to the final destination and this has played a role in decision-making on particular licences. The exception is export licence applications submitted to the police authorities for transfers of hunting and sporting rifles to private persons and firearms traders within the OECD, which require information on 'transit countries'.<sup>260</sup>

Officials stated that it would be possible to collect such information on a systematic basis or to place limitations on how transfers take place, including the routes exporters are allowed to take. However, they questioned the wisdom of altering Swedish licensing procedures in this way, mainly because of the size and composition of their SALW industry.<sup>261</sup>

Sweden's main tool for tackling potential risks of diversion risks is a strong system of end-user certificates (EUCs) and end-user assurances. A range of different end-user certificates are used depending on what products are to be exported and who the end-user is.<sup>262</sup> When a State is the

<sup>258</sup> Richard Tornberg, op. cit.

<sup>259</sup> URL <<http://www.isp.se/sa/node.asp?node=628>>.

<sup>260</sup> URL <<http://www.polisen.se/inter/nodeid=4520&pageversion=1.jsp>>.

<sup>261</sup> Richard Tornberg, op. cit.

<sup>262</sup> Richard Tornberg, op. cit.

end-user, Sweden uses a EUC, printed on numbered banknote paper, which Swedish exporters must present to their proposed customer for signature. The original EUC is then sent from the Swedish embassy in the recipient country to the Swedish licensing authority, which checks that the signatory is authorised to sign the certificate.<sup>263</sup>

The Swedish system also includes a specific set of end-user assurances. As a rule, the Swedish government requires an assurance from the recipient country's government that the procured equipment will not be re-sold without the permission of the Swedish Government. There is also a specific set of end user assurance focussed on sales of SALW to foreign gun shops. The recipient must sign a declaration stating that the weapons 'will be sold for hunting/sporting/target practicing/collector's sole use' only in the recipient country, and that the goods will not be re-sold or re-exported.<sup>264</sup> Sweden is currently examining options for improving its system of EUCs and end-user assurances.<sup>265</sup>

### **Brokering, transit and transshipment licences**

Swedish brokering controls are laid down in the Military Equipment Act and the Military Equipment Ordinance. The licensing requirements apply to individuals and companies who are resident or permanently domiciled in Sweden and wish to engage in activities relating to the supply of controlled goods, either domestically or abroad.<sup>266</sup> The information required from the company or individual applying for a brokering licence does not include information on transport modalities.

The information required from the company or individual applying for a transit or transshipment licence does not include information on transport modalities. However, when shipping goods by air, the licensee is required to submit a Way Bill or other equivalent documentation to the licensing authorities which would contain details of the air cargo carrier so, in practice, this information is available to the licensing authorities.<sup>267</sup>

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<sup>263</sup> URL <<http://www.isp.se/sa/node.asp?node=543>>

<sup>264</sup> Small Arms / Ammunition Certificate to the Government of Sweden, URL <<http://www.isp.se/sa/node.asp?node=628>>

<sup>265</sup> Richard Tornberg, Legal Adviser, Inspectorate for Strategic Products (ISP), response to Questionnaire, Received 25 November 2008

<sup>266</sup> Holger Anders, 'Implementing the EU Common Position on the control of arms brokering: progress after two years', GRIP Note d'Analyse, 7 July 2005 URL <<http://www.grip-publications.eu/bdg/g4579.html>>

<sup>267</sup> Mattias Timrén, op. cit.

### **Intra- and inter-governmental information sharing**

The Swedish licensing and customs authorities have well-developed mechanisms of cooperation (see below).<sup>268</sup> Cooperation between the Swedish licensing authorities and the Swedish Civil Aviation Authority (CAA) are not as strong.<sup>269</sup> According to one licensing official, there was scope for sitting down with 'customs and (the) air transportation board and look at ways to improve our risk assessment.'<sup>270</sup>

The Swedish licensing authority has not participated in any information sharing activities with other EU or Wassenaar Arrangement States on the activities of air cargo carriers involved in illicit SALW transfers and were not aware of the SitCen information sharing exercise on suspect air carriers (See Part 4). Officials at ISP noted that if such information were to be exchanged, it should be shared with both the CAA and customs, and not just the licensing authorities.<sup>271</sup>

### **Outreach to industry**

ISP maintains regular contacts with the companies that produce military equipment that are subject to control. Companies are required to provide ISP with regular reports on their marketing of military equipment in other countries and ISP carries out regular inspection visits to monitor the companies' internal export control mechanisms.<sup>272</sup> As part of this assessment, ISP examines the procedures that companies have in place for verifying that the exported goods have reached their intended destination.<sup>273</sup> Officials noted that one possible area for future work would be to pay closer attention to the few companies that were exporting SALW and examine which air cargo companies they were using for their exports.<sup>274</sup>

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<sup>268</sup> Richard Tornberg, *op. cit.*

<sup>269</sup> *ibid.*

<sup>270</sup> Mattias Timrén, *op. cit.*

<sup>271</sup> Richard Tornberg, *op. cit.*

<sup>272</sup> Swedish Ministry of Foreign Affairs, 'Strategic Export Control in 2007 – Military Equipment and Dual-Use Products', Government Communication, 2007/08:114, 13 March 2008, p. 18.

<sup>273</sup> Richard Tornberg, *op. cit.*

<sup>274</sup> Mattias Timrén, *op. cit.*

### 3) Customs procedures

**Customs declaration forms:** *For extra-EU transfers, the standard customs form is the Single Administrative Document (SAD)*

Summary of customs procedures as they apply to controls on the air transport of SALW\*:

|  | Extra-EU | Intra-EU |
|--|----------|----------|
| Prior notification required for SALW transfers?  | Y        | N        |
| If involving air transport, information is required on:  |          |          |
| - Details of the air carrier?  | N        | N/A      |
| - Details of the freight forwarder(s)?   | N        | N/A      |
| - Registration and flag of any aircraft involved in the transfer?                                    | N        | N/A      |
| - Flight route and any planned stopovers?  | N        | N/A      |
| - Records of previous similar transfers by air?  | N        | N/A      |
| Possible for a transfer to proceed without any information on transport being provided?              | Y        | Y        |
| Submitted information systematically checked against the approved export licence?                    | Y        | Y        |
| Has shared information with other states about exporters, air carriers or freight forwarding agents? | N        |          |

*\*Information compiled by authors from this study's questionnaires, interviews and other official sources.*

For exports of goods which are covered by Swedish licensing procedures there is a requirement to make a pre-notification to customs 48 hours before the transfer takes place.<sup>275</sup> The information contained in this pre-notification form is the same as the information contained in the Single Administration Document (SAD).<sup>276</sup> However, the information in Box 18 of the SAD (Identity and nationality of means of transport at departure) and Box 21 (Identity and nationality of active means of transport crossing the border) is optional.<sup>277</sup> Hence, the pre-notification form submissions do not systematically collect information on transport modalities.<sup>278</sup> Any person who exports weapons and munitions from Sweden must declare the goods to the customs authorities Customs Authority. The relevant customs declaration form does not require any information on transport modalities.<sup>279</sup>

<sup>275</sup> Fredrik Persson, Manager International Affairs, Swedish Customs, Response to Questionnaire, Submitted 29 Oct. 2008.

<sup>276</sup> *ibid.*

<sup>277</sup> Jan Persson, Customs Adviser, Email correspondence with the author, 19 Jan. 2009.

<sup>278</sup> Fredrik Persson, Manager International Affairs, Swedish Customs, response to Questionnaire, Submitted 29 Oct. 2008.

<sup>279</sup> *ibid.*

### **Intra- and inter-governmental information sharing**

Information submitted to customs on exports of controlled goods is systematically checked against export licence approvals. The original export licence is sent to the exporter who is required to present it to the customs authorities. In addition, both ISP and customs have access to a shared database containing information on all licences granted.<sup>280</sup> This database contains information on the material, exporter, quantity and value of goods that have been licensed for export, allowing the customs authorities to check the information collected in customs declarations against the information collected through export licence applications.<sup>281</sup>

A new system is being developed under which information on the consignee will also be fed into the database, effectively giving the customs authorities access to all the information contained in the export licence.<sup>282</sup> Information on export licence denials is not shared with the customs authorities. Customs authorities will sometimes contact the licensing authorities if they think something is amiss, for example, if the end-user named in the export licence is different to the one named in the customs declaration.<sup>283</sup>

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<sup>280</sup> Mattias Timrén, *op. cit.*

<sup>281</sup> *ibid.* Also see Swedish Ministry of Foreign Affairs, 'Strategic Export Control in 2007 – Military Equipment and Dual-Use Products', Government Communication, 2007/08:114, 13 March 2008, pp. 80 - 81: 'In the past year, the Board of Customs has been more active in the sphere of export control. It will accordingly become increasingly common for the Board of Customs to stop a consignment to check whether it can be permitted to a particular recipient. This places new demands on ISP in the form of shorter response times. It also makes new demands for improved communication between the relevant agencies.'

<sup>282</sup> Mattias Timrén, *op. cit.*

<sup>283</sup> *ibid.*

#### 4) The regulation of air cargo operators and transfers of SALW

**Form for general authorisation to carry SALW:** N/A

**CAA procedures in relation to the air transport of SALW**

Summary of national regulations on air cargo carriers as they apply to controls on the air transport of SALW

|  |                    |
|--|--------------------|
| General licence required to engage in the transport of SALW and their ammunition?  | Y (for ammunition) |
| Licence required to engage in the transport of SALW and their ammunition on a case-by-case basis?  | Y (for ammunition) |
| Air carriers can be barred from operating in national territory:   |                    |
| - If customs and/or law enforcement officials determine an aircraft's cargo includes SALW, and that its flight plan includes a destination subject to a UN arms embargo?         | N                  |
| - If customs and/or law enforcement officials determine that one of their aircraft's cargo includes SALW, and its flight plan includes a destination located in a conflict zone? | N                  |
| - If they are suspected of being involved in destabilising transfers of SALW?  | N                  |
| Do case-by-case approvals for carriage of SALW and their ammunition include:   |                    |
| - Details of the air carrier?  | N/A                |
| - Details of the freight forwarder(s)?   | N/A                |
| - Registration and flag of any aircraft involved in the transfer?  | N/A                |
| - Flight route and any planned stopovers?  | N/A                |
| - Records of previous similar transfers by air?  | N/A                |
| - Compliance with existing national legislation or international agreements relating to air transport of weapons?  | N/A                |

*\*Information compiled by authors from this study's questionnaires, interviews and other official sources.*

Responsibility for the regulation of civil aviation in Sweden is divided between two organisations. Luftfartsverket (LFV) (the Swedish Civil Aviation Administration), which is responsible for infrastructure services including airport management and air traffic control and Luftfartsstyrelsen (the Swedish Civil Aviation Authority), which is responsible for the regulation and oversight of Swedish civil aviation

including the issuing of all permits. Luftfartsstyrelsen was formed on 1 January 2005 when it separated from LFV. On 1 January 2009 Luftfartsstyrelsen became a department within Transportstyrelsen (the Swedish Transport Agency).<sup>284</sup>

Sweden has no legislation or control measures in place that specifically regulate the air transport of SALW. Luftfartsstyrelsen is responsible for issuing Operating Licences (OL), Air Operator Certificates (AOC) and Security Approvals.<sup>285</sup> However, none of these permits explicitly refers to the transport of SALW or weapons.<sup>286</sup>

Sweden fully applies Annex 18 of the Chicago Convention - covering the transport of dangerous goods. Every Swedish carrier transporting dangerous needs approval from Luftfartsstyrelsen. Non-Swedish carriers are the responsibility of the State of origin.<sup>287</sup> All air carriers are required to fill out shipper's declarations when transporting dangerous goods, which covers all SALW ammunition. The international templates produced by either ICAO or IATA are accepted by the Swedish authorities.<sup>288</sup> All assessments of these permits are made purely on the grounds of air safety. Article 35 of the Chicago Convention - covering the transport of weapons of war - is considered to be under the exclusive purview of the Swedish export licensing authorities.<sup>289</sup>

The shipper's declaration is not submitted to Luftfartsstyrelsen.<sup>290</sup> Rather, it passes through the supply chain from the manufacturer, to the shipper, to the ground handling agent and the airline.<sup>291</sup> Luftfartsstyrelsen's role is to keep an eye on the air carriers themselves and does not include maintaining an audit of the total amount of dangerous goods being shipped to, from or via Sweden.<sup>292</sup> The only cases Luftfartsstyrelsen handles are exemptions, when someone wants to deviate from the ICAO standards, such as shipping certain marked goods or using practices that lie outside the ICAO's Technical Instructions for the Safe Transport of Dangerous Goods.<sup>293</sup>

Information on transfers of dangerous goods are submitted to Luftfartsverket (LFV). In the remarks column of the flight plan, air carriers are required to specify what kind of dangerous goods are on board, and the flight plan is submitted to the air traffic control service managed by LFV.

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<sup>284</sup> URL <<http://www.transportstyrelsen.se/en/Aviation/>>.

<sup>285</sup> Annika Ramstedt, Senior Advisor Security, the Swedish Civil Aviation Authority, Department for AGA, ANS and SEC, response to Questionnaire, 22 Oct. 2008.

<sup>286</sup> *ibid.*

<sup>287</sup> Göran Svensson, Area Manager Aerodrome Regulations and Dangerous Goods, interview with the author, 13 Jan. 2009.

<sup>288</sup> *ibid.*

<sup>289</sup> *ibid.*

<sup>290</sup> *ibid.*

<sup>291</sup> *ibid.*

<sup>292</sup> *ibid.*

<sup>293</sup> *ibid.*

The shipper's declaration is also submitted to the ground-handling agent who has the responsibility of noting the information in the load manifest. The ground-handling agent will also send that information to the airport of destination.

In terms of improving the oversight of SALW transfers, officials at Luftfartsstyrelsen felt that developing and expanding Annex 18 to cover a wider range of products and include diversion risks would be a difficult process. It was pointed out that Annex 18 is focussed exclusively on air safety issues while agreeing changes to its coverage and workings is an 'arduous process'.<sup>294</sup>

One topic that officials felt might be deserving of future attention was the distinction between State aircraft and civil aircraft. The Chicago Convention states very clearly that it doesn't encompass military, police and coast guard activities, which can have the effect of leaving State aircraft as a virtual 'black hole' in terms of regulatory oversight.<sup>295</sup> The issue was complicated by the fact that the distinction between civil and State aircraft is not well defined in the Chicago Convention. There can often be a situation of civil aircraft performing duties for the purposes of a State and these cases can be handled differently by States.<sup>296</sup>

If State aircraft, or an aircraft performing duties on behalf of a State, wants to over fly Swedish territory, diplomatic permission must be obtained. However, the information submitted with the necessary diplomatic note will not, generally, include information on the contents of the aircraft. Officials stressed that this was not a major concern for Sweden, and any issues that did emerge in the Swedish context would be unrelated to the trafficking of SALW. However, it does point to concerns that might emerge elsewhere.

### **Intra- and inter-governmental information sharing**

Luftfartsstyrelsen does coordinate with other government agencies when considering certain permits for dangerous goods. For example, if there is nuclear fuel on board the flight, Luftfartsstyrelsen will often consult with Strålsäkerhetsmyndigheten (Swedish Radiation Safety Authority).<sup>297</sup> However, there is no equivalent system of cooperation and coordination with ISP.<sup>298</sup>

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<sup>294</sup> *ibid.*

<sup>295</sup> *ibid.*

<sup>296</sup> Anders Gradin, *op. cit.*

<sup>297</sup> Göran Svensson, *op. cit.*

<sup>298</sup> Göran Svensson, *op. cit.*

## Ramp inspections

Luftfartsstyrelsen is also responsible for carrying out ramp inspections in line with SAFA guidelines. If undeclared dangerous goods are discovered on a flight then Luftfartsstyrelsen decides whether to take further action and in certain situations the case may be referred to customs or ISP.<sup>299</sup> The customs authorities do not take part in ramp inspections.<sup>300</sup> However, the different authorities that work at the airports will share information if they see something improper.<sup>301</sup>

## 5) Conclusions

Sweden's case poses interesting questions regarding the amount of effort States should be expected to invest in tackling the illicit transfers of SALW. Sweden has a well-developed system of export licensing procedures, a limited SALW industry, and limited exposure to the kind of actors that are engaged in illicit SALW transfers by air transport. Officials within ISP, Customs and Luftfartsstyrelsen are therefore wary of developing additional administrative burdens to tackle a problem that has little relevance for the Swedish situation.

### Good Practice

- Sweden's system of EUCs and End User Assurances provides a potential model for other States to use. Improved mechanisms of EUCs and post-shipment verification could have as much of an impact on tackling the problems relating to diversion as improving the regulation of the air cargo industry.

### Challenges

- Levels of intra-agency cooperation in this field are often poor and in need of improvement. As in most States, the air transport of SALW does not fall under the exclusive purview of any department or agency. As one official at Luftfartsstyrelsen put it, "this is an area where there are split responsibilities and there is no one who has a clear overview' of all aspects of the issue."<sup>302</sup>
- There is a potential need to take a closer look at the distinction between state aircraft and civil aircraft, including the question of where the division between these two types of operation should lie, and how much information on SALW transfers is provided in the case of State aircraft.

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<sup>299</sup> Göran Svensson. op. cit.

<sup>300</sup> Anders Gradin. op. cit.

<sup>301</sup> *ibid.*

<sup>302</sup> *ibid.*



## Case Study: United Kingdom

### 1) Introduction

The UK's role as an SALW producer or exporter declined through the 1990s. The UK government does not presently regard itself to be a major exporter of SALW, noting that most SALW shipments consist of less than 10 weapons, and large shipments are now relatively rare. However, since 2003, the UK's position as a significant exporter and transporter of SALW has expanded again: substantially due to its role in supplying SALW to military, police and security forces in Iraq and Afghanistan.<sup>303</sup> Moreover, the UK does remain a substantial centre for arms transfers, including transit, more generally.

The UK's export control system is based predominantly upon pre-export risk assessment at the licensing stage, rather than upon verifying the delivery of arms after export, and with only limited emphasis on seeking assurances on their delivery and end-use.<sup>304</sup> This risk-assessment based system has not tended to require information to be provided on transit routes or modes of transportation, although at present applications for specific (i.e. not 'open') transfer licences often require details of the air carrier and freight forwarding agents.

Over the last decade, the decision-making process on whether to licence an arms transfer has involved detailed consultations amongst all directly concerned government departments BERR (Department for Business Enterprise and Regulatory Reform), FCO (Foreign and Commonwealth Office), MoD (Ministry of Defence) and DFID (Department for International Development) with controversial matters referred to Cabinet for decision. There has been substantial increase in post-hoc transparency and public and parliamentary scrutiny of licensing decisions. However, the relative lack of pre-licensing requirements for information relating to transportation has been a matter for concern. Indeed, the UK MoD itself has chartered aircraft from air cargo companies linked to known SALW traffickers to transport military equipment from the UK (although

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<sup>303</sup> Ref: SALW exports included in UN Register on Conventional Arms (UNROCAT) submissions.

<sup>304</sup> For details, see HMG statements that "the UK Government's assertion that *"the introduction of a process that allows for the issue of licences based on future end use monitoring militates against the effective application of the criteria at the licensing stage."* (Response of the Secretaries of State for Defence, Foreign and Commonwealth Affairs, International Development and Trade and Industry to the Report from the Quadripartite Committee on Strategic Export Controls: HMG's Annual Report for 2004, Quarterly Reports for 2005, Licensing Policy and Parliamentary Scrutiny, October 2006, Cm 6954, para. 40, <http://www.official-documents.gov.uk/document/cm69/6954/6954.pdf>).

The UK declines to apply non-re-export clauses to its arms export licences, and refuses to ascribe to them when buying arms from the USA: the UK MOD's Defence Acquisition Guidance states that "It is a requirement of the DSP83 [US Non-Transfer and Use Certificate]...that USG[overnment] permission is sought for any re-export of the goods concerned. Her Majesty's Government (HMG) does not recognise the right of USG to impose controls in this way, as this involves extra-territoriality rights and is therefore an infringement of UK sovereignty." (<http://www.ams.mod.uk/aofcontent/tactical/toolkit/content/topics/usaproc.htm> accessed 19 January 2009).

not, to our knowledge, SALW).<sup>305</sup>

The UK government does consider the control of air transportation of SALW to be a matter of concern for the UK. The greatest UK government concerns are associated with:

- (i) the provision of air transport between third countries and
- (ii) the transit/transshipment of SALW through the UK to destinations that are either under embargo or are considered by the UK to be 'sensitive' destinations.

The UK has recently developed a novel approach to enhancing controls of transportation of SALW, which in some ways is an alternative to the WA *Best Practices*' vision of considering transport modalities submitted by the exporter at licensing stage. This new UK approach captures UK-based air cargo carriers operating in other parts of the world within export licensing regulations (see below).

## 2) Licensing procedures

### **General information on licensing procedures**

**Licensing authority:** Export Control Organisation (ECO), involving four Government Departments (see consultation procedures below) coordinated within Department for Business, Enterprise and Regulatory Reform (BERR).

**Export Licences and application forms:** Application for transit, export or brokering licence submitted to ECO via SPIRE (online data system).

**Consultation procedures:** Consultation with Ministry of Defence, Foreign and Commonwealth Office, Department for International Development. Decisions are normally by consensus between the four Departments, and can be (and are in practice) referred to Cabinet if necessary.

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<sup>305</sup> According to Civil Aviation Authority records, the airline Jet Line International carried out flights from RAF Brize Norton on behalf of the Ministry of Defence between 6-9 March 2005. [http://www.caa.co.uk/docs/589/erg\\_epia\\_exemptions\\_list\\_exceptional.pdf](http://www.caa.co.uk/docs/589/erg_epia_exemptions_list_exceptional.pdf) Jet Line International have asset operating history links with Aerocom, which was named in a UN Sanction Panel report as being involved in shipping arms to Liberia (See <[http://www.sipri.org/contents/armstrad/Air\\_Cargo\\_Operators/Jet\\_Line\\_International.html](http://www.sipri.org/contents/armstrad/Air_Cargo_Operators/Jet_Line_International.html)> and United Nations Security Council, Report of the Panel of Experts appointed pursuant to paragraph 25 of Security Council Resolution 1478 (2003) concerning Liberia, S/2003/937, 28 Oct. 2003, pp. 28–29). UK Foreign Secretary Jack Straw stated on 25 May 2004 that: "Our commitment to dealing with arms traffickers/sanctions busters is second to none, and a matter of public record." Hansard 26 May 2004: Column 1639W.

**National legislation:** Export Control Act 2002 and associated Statutory Instruments: the secondary legislation under this act is particularly The Export of Goods, Transfer of Technology and Provision of Technical Assistance Order 2003 (as subsequently amended). This primary and secondary legislation has recently been subject to detailed review, resulting in further secondary legislation coming into force during 2009. Note also that the provisions of EC Directive 91/477/EEC (18 June 1991) on control of the acquisition and possession of weapons are also considered by the UK to be directly relevant.

Information on regulations and procedures, including licence application processes, is available on the ECO website at: <http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/index.html>.

**Relevant international agreements:** Wassenaar Arrangement, OSCE Guidelines, EU Code of Conduct. Also explicitly respects and co-operates with ECOWAS Convention and Nairobi Protocol with regard to exports to those regions.

### **Licensing procedures in relation to the air transport of SALW**

SALW transfer licences are considered on a case-by-case basis. Licences are required in all cases except in relation to visiting forces, Air Marshall and transfers on behalf of the UK government where exemptions from normal licensing procedures apply. The following table relates to information required at the pre-licensing stage.

Summary of licensing procedures as they apply to controls on the air transport of SALW\*:

|   | <b>Export/Import licence</b> | <b>Transit / Transshipment licence</b> | <b>Brokering licence</b>  |
|---|------------------------------|--|---|
| Required for SALW transfers?  | Y                            | Y                                      | Y   |
| If involving air transport, information is required on:   |                              |  |   |
| - Details of the air carrier?   | Y                            | Y                                      | Y   |
| - Details of the freight forwarder(s)?  | Y                            | Y                                      | Y   |
| - Registration and flag of any aircraft involved in the transfer?                                       | N                            | N                                      | N   |
| - Flight route and any planned stopovers?   | N                            | N                                      | N   |
| - Records of previous similar transfers by air?   | N                            | N                                      | N   |
| Possible to grant a licence without this information being provided?                                    | Y                            | Y                                      | Y   |
| Requirement to provide a certificate of unloading, or any other relevant document, confirming delivery? | N                            | N                                      | N   |
| Systems in place for sharing information with customs authorities and CAAs?                             |                              |  | Customs declarations (captured by 'CHIEF' database) should now be automatically checked against SPIRE ('Automatic Licence Verification'). |
| Has shared information with other states about exporters, air carriers or freight forwarding agents?    |                              |  | Yes, occasionally.  |

*\*Information compiled by authors from this study's questionnaires, interviews and other official sources.*

The UK arms transfer licensing system has not included extensive pre-licensing requirements for information relating to transportation, or related information relating to shipping agents, transit routes and transit routes.

Even today, the UK does not systematically require licence applicants to submit transporter information at licensing stage, although the UK government does now indicate that it can require details of the air carrier and freight-forwarding agents.<sup>306</sup> It nevertheless remains possible in the UK system to issue a licence for the transfer of SALW without any information on transport being provided. Licence applications are considered on a case-by-case basis, and requirements for information on transport at the pre-licensing stage depend on whether the pre-risk assessment raises specific concerns about risks of diversion.

The UK requires substantial information relating to transportation prior the shipment taking place, through the customs declaration, but not for the licensing authorities. Important issues are raised due to the substantial length of time that can elapse between a licence being issued and being used (at which point transport modalities are likely to be known). This issue is exacerbated by the fact that the UK operates a dual-track system of single individual export licences (for specified quantities of goods over 2 years) and open individual export licences (OIELs) (for unspecified quantities of goods over 2-5 years). In practice, the UK issues OIELs to many exporters for SALW and ammunition. Since OIELs are issued far in advance of shipment, and for unspecified quantities, it is difficult to know how they will be made consistent with WA *Best Practices* guidelines requiring transporter and routing information before being validated.

### **Brokering, transit and transshipment licences**

The UK system for licensing transit, transshipment and brokering of SALW is now almost identical to the procedures required for export licensing, although some questions on the brokering licence application differ. As noted, the UK has recently (2008) strengthened its brokering and transit/transshipment controls, improvements which enter into force on 6 April 2009.<sup>307</sup>

Under the revised legislation, the UK plans to bring arms transporters based in the UK directly into the transfer control system, requiring such transporters to apply for an expanded category of brokering licences for most SALW transfers between sensitive origin and destination countries.<sup>308</sup> This is an important new development, after a consultation period involving all relevant government departments, relevant industrial and commercial bodies (including transportation and shipping agents) and NGOs. It is due to come into force in April 2009. It is important to note, however, that the proposal has been criticised by some representatives of major freight-forwarding and transportation agents, who fear that the new regulations will place undue burdens and responsibilities on them, not only for their own activities but also relating to

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<sup>306</sup> UK Government response to this survey

<sup>307</sup> All details at <http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/latest-news/notice-to-exporters/page49884.html>

<sup>308</sup> [www.berr.gov.uk/files/file42914.doc](http://www.berr.gov.uk/files/file42914.doc)

wider risk assessments.<sup>309</sup> Because it is a new development, it is relatively unclear how effective the system will be. However, it is important to note that the new system will only apply to air cargo carriers which are based in the UK and will not place any requirements on air cargo carriers which are registered or based in other States. It is not clear yet whether the UK will develop further information requirements or restrictions at the pre-licensing stage for such non-UK carriers. The new legislations will also extend brokering controls over UK traders brokering SALW while located overseas (extra-territoriality).

**Under the UK's new transit/transshipment system,** the more sensitive the goods and/or the more sensitive the destination, the more likely it is that the transit will require a transshipment licence. From April 2009, a licence will be required for the transit or transshipments of SALW to any of 72 destinations (which are either embargoed or considered 'sensitive'). For example, all category A goods<sup>310</sup> transiting the UK require a licence; all category B goods to a list of some 49 States require a licence. Less sensitive goods to less sensitive destinations will generally not require a transit licence, provided certain relatively undemanding conditions are met. For less sensitive destinations and equipment an Open General Transshipment Licence (OGTL) exists which provides for multiple, unlimited transits without prior or case-by-case Government scrutiny.

As a derogation to this powerful set of controls, the UK is unusual amongst European States in including some SALW brokering in its system of open licensing, under which SALW transfers between two 'white-lists' of States may be arranged by a UK trader or transporter without specific licences. This could move SALW from, for example, Cyprus to Israel or Haiti - both transfers for which UK policy restrictions would likely prevent the issuing of individual brokering licences.<sup>311</sup>

### **Intra- and inter-governmental information sharing relating to air transport of SALW**

The UK participates in the relevant EU Code of Conduct, OSCE and Wassenaar Arrangement mechanisms for information exchange and consultation. Beyond this, the UK reports that it does occasionally exchange information or consult with EU, Wassenaar Arrangement and other partner states on issues related to air transport of SALW when relevant to specific cases. Such information exchange or consultation on specific cases relating to air transportation of SALW is however, rare. The UK government indicates that they have shared information with partner countries about exporters/importers, air carriers or freight forwarding agents that have been involved in air transport of SALW that may

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<sup>309</sup> Information directly from the consultation process and also from private interviews, January 2009.

<sup>310</sup> Under UK licensing controls Category "A" consists of 'Long Range Missiles (range over 300km), Unmanned Air Vehicles, cluster munitions and specially designed components, and certain paramilitary goods whose export is already banned because of evidence of their use in torture.' Category B consists of 'Small Arms and Man Portable Air Defence Systems (MANPADs) and accessories, ammunition and specially designed components.' Category C consists of all goods contained on the Military List (and which are not covered by Category A or B). See URL <<http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/legislation/export-control-act-2002/eca-2002-guidance/page10926.html>>.

<sup>311</sup> SALW OGTL on DBERR website.

contribute to destabilising accumulations or a potential threat to security and stability. However, they have not reportedly yet shared such information within the WA relating to submission of false information or licence denials, although in principle the UK may do so through the WA General Information Exchange mechanism or through the Ad-Hoc Group of Security and Intelligence Experts. Information of an operational nature would normally be shared confidentially between security agencies and customs officials rather than licensing authorities.

### **Outreach to industry**

The UK government has established relationships with the range of relevant industry and commercial bodies, which were actively reinforced and systematised as part of the implementation of the revised Export Control Act (2002) and following secondary legislation.

In relation to the aviation industry, the main bodies with whom the UK arms transfer control authorities liaise, are the British International Freight Association and the Chartered Institute of Logistics and Transport. Individual major shipping agencies, such as Strategic Shipping Limited, are actively and regularly engaged. Individual airlines are also reportedly actively made aware of their responsibilities relating to controls for air transport of SALW. Any air carrier or associated warehouse agents involved in transporting firearms or holding them prior to transportation require specific authorisation, leading to regular engagement with officials.

All relevant key sectors of industry and concerned NGOs have been involved with the development of UK control systems for SALW. This is particularly so since 2001 and in relation to the recent review and introduction of new controls in 2009.

### **3) Customs procedures**

Once a licence for an SALW transfer has been issued, a customs declaration needs to be completed and approved before the shipment can proceed. Legally, the UK customs authority (i.e. HM (Her Majesty's) Revenue and Customs) has wide ranging and stringent powers for monitoring, investigation and inspection, and for blocking shipments that customs deem to be suspicious. Customs officers thus have authority to conduct highly intrusive investigations and inspections in relation to possible or declared transfers of controlled goods such as SALW.

In practice, there are very large numbers of shipments of various types of goods that require customs approval each week, and the overall approach of the authority is to avoid undue delays to shipments. In practice, the process of submitting and checking customs declaration forms and issuing authorisations for shipment is now mostly electronic. Customs states that it takes an 'intelligence-led' approach to monitoring and checking shipments of SALW or similar controlled goods.

## Customs declaration forms

Customs declarations take the form of a Single Administrative Document (SAD), submitted and processed within the Customs Handling of Import and Export Freight (CHIEF) electronic database. The submission relating to SALW shipments will include reference to the relevant transfer licence (including licence number etc), as well as information relating to the contents of the cargo and freight-forwarder, air carrier, and flight routes (see table below). This information submitted will then be checked by customs officials based at the National Clearance hub (centred in Salford). This mainly involves checking the application against the export licence itself, which will have automatically been put on the database by the licensing authorities when it was issued. In part this is automated, using an Automatic Licence Verification (ALV) procedure.

Summary of customs procedures as they apply to controls on the air transport of SALW\*:

|  | Extra-EU          | Intra-EU      |
|--|-------------------|---------------|
| Prior notification required for SALW transfers?  | Y                 | Y             |
| If involving air transport, information is required on:  |                   |               |
| - Details of the air carrier?  | Y (flight number) | In some cases |
| - Details of the freight forwarder(s)?   | Y                 | In some cases |
| - Registration and flag of any aircraft involved in the transfer?                                    | Y                 | Y             |
| - Flight route and any planned stopovers?  | Y                 | Y             |
| - Records of previous similar transfers by air?  | N                 | N             |
| Possible for a transfer to proceed without any information on transport being provided?              | N                 | Y             |
| Submitted information systematically checked against the approved export licence?                    | Y                 | Y             |
| Has shared information with other states about exporters, air carriers or freight forwarding agents? | Yes, occasionally |               |
| Systems in place for sharing information with customs authorities and CAAs?                          | Y                 | Y             |

*\*Information compiled by authors from this study's questionnaires, interviews and other official sources.*

If any significant discrepancies are identified between the data provided in the application for customs authorisation and what has been authorised in the licence, then the shipment is deemed 'not good to go' and the application is refused, pending a new and revised application. It is at this point that further information may be taken into account if an aspect of this shipment is already under investigation, or there is specific

intelligence bearing on whether to permit this shipment. However, if the application and licence details match, the shipment is normally quickly authorised for shipment as ‘good to go’ and preparations for shipment can proceed. The customs authorities at the relevant airport or other authorised shipping point are automatically notified.

There is no specific public information available on the criteria for, and frequency of, physical inspection by Customs of authorised cargos at the shipment points (which is deemed by customs to be sensitive information). As noted, such physical inspections (or associated specific investigations) would normally be ‘intelligence led’, and will thus take place only in the context of specific investigations. On the basis of interviews and discussions conducted for this study, the experience and impressions of non-official experts and practitioners in the UK are that random physical inspections by UK customs of air freight cargoes relating to SALW, or their parts and components, are rare. There are NGO concerns raised by NGOs that, in practice, UK Customs do not prioritise direct checks on SALW shipments, unless as part of a wider criminal investigation. However, there is no doubt that UK Customs have all of the legal authority necessary to make ramp and other inspections as they choose.

#### **Intra- and inter-governmental information sharing**

UK Customs automatically receives full information on SALW transfer licences issued, and will similarly automatically receive information such as lists of authorised air carriers and brokers for SALW transfers. There are clear and established lines of communication between licensing and customs officials, which are available for use on a case-by-case basis relating to SALW shipments. However, it is not clear how extensively this is used. Particularly it is not clear how systematically risks and concerns that are raised while considering whether to issue a transfer licence are recorded and are subsequently readily available to the customs officials who review the documentation submitted to customs prior to shipment.

In relation to inter-governmental information sharing involving UK customs, there are established mechanisms for such information sharing, which are used on a case-by-case basis in the context of specific investigations.

#### **4) The regulation of air cargo operators and transfers of SALW**

*Form for flight-specific authorisation to carry SALW:* <http://www.caa.co.uk/docs/33/CAP668.PDF>

Article 59 of the *Air Navigation Order 2000* requires all aircraft registered in the UK – no matter where they are operating – and all aircraft registered in a non-UK country when they are operating in the UK, to apply for flight specific authorisation to carry ‘weapons or munitions of

war', or dangerous goods. Unusually amongst European States, therefore, the UK applies both Annex 18 of the ICAO Chicago Convention (covering the transport of dangerous goods) and the less commonly applied Article 35 (covering the flight or overflight of weapons of war). In situations where applications are submitted to CAA Dangerous Goods Office at least 10 days prior to the flight, all States involved in the flight (origin, transit, overflight, destination) must consent. However, there does not appear to be a uniform definition of "weapons and munitions of war" (these are based on 'calibre' lists at <http://www.caa.co.uk/docs/33/CAP668.PDF> and are not harmonised with EU, UK or WA export control lists.

Such applications to the CAA are reportedly checked against transfer licences, although we have not yet confirmed whether this is a fully systematic process or the extent to which such checks are integrated into a wider risk assessment process.

Summary of national regulations on air cargo carriers as they apply to controls on the air transport of SALW\*:

|  |   |
|--|---|
| General licence required to engage in the transport of SALW and their ammunition?  | Y(for UK-based carriers, as of April 2009)) |
| General licence required to engage in the transport of SALW and their ammunition? on a case-by-case basis?   | Y (for UK-based carriers, as of April 2009) |
| Licence required to engage in the transport of SALW and their ammunition on a case-by-case basis? Air carriers can be barred from operating in national territory:   |   |
| Air carriers can be barred from operating in national territory:- If customs and/or law enforcement officials determine an aircraft's cargo includes SALW, and that its flight plan includes a destination subject to a UN arms embargo                | Y   |
| - If customs and/or law enforcement officials determine an aircraft's cargo includes SALW, and that one of their aircraft's cargo includes SALW, and its flight plan includes a destination subject to a UN arms embargo or located in a conflict zone | Y (to 'sensitive' destinations)             |
| - If customs and/or law enforcement officials determine that one of their aircraft's cargo includes SALW, and its flight plan includes a destination located in a conflict zone?   | Y (to 'sensitive' destinations)             |
| - If they are suspected of being involved in destabilising transfers of SALW   | Y   |

|   |                                  |
|---|----------------------------------|
| Do case-by-case approvals for carriage of SALW and their ammunition include:                                      |                                  |
| - Details of the air carrier?   | Yes                              |
| - Details of the freight forwarder(s)?  | No (only “shipper”)              |
| - Registration and flag of any aircraft involved in the transfer?   | Yes                              |
| - Flight route and any planned stopovers?   | Yes                              |
| - Records of previous similar transfers by air?   | No                               |
| - Compliance with existing national legislation or international agreements relating to air transport of weapons? | Yes (approval from other states) |

*\*Information compiled by authors from this study’s questionnaires, interviews and other official sources.*

## 5) Conclusions

The UK government is amongst those that express definite concern about the risks of diversion of SALW through air transport. It is particularly concerned about risks associated with air transport between third States, and with transit/transshipment of SALW by air transport to sensitive or embargoed destinations. There is relatively high awareness, expertise and concern in the UK in civil society and parliament about SALW transfer controls, with numerous capable NGOs consistently engaged, including on air transportation issues. Over the last decade, patterns of critical and constructive engagement between the relevant government departments, industry and NGOs have developed substantially, and recent regulatory reviews have included industry bodies relating to air transportation.

The UK case presents an example of a State which has long-established and relatively well-developed systems for controls on transfers of arms (including SALW). Yet until recently, these systems have had only limited requirements for information relating to transportation prior to licensing decisions being made. This has weakened the UK’s capacity to prevent diversion of SALW diversion through pre-licensing risk assessments. However, in the context of enhancing controls on SALW transfers to prevent diversion or destabilising transfers, the UK has recently regularly reviewed its relevant systems and regulations, and has decided on a distinctive approach towards regulating air transportation of SALW. This approach aims to bring SALW transportation and shipping agents directly into the transfer control system by requiring transporters to apply for licences in a similar way to arms brokers. This has a different emphasis compared to the provisions of the *WA Best Practice* guidelines (though it is arguably consistent with these), as the *Best Practice* guidelines focus on enhancing requirements for information

on transportation in the context of issuing transfer licences. This approach offers potential advantages - for example by capturing UK-based air carriers operating between third States, but it is not yet clear how air-carriers based in other States will be covered, or the extent to which the relevant shippers and carriers will buy-in to the new system.

UK customs control systems are well-developed in their own right, and have relevant links with the transfer licensing system. However, it is not clear that information on transportation and transit routes provided to customs shortly before delivery commences, is systematically used in a risk assessment system. Questions can arise relating to the long time lapses between issuing a licence and making the deliveries, particularly in relation to open general licences. The UK applies both Annex 18 and Annex 35 of the Chicago Convention, and insists that all transport by air carriers of SALW and/or ammunition must be approved through the CAA Dangerous Goods Office. It is not clear how well integrated the processes for providing such authorisation are linked with a wider diversion risk assessment.

## Case Study: Ukraine

### 1) Introduction

The inheritor of an enormous stockpile of Cold War SALW and ammunition,<sup>312</sup> Ukraine appears nonetheless to have emerged relatively recently as a major exporter of SALW. Occasional reports of destabilising or illicit SALW transfers from Ukraine to various destinations emerged during the late 1990s and early 2000s, although allegations of illicit exports of major weapons systems and platforms were more prevalent.<sup>313</sup> Similarly, the first ever arms export reports produced by the State Service for Export Control (SSEC) which covered 2004 and 2005, listed only relatively small numbers of SALW exports. The 2006 report, in contrast, listed major exports of SALW, including 22,000 assault rifles and submachine guns to Azerbaijan (subject to a politically-binding OSCE arms embargo since 1992);<sup>314</sup> 10,000 assault rifles and submachine guns to Chad; 100,000 assault rifles and submachine guns to Libya; as well as over 100,000 rifles and carbines to the USA.<sup>315</sup> The report for 2007 details exports of over 211,000 SALW units to 19 countries, including significant exports of military SALW to Chad, Libya and Kenya.<sup>316</sup> In addition, Ukrainian-registered aircraft and Ukrainian aircrews have been regularly cited in reports of illicit or destabilising SALW transfers by air, including transfers which have taken place outside Ukraine itself.<sup>317</sup>

Both Ukrainian SALW and Ukrainian aircraft, therefore, have reportedly played a role in a series of problematic transfers since the early 2000s. Occurring within a system of SALW export and transport controls whose multi-tier complexity and attention to transport modalities in theory go beyond many of the EU States within this study, Ukraine illustrates the importance of clarity and transparency in control systems, and the necessity of clear and responsible decision-making by licensing and enforcement officials.

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<sup>312</sup> Estimates of the size of this stockpile, made by NATO-funded SALW destruction programme staff and military experts, range from between 6 and 15 million weapons, and around 2.4 million tons of ammunition. Hugh Griffiths and Aaron Karp, 'Ukraine: coping with post-Soviet legacies', *Contemporary Security Policy*, vol. 29, no. 1 (2008), pp. 202–208.

<sup>313</sup> For a summary of these allegations, see Jane's Information Group, *Sentinel Security Assessment: Russia and the CIS*, No. 19 (2006).

<sup>314</sup> The Decision of the Committee of Senior Officials of the OSCE, 28 February 1992, requests that all OSCE participating States (including Ukraine) should introduce an embargo on "all deliveries of weapons and munitions to forces engaged in combat in the Nagorno-Karabakh area".

<sup>315</sup> SSEC, *Information on the volume of international arms transfers realised by Ukraine in 2006*, 27 Sept 2006, ([http://www.dsecu.gov.ua/control/uk/publish/article?art\\_id=40683&cat\\_id=34940](http://www.dsecu.gov.ua/control/uk/publish/article?art_id=40683&cat_id=34940)).

<sup>316</sup> Paul Holtom, *Ukrainian Exports of Small Arms and Light Weapons 2004-2007* (SIPRI Background Paper, October 2008).

<sup>317</sup> See examples cited in Section 2.2.iv.

## 2) Licensing procedures: centralised and multi-channel

### **General information**

**National legislation:** The central piece of legislation governing arms transfers is the *Law of Ukraine No. 549-IV 'On State Control of international Transfers of Goods Designated for Military Purposes and Dual-Use Goods'* (20 February 2003).

Aspects of export controls have been further elaborated through Presidential Decrees and Decrees of the Cabinet of Ministers. Particularly pertinent for this study is the *Order of the Cabinet of Ministers No. 690 'On Improvement of the Mechanism of Control over International Air Transfers of Military and Dual-Use Goods'* (20 November 2003), as amended 14 May 2008.

**Licensing authority for SALW transfers:** State Service for Export Control (SSEC).

### **Export Licences and application forms:**

<http://www.dsecu.gov.ua/document/37016;/D-0101.doc> (application form for all international transfers except transit)

<http://www.dsecu.gov.ua/document/37017;/D-0301.doc> (transit permit)

<http://www.dsecu.gov.ua/document/37024;/f0.doc> (delivery verification form)

[http://www.dsecu.gov.ua/document/37300;/375\\_dod3.doc](http://www.dsecu.gov.ua/document/37300;/375_dod3.doc) (activity reporting form for licence holders)

**Consultation procedures:** In making licensing decisions, SSEC may consult with Ministry of Foreign Affairs, State Intelligence Services, Ministry of Defence, Ministry of Industrial Policy, Ministry of Economy, State Customs Service, National Space Agency of Ukraine and others.

**Relevant international agreements:** Wassenaar Arrangement; OSCE Documents and Decisions (Document on SALW, Document on Conventional Ammunition Stockpiles, Decision on MANPADS, Decision on End-User Certificates); public (but non-legal) commitment to adhering to EU Code of Conduct on Arms Exports;<sup>318</sup> UN Programme of Action on SALW.

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<sup>318</sup> EU-Ukraine Action Plan, 2005-2007 (<http://www.mfa.gov.ua/mfa/ua/848.htm>).

Summary of licensing procedures as they apply to controls on the air transport of SALW\*:

|   | <b>Export licence</b>   | <b>Transit / Tranship. licence</b>           | <b>Brokering licence</b>  |
|---|---|--|---|
| Required for SALW transfers?  | Yes   | Yes  | Yes   |
| If involving air transport, information is required on:   |   |  |   |
| - Details of the air carrier?   | Yes   | No   | Yes   |
| - Details of the freight forwarder(s)?  | No  | No   | No  |
| - Registration and flag of any aircraft involved in the transfer?                                       | Yes   | No   | Yes   |
| - Flight route and any planned stopovers?   | Yes   | Entry and exit point of Ukrainian territory. | Yes   |
| - Records of previous similar transfers by air?   |   |  |   |
| Possible to grant a licence without any information on transport being provided?                        | Yes, but exporters of military goods by air are obliged to supply this information to SSEC. |  | Yes, but exporters of military goods by air are obliged to supply this information to SSEC. |
| Requirement to provide a certificate of unloading, or any other relevant document, confirming delivery? | Yes   |  | Yes   |
| Systems in place for sharing information with customs authorities and CAA?                              |   |  | Yes   |
| Has shared information with other states about exporters, air carriers or freight forwarding agents?    |   |  | Not known   |

*\*Information compiled by authors from this study's questionnaires, interviews and other official sources.*

Ukraine's export control system is highly centralised, both in terms of authority and information. Licensing of all aspects of SALW arms transfers (with the exception of hunting and sporting weapons)<sup>319</sup> - from the registration of exporters to the authorisation of air carriers to carry military goods - is coordinated by the State Service for Export Control (SSEC), a department under the authority of the Ukrainian Presidency.<sup>320</sup>

<sup>319</sup> *Law of Ukraine No. 549-IV 'On State Control of international Transfers of Goods Designated for Military Purposes and Dual-Use Goods', Article 2.* Hunting, sporting and gas guns fall under the authority of the Ministry of the Interior: interview with State Customs Service, 12 December 2008.

<sup>320</sup> Although, like other Ministries, the SSEC is under the authority of both the Presidency and the Cabinet of Ministers, final decisions on sensitive licences are taken by the Interdepartmental Commission for Policy in the area of Military and Technical Cooperation and Export Control, a body under the National Security and Defence Council of Ukraine whose members are appointed directly by the President. See Scientific and Technical Centre for Export and Import of Special Technologies, Hardware and Materials (STC), *Brief Overview of Ukraine's Export Control System* (n.d.), Appendix 2.

SSEC issues all licences for SALW export, transit, import or transportation by air; and receives reports of activity in these areas by licence-holders themselves, and from enforcement departments (Customs Service and the Ministry of Transport).

SSEC's knowledge about (licensed) exporters and their activities should be comparatively complete, since applicants for military export licences must undertake four licensing stages: they must be registered with SSEC; possess a 3-year general licence to export military goods; obtain a 1-year licence to undertake negotiations for a military export deal; and finally apply for a licence to undertake specific transfers, generally valid for three years.<sup>321</sup>

Unusually, air carriers transporting military goods must also be licensed by SSEC. The authors were informed that at present, only one Ukrainian air carrier, the State-owned Ukrainian Cargo Airways (UATK) which operates on behalf of the Ministry of Defence, possesses such authorisation.<sup>322</sup> This is in contrast to the maritime transport of military goods, for instance, in which a variety of commercial freight forwarders and ship operators are evidently involved.<sup>323</sup>

Where goods are to be exported by air, applicants for specific transfer licences must submit information regarding the air carrier and aircraft to be used, the aircraft's crew lists, the route of delivery, and the consignee of the air cargo.<sup>324</sup>

The authors were unable to gain detailed information regarding SSEC procedures to verify this information, but such verification should already be made possible by the fact that both licensing and information-gathering is multi-channel:

- The burden of information gathering is placed on licence holders themselves, who are required to submit trimestrial reports on their activities. Reports which, for physical exports, must include: the dates of customs clearance; the numbers of the customs declaration forms; and for air transport, details (not specified on the reporting form) of the air carrier.<sup>325</sup>
- However, the Customs Service also makes monthly reports to SSEC regarding exports of controlled goods which include details of flights, nature of goods, their quantity and type. Customs also reports quarterly to SSEC, the Presidency, State Security Service and the

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<sup>321</sup> Scientific and Technical Centre for Export and Import of Special Technologies, Hardware and Materials (STC), *Brief Overview of Ukraine's Export Control System* (n.d.).

<sup>322</sup> Interview with STC, 10 December 2008.

<sup>323</sup> See, e.g. Reports surrounding the MV Faina, a Belize-flagged vessel operated by a commercial Ukrainian shipping company, Tomex Team, transporting military equipment exported by Ukrinmash. In addition, least one other vessel, operated by a German shipping company, has also reportedly transported military equipment for Ukrinmash during 2008: see 'Deutsches Waffen-Schiff für Afrika', *Der Spiegel*, 11 October 2008.

<sup>324</sup> [www.dsecu.gov.ua/document/37016;/D-0101.doc](http://www.dsecu.gov.ua/document/37016;/D-0101.doc) (application form for all international transfers except transit), Section 22.7 (additional obligations for exports by air).

<sup>325</sup> Licence activity reporting form at [www.dsecu.gov.ua/document/37300;/375\\_dod3.doc](http://www.dsecu.gov.ua/document/37300;/375_dod3.doc) (accessed 24 January 2009).

Cabinet of Ministers regarding the activities of all transporters involved in transporting export-controlled goods.<sup>326</sup>

The authors were informed that transport authorisations themselves are similarly multi-channel:

- At the point of export during the customs process, the transport agent is required to present a 'departure permit' issued by the Civil Aviation Authority (CAA); this should in turn only be issued after CAA has received authorisation from SSEC.
- SSEC clearances for exports are also sent to the Customs Service directly.<sup>327</sup>

Prior to export, therefore, both exporter and transporter should have their permissions verified by aviation and customs authorities. After exports have taken place, it should also be possible to compare exporters' activity reports with customs' activity reports after exports have taken place.

### **Brokering and transit licences**

The frequency and volume of transits of SALW through Ukrainian territory are difficult to gauge. Some indication is afforded by reports of export and transit licences issued by SSEC for 2006 and the first part of 2007, which indicate that around a tenth as many transit licence applications are received as export licence applications.<sup>328</sup> This still amounts to several hundred during the course of a year.

#### **Arms Export and Arms Transit Licences Authorised by Ukraine in 2006**

| <b>2006</b>     | <b>Export</b> | <b>Transit</b> |
|-----------------|---------------|----------------|
| <b>Received</b> | <b>2,566</b>  | <b>290</b>     |
| <b>Approved</b> | <b>2,328</b>  | <b>258</b>     |

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<sup>326</sup> Interview with State Customs Service, 12 December 2008.

<sup>327</sup> *ibid.*

<sup>328</sup> STC, *Export Control Newsletter*, No. 1, 2007, pp. 25-28. We are grateful to Roy Isbister, Transfer Controls Team Leader at Saferworld (UK) for pointing out these figures and the possibility of this comparison.

The transit of military goods through Ukrainian territory in theory requires the same licensing from SSEC as exports,<sup>329</sup> although transit permits do not appear to specify air transport details (unlike export licence applications).<sup>330</sup>

Ukrainian business entities wishing to broker the third-State supply of any military goods must be registered with SSEC and obtain individual licences for each brokering transaction.<sup>331</sup> The authors were informed that at present, arms brokering remains a monopoly of the state-owned Ukrspetsexport and 'filial companies', to permit tight control over foreign trade activities.<sup>332</sup> However, a second State-owned company, TASKO-Export, was also reportedly granted the authority to broker a range of military equipment by the Cabinet of Ministers in 2007, although this expanded authority appears to have been countermanded by the President in December 2008.<sup>333</sup>

### **Delivery verification**

Exporters are required to provide delivery verification documentation to SSEC after a transfer has taken place, which must include: the date of shipment; details of the goods delivered; and delivery verification certification from authorities in the State of final destination.<sup>334</sup> In addition, the authors were informed that SSEC or other competent officials sometimes physically accompany sensitive exports to their destination - a method of physical verification which has a counterpart in the physical accompaniment of aircraft in Ukrainian airspace (see below).

### **3) Customs procedures in relation to the air transport of SALW**

The State Customs Service provides the principal physical control over the air transport of sensitive goods, including SALW. Customs' capacity to oversee and detect exports and transits of SALW appears fairly comprehensive. The authors were informed that all Ukrainian airports capable of landing transport aircraft or civil aircraft have a customs presence, and that in exceptional circumstances, customs officials were also sent to private airstrips to inspect cargo. All international flights are required to enter and leave through authorised 'border crossing' airports (just as land transport has to leave Ukraine through authorised border crossings).<sup>335</sup> Nor is military transport exempt - although dealt with through different (military) channels, the authors were informed that even Russia's Black Sea Fleet has to undergo customs procedures.

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<sup>329</sup> Decree of the Cabinet of Ministers No, 1807, 20 November 2003.

<sup>330</sup> [www.dsecu.gov.ua/document/37017;/D-0301.doc](http://www.dsecu.gov.ua/document/37017;/D-0301.doc) [transit permit form].

<sup>331</sup> Scientific and Technical Centre for Export and Import of Special Technologies, Hardware and Materials (STC), *Export Control Newsletter, No.1, June 2007*, p. 16.

<sup>332</sup> Interview with Scientific and Technical Centre for Export and Import of Special Technologies, Hardware and Materials (STC), 10 December 2008.

<sup>333</sup> 'Yuschenko suspends cabinet resolution on delegation of additional powers to export and import military goods to TASKO-export', *Interfax*, 9 December 2008.

<sup>334</sup> <http://www.dsecu.gov.ua/document/37024;/f0.doc> (delivery verification requirements).

<sup>335</sup> Interview with State Customs Service, 12 December 2008.

This comprehensiveness was confirmed by commercial transport agents interviewed by the authors, who stated that the level of cargo inspection in Ukraine, particularly of transit cargoes, was unusually high in comparison to European customs services. In this regard there appears to be some confusion with regard to customs powers to inspect cargo: materials provided to the report's authors by the Scientific and Technical Centre for Export and Import of Special Technologies, Hardware and Materials (STC) stated that although customs officials had the right to intrusively inspect transit goods, this had to be justified by force majeure, and had *never* occurred for military goods.<sup>336</sup> In contrast, this report's authors were informed by customs themselves that physical inspections of cargoes were generally based upon a 'red-flag' risk assessment system using 12-15 indicators ranging from incongruous routes listed on customs declarations to consignors not on the list of registered exporters of controlled goods. Nonetheless *all* military cargoes passing through customs were physically inspected. Commercial transport agents interviewed by the authors estimated that between 80 and 90% of *all* transit cargoes were physically inspected within Ukraine. Indeed, some of those interviewed cited this very high level of physical inspection as a reason for less scrupulous transport actors to evade customs controls.

Despite this large coverage of the customs inspectorate, only five staff within the central secretariat of the State Customs Service deal with export control issues, only two of which have any policy role.<sup>337</sup> This is perhaps because in organisational terms its role remains passive in relation to SSEC - its role is principally confined to identifying goods which should be subject to export controls. If customs have a suspicion about a cargo or carrier, they will consult SSEC, but not vice-versa (despite SSEC being tasked with making risk-assessments regarding transporters at licensing stage on which customs might have valuable information). Customs also receives information from the Civil Aviation Authority regarding trusted air carriers, in the form of a 'white list' of air carriers who have received authorisation to carry sensitive goods, which includes the names of authorised aircraft captains.<sup>338</sup>

In general, the authors were informed that the priority concern for customs was with dual-use goods being used for WMD applications. By contrast, military goods, including SALW, were easier to detect and verify, and generally involved fewer private consignees.<sup>339</sup>

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<sup>336</sup> Copy of report provided by STC official, 11 December 2008.

<sup>337</sup> Interview with State Customs Service, 12 December 2008.

<sup>338</sup> *ibid.*

<sup>339</sup> *ibid.*

**Customs Declaration Form:** harmonised with Single Administrative Document (SAD)

Summary of customs procedures as they apply to controls on the air transport of SALW

|  |  |
|--|--|
|  |  |
| Prior notification required for SALW transfers?  | Y  |
| If involving air transport, information is required on:  |  |
| - Details of the air carrier?  | Y  |
| - Details of the freight forwarder(s)?   | N  |
| - Registration and flag of any aircraft involved in the transfer?                                    | N (but can sometimes be determined if flight number given).                                |
| - Flight route and any planned stopovers?  | Y (only origin and destination airports).  |
| - Records of previous similar transfers by air?  | N (but customs declaration must be accompanied by authorisation of air carrier from SSEC). |
| Possible for a transfer to proceed without any information on transport being provided?              | N  |
| Submitted information systematically checked against the approved export licence?                    | Y  |
| Has shared information with other states about exporters, air carriers or freight forwarding agents? |  |

*\*Information compiled by authors from this study's questionnaires, interviews and other official sources.*

**4) The regulation of air cargo operators and transfers of SALW**

During the late 1990s and early 2000s, a number of Ukrainian air cargo operators were named in reports by UN investigative panels and human rights organisations as being allegedly involved in destabilising or illicit SALW transfers to conflict regions, often operating entirely outside of Ukraine. Two prominent ones are listed below:

| <b>Company</b>        | <b>Aircraft</b>                    | <b>Alleged transfers</b>  |
|-----------------------|------------------------------------|---|
| Ukrainian Airways     | Cargo<br>UR-UCK (An-12) and others | Anti-tank munitions from Bratislava (Slovakia) to Angola via Israel in 2001 on aircraft UR-UCK ( <i>Human Rights Watch, 2004</i> ).<br><br>Suspected of involvement in undeclared arms shipments to Tanzania, 2001 ( <i>Human Rights Watch, 2004</i> ).<br><br>Arms from Uganda to Ugandan forces in DRC, 1999 ( <i>International Crisis Group, 1999</i> ). . |
| Volare/Albatross Avia | Various aircraft                   | Il-76 from Ostrava (Czech Republic) detained in 2001 during re-fuelling at Burgas (Bulgaria) with arms suspected as being destined for Eritrea. ( <i>Amnesty International, 2006</i> ).   |

Unusually amongst the countries in this study, since at least 2003, Ukraine has brought air cargo operators within the purview of the export control system, perhaps partly in reaction to the above and similar allegations. This has added an additional layer of control to those already placed on air carriers through civil aviation air operator certificates and flight permissions:

**(i) SSEC military air carrier permit:** Under a 2003 Cabinet order ‘On Improvement of the Mechanism for Executing Control over International Air Transfers of Military and Dual-Use Goods’, air cargo operators must be licensed by SSEC to transport military goods, submitting information on authorised aircraft and crew members.<sup>340</sup>

**(ii) CAA AOC:** Air Operator Certificates granted to Ukrainian air cargo operators by the Civil Aviation Administration specify whether the carrier may transport (a) dangerous goods, and (b) weapons of war (the latter defined by an anti-terrorism committee of the Security Service of Ukraine).<sup>341</sup>

**(iii) CAA DG authorisation:** Licences (either flight-specific or general), established under ICAO standards, are also required by air cargo operators (including Ukrainian carriers operating outside of Ukraine) to carry dangerous goods, which should include SALW ammunition.

**(iv) CAA flight permission:** Flight plans for departures, landings and overflights of Ukrainian airspace must include a description of cargo (description and UN Dangerous Goods number), and notification of military or dangerous goods carriage. Such flight requests must be submitted 48 hours beforehand.<sup>342</sup>

<sup>340</sup> Decree of the Cabinet of Ministers № 690 of 20 November 2003 ‘On Improvement of the Mechanism for Executing Control over International Air Transfers of Military and Dual-Use Goods’.

<sup>341</sup> Interview with ICAO Institute, 11 December 2008.

<sup>342</sup> Interview with State Customs Service, 12 December 2008.

(v) **CAA departure permit for military goods:** The Civil Aviation Authority must issue a departure permit for any carrier (Ukrainian or otherwise) to leave Ukraine carrying military goods, issued only with SSEC's consent.

Thus five overlapping control mechanisms – two specific to air cargo operators, and three to flights themselves – control aspects of arms flights. The second and the third (which are responsible for implementing ICAO Annex 18 standards on licensing the carriage of dangerous goods and may not apply to SALW transported without ammunition) apply to *Ukrainian aircraft operating outside of Ukraine*. The authors were informed that Ukrainian CAA inspectors frequently inspect leased Ukrainian-registered aircraft operating in other States, although these inspections are likely to focus on safety issues.<sup>343</sup> Oversight of *foreign aircraft within Ukraine*, conversely, is in theory assured by rules requiring foreign aircraft to land initially at an international airport when entering Ukraine; and for non-CIS aircraft to move within Ukraine only with a Ukrainian 'flight navigator' on board.<sup>344</sup>

The authors were informed that only one Ukrainian air carrier, Ukrainian Cargo Airways (UATK) was currently authorised by SSEC to transport military goods, although other Ukrainian carriers have evidently been involved in transporting military goods in the past. In contrast to this strict control of military air cargo carriers themselves, other transport actors - including freight forwarders - have not been regulated or registered at all since 1998.<sup>345</sup> The authors are aware of at least three Ukraine-based freight forwarders involved in military transfers.<sup>346</sup>

While this strict, multi-tier system of authorisations for flights carrying arms enables thorough official surveillance of authorised SALW flights, the authority to sanction carriers who have been involved in *illicit* transfers appear less powerful. As with most States within the study, carriers may be stripped of their Air Operating Certificates (AOCs) only on safety grounds (including those of 'economic safety', or the financial stability of the company).<sup>347</sup> Equally, ramp inspections of both foreign and Ukrainian carriers are undertaken by CAA on safety grounds, working on Europe-wide (EASA) standards.<sup>348</sup> While such inspections may uncover illicit cargoes, this is not one of their purposes, and CAA authorities are not assisted by customs authorities, similar to some other States in the study. Nonetheless the frequent congruence of poor safety standards and illicit transfers makes this safety focus of some indirect use in preventing trafficking. As such, two Ukrainian carriers (both also appearing on the EU 'blacklist') had their AOCs suspended during 2007, and both were previously cited in credible reports of illicit or destabilising SALW transfers.<sup>349</sup>

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<sup>343</sup> Interview with ICAO Institute, 11 December 2008.

<sup>344</sup> Ukraine Civil Aviation Authority, *Information on Entry, Transit and Departure of Aircraft (n.d.)* (<http://avia.gov.ua/eng/index.htm> accessed 26 January 2009).

<sup>345</sup> Interviews with Ukrainian freight forwarders, 10 December 2008.

<sup>346</sup> Private communication.

<sup>347</sup> Interview with ICAO Institute, Ukraine, 11 December 2008.

<sup>348</sup> *ibid.*

<sup>349</sup> Interview with ICAO Institute, Ukraine, 11 December 2008, and private communication.

## Authorisations to carry SALW

### Summary of national regulations on air cargo carriers as they apply to controls on the air transport of SALW

|  |  |
|--|--|
| General licence required to engage in the transport of SALW and their ammunition?  | Y  |
| Licence required to engage in the transport of SALW and their ammunition on a case-by-case basis?  | Y  |
| Air carriers can be barred from operating in national territory:   |  |
| - If customs and/or law enforcement officials determine an aircraft's cargo includes SALW, and that its flight plan includes a destination subject to a UN arms embargo?         | Departure permit can be denied (but requires prior knowledge of SALW cargo).                         |
| - If customs and/or law enforcement officials determine that one of their aircraft's cargo includes SALW, and its flight plan includes a destination located in a conflict zone? | Departure permit can be denied (but requires prior knowledge of SALW cargo).                         |
| - If they are suspected of being involved in destabilising transfers of SALW?  | Departure permit can be denied (but requires prior knowledge of SALW cargo).                         |
| Do case-by-case approvals for carriage of SALW and their ammunition include:   |  |
| - Details of the air carrier?  | Y  |
| - Details of the freight forwarder(s)?   | Y  |
| - Registration and flag of any aircraft involved in the transfer?  | Y  |
| - Flight route and any planned stopovers?  | Only airports immediately before and after passage through Ukraine, and flight route within Ukraine. |
| - Records of previous similar transfers by air?  | N  |
| - Compliance with existing national legislation or international agreements relating to air transport of weapons?  | Y (authorisation for import/export from SSEC).   |

*\*Information compiled by authors from this study's questionnaires, interviews and other official sources.*

## 5) Conclusions

Ukraine operates a highly centralised, multi-tier and multi-channel system for controlling transfers of SALW. Unusually, air carriers have been integrated into this system since 2003.

### Good Practice

- The strength of this multi-channel system is the capacity it affords to SSEC to cross-check information on cargoes, exporters, transport modalities and transport actors submitted by commercial actors themselves, with parallel information and permissions submitted by other agencies (Civil Aviation and customs authorities). Unfortunately, the authors were unable to obtain information directly from SSEC regarding the details of their decision-making or verification procedures.

### Challenges

- Information flows within this system at licensing stage appear to be overwhelmingly one-way - from SSEC towards enforcement and transport authorities. This makes some sense, as SSEC is responsible for licensing both exporters/brokers, and air carriers themselves. At point of transfer, this tends to confine the role of customs and transport authorities to verifying that cargoes and carriers have been correctly authorised. Customs and transport authorities do not appear to play any wider role in making risk assessments based upon information which may only come to light at the point of export.
- There appears to be some confusion regarding the strict monopolies upon which tight control of air carriage of SALW (by UATK) and arms brokering (by Ukrspetsexport and filial companies) is theoretically based. In practice, it is evident that a range of other private companies and transport actors are sometimes involved in SALW transfers. This underlines the importance of seeking to supplement limited *authorisations* to commercial actors, with broader *outreach* to (and *surveillance* of) commercial and transport actors.

## Case Studies Conclusions

On the basis of the five case studies, and also the wider survey of a further 34 European States discussed in Part 2 (and Annexes), it is possible to identify some characteristic types of national approaches towards systems for controlling air transport of SALW. This section briefly introduces and discusses these.

### Key conclusions

#### Substantial national systems

All of the States examined in this study have **substantial national systems for controlling air transport of SALW**, the main elements of which include regulations, procedures and authorities for regulating arms transfers; customs controls, and civil aviation controls. However, in each State there are some **gaps or potential weaknesses**, and in some there appear to be important weaknesses, in one or more of the above aspects of controls or in the linkages between them. **In numerous cases, there appear to be major mismatches** between access to relevant information, responsibility and capacity for systematic risk assessments; and authority and capacity to enforce controls.

#### Varied procedures and systems

A further key overall finding is that the existing national systems for controlling air transport of SALW, and the wider national transfer and air transport control systems in which these are embedded, **vary substantially between European States**. Not only are there major differences in overall national approaches, but also variations in key details of regulations, practices and capacities add up to important distinctions on an overall system level. European States' existing systems thus remain very **heterogeneous**. Moreover, our survey indicates that such heterogeneity is likely to persist for the foreseeable future: there is no identifiable trend towards overall harmonisation.

This heterogeneity is not necessarily a profound problem in itself: there are several acceptable approaches towards effective national controls. However, it does affect the actual and potential roles of regional and international organisations and mechanisms in reinforcing these national controls, and it shapes and constrains strategies for promoting more effective controls across Europe.

#### State categories

Within this overall context, it is useful to highlight certain broad categorisations of States' in relation to controls on air transport of SALW. These mainly reflect a combination of differing contexts and policy priorities relating to SALW controls and different overall approaches towards arms transfer controls as they relate to transportation.

i) The first broad category includes States:

- **that have a relatively small SALW production industry or engagement in SALW transfers,**
- **which do not perceive air transport of SALW within their jurisdiction to present substantial problems or risks of diversion at present.**

The authorities generally know well the small community of export and transport actors typically involved in any SALW transfers that do take place. In response to our survey, such States tended to indicate ‘no priority’ for enhancing controls on air transport of SALW, and reluctance to revise their existing transfer licensing procedures to require information and limits on transit routes or modes of transportation, as recommended in the *WA Best Practices* document. **Sweden** appears to fall broadly into this category.

ii) A second category includes States:

- **with relatively explicit, rigid and explicit licensing controls on air transport of SALW,**
- **that do have significant numbers of transfers of used or new SALW (as exporters, importers and transit states), and which did identify air transport of SALW as a significant concern for them.**

Several Central and Eastern European States appear to fall into this category. For example, Ukraine has a complex, strict, and detailed system involving requirements for information on transportation at the licensing stage as well as a multi-channel control system for cross-checking during transportation and transshipment. A relatively large number of SALW transfers take place from or across its territory, and it recognises the importance of developing a good reputation for effective controls in this area. The challenges for several States in this category are to combine their existing strict administrative controls and cross-checks with effective risk assessments and appropriately restrictive licensing decisions, and also broader outreach and surveillance of local commercial and transport actors.

iii) A third category includes States

- with **significant quantities of SALW transfers and air transportation of SALW taking place within their jurisdiction,**
- which have **national control systems that focus mainly on pre-licensing risk assessments of SALW transfers and whose licensing system has only limited information requirements and limits relating to intermediaries, transportation or transit.**

Open licences are also sometimes available in these countries. For these States, the *WA Best Practices* guidelines are directly relevant, but mostly these are not yet fully implemented. This category includes numerous states, particularly in Western Europe and France is a good

example. In this category (as for the others), there are important opportunities for enhancing requirements relating to transportation at the licensing stage, and further developing links between licensing, customs and civil aviation authorities.

iv) A fourth category includes States which:

- **are a major transport hub for SALW and related transfers, even if they are not themselves major SALW exporters or importers.**

The Netherlands falls within this category. For these States, risks of diversion of SALW during transit are a substantial concern, but there are worries about imposing systematic transit licensing controls (which would be relatively burdensome). Such States tend to have relatively limited engagement with *WA Best Practice* Guidelines relating to integrating transportation and transit issues at the licensing stage. However, systems for customs controls, and enhanced linkages between customs and civil aviation controls, for air transport of SALW are particularly relevant and important for such States.

v) A fifth possible category includes States:

- **with significance scales of SALW transfers and transportation**
- that have **transfer control systems focussed on pre-licence risk assessments**, but which are seeking to bring transportation agents into the licensing regime in a similar way to brokering licences rather than pursuing the approaches envisaged in the *WA Best Practices*.

The **UK** falls into this category, and it is not yet clear whether other countries will follow a similar approach. This approach is promising in several respects, but it raises its own potential problems to ensure overall effectiveness of the national control system and., for example, highlighting challenges to ensure that non-UK transporters are fully covered.

These five broad categories should not be taken too seriously, in the sense that the characterisations are tentative and there are overlaps between them. However, they do highlight important distinctions, and they are useful as a reference point for drawing conclusions and recommendations from this study.



## **5 Conclusions: Findings, Strategic Approaches and Priorities for Action**

This final section analyses the implications of our findings for future priorities to enhance controls on air transport of SALW, in Europe and beyond. It discusses the main conclusions and findings, and presents strategic approaches to enhance the effectiveness of national control systems, and to develop the capacities and roles of regional and international organisations and mechanisms in this context. In doing so, it aims to inform strategic planning by interested States and organisations on priorities for future action in this area.

### **5.1 Existing national controls and implications**

Parts 2 and 3 of this study confirm that although all of the European States have substantial national regulation, procedures and practices for controlling air transport of SALW, virtually all existing national systems appear to have weaknesses that should be addressed – and some appear to be inadequate. Further national, regional and international initiatives and measures are needed to strengthen national controls and to improve co-operation and co-ordination between them.

In principle, there are several distinct strategic medium-to-long term potential approaches towards strengthening controls of air transport of SALW in Europe. These include:

- Aim to identify and elaborate a ‘model’ system for national controls, and to take initiatives to negotiate agreement amongst European States to adopt and implement these. This approach would promise the benefits of harmonisation, including elimination of loopholes in controls due to incommensurate national systems; improve understanding of the national controls of neighbouring states; and facilitate regional and international co-operation mechanisms that are optimised to support the adopted model national controls.
- Aim to develop a strong regional control system, involving a substantial shift of responsibilities and resources from national systems towards EU, regional or international agencies in selected key areas. This approach would promise benefits from pooled monitoring, assessment and enforcement resources; and enable regional bodies plus States with strong national resources and commitment to controls to directly help to address weaknesses in less developed States.
- Aim for a pragmatic incremental approach of periodic awareness-raising initiatives and ad-hoc bilateral assistance projects within existing frameworks, to gradually enhance adoption by a large majority of European States - at least of the basic WA Best Practices and OSCE Guidelines for controlling air transport of SALW. This minimalist approach is obviously politically feasible, and promises limited but real practical progress amongst willing States while avoiding difficult international negotiations and risk of noticeable failure.

All of these potential strategic approaches have their limitations and it is not possible to wholeheartedly recommend one at the expense of the other two.

The first of the potential approaches is superficially attractive, but the information gathered in the study highlights that it is not likely to be feasible and that a ‘harmonisation’ debate is unlikely to be productive, illustrated by responses from several States regarding differing priorities in SALW control, and commitments to existing national measures controlling SALW air transport. It is clear from the survey and analysis that national systems and approaches

towards controlling air transportation of SALW vary substantially within the EU and more widely across Europe. As discussed in the case study conclusions, there are a number of different characteristic national approaches towards such controls, and there is no indication that such diversity is likely to reduce in the near future. The third of these is most feasible, but is too limited on its own to offer serious prospect of substantial progress towards effective controls on air transport of SALW across Europe.

**Part 3** of this report, and the reluctance expressed by some States in questionnaire responses to engage with more formal information-sharing or institutional collaboration, illustrates that the second **potential approach outlined above is not politically realistic in the present context**. Even if it was, it is not clear that the immense political effort required to achieve a substantial shift from national to regional control systems would bring major benefits for effective controls on SALW air transport in the foreseeable future. This is not to rule out enhanced roles for regional and international organisations – on the contrary, this study has identified useful opportunities in this area. In particular, highlighting the important role that EU air safety mechanisms have played in restricting the activities of air cargo carriers that are involved in illicit or destabilising SALW transfers. Sustaining this impact is achievable and would not require a significant additional transfer of powers from the national to the EU level. Overall, any effort in this area should be designed to support and reinforce national control systems rather than to supersede them.

The third of these is most feasible, but is too limited on its own to offer serious prospect of substantial progress towards effective controls on air transport of SALW across Europe. The first of the above options is superficially attractive, but the information gathered in our study highlights that it is not likely to be feasible and that a ‘harmonisation’ debate is unlikely to be productive, illustrated by responses from several States regarding differing priorities in SALW control, and commitments to existing national measures controlling SALW air transport. It is clear from our survey and analysis that national systems and approaches towards controlling air transportation of SALW vary substantially within the EU and more widely across Europe. As discussed in **4 “Case Studies conclusions”**, there are a number of different characteristic national approaches towards such controls, and there is no indication that such diversity is likely to reduce in the near future.

When considering these potential approaches, there are two important criteria to note from the overall examination in this study:



Most governments have reported that they believe that their overall national approach and system for **controlling air transport of SALW is either actually or potentially effective**, even if elements of their existing controls could usefully be strengthened.



In some cases, where there are **admitted potential weaknesses or gaps** arising from the existing national approach, the governments concerned have reported that they believe that the actual problems of diversion or destabilising transfer of SALW through air-transport within their jurisdiction are **not sufficiently serious to justify a major review** of their overall approach to SALW transfers controls.

This is not to suggest that there is little dynamism in the development of some national control systems relating to air transport of SALW. In some countries, such as the **UK**, there are recent important reforms underway that will imply major changes in national approaches. Useful lessons can be learned from these, as well as from established systems of other States. Once

again, however, these new initiatives will not reduce the diversity of national approaches, and may even increase them.

This context has important implications for the development of realistic and useful strategic medium-long-term approaches for enhancing controls on air transport of SALW in Europe. It is important to recognise that it is inevitable for the foreseeable future that national control systems on air transport of SALW will continue to be profoundly heterogeneous.

Thus:



**A good overall strategic approach** towards improving controls must **fully accommodate this diversity, and focus on developing and implementing elaborated best practice guidelines** designed to ensure the overall effectiveness of national *systems* of controls as much as of the elements of such systems.

## 5.2 Needs and priorities of systems of national controls

The development of regional and international good practice guidelines relating to any aspect of SALW transfer controls, including controls on air transport, has been gradual and hard to achieve. The focus and framework of such guidelines has typically been constrained by the scope and norms of the regional or international arrangement in which they have been developed. For example, the WA is an international export control regime, and has therefore tended to focus on guidelines for considering and approving transfer licences, and this is reflected in the emphasis of the *WA Best Practices* on transfer licensing. Frameworks for co-operation on other strategic aspects, such as enforcement of controls on air carriers, have been distinct and subject to different norms and primary objectives. For example, aviation safety concerns dictating harmonisation over the carriage of 'dangerous goods' rather than 'weapons'. This has resulted in a relatively fragmented or partial approach to regional or international discussions of controls on air transport of SALW and other military goods.



However, the **situation is ripe for initiatives that aim to promote a more integrated approach that focuses on the overall system of national controls**, and this study provides an evidential basis for such an approach.

Each system of control (export, customs and civil aviation) can broadly be understood as stages through which a typical authorised transfer of SALW by air will have to pass through when leaving, transiting or arriving from, via or to different national territories. ***They represent the points at which an illicit or destabilising transfer of SALW by air transport can be prevented or intercepted by the different national authorities.***

Each authority (export control, customs and civil aviation) has access to different types of information about a particular transfer and also different powers at its disposal to prevent potentially illicit or destabilising shipments from taking place. These factors derive from the differences in the goals of each authority. Export licensing authorities are typically tasked with prohibiting shipments based upon *policy* or *risk assessment*. Customs authorities are tasked with preventing the unauthorised *physical* movement of goods. Finally, civil aviation control systems

can contribute to prevention or control measures but they mainly focus on aviation safety rather than on trade control or counter-proliferation.

Each of the three main dimensions of controls on air transport of SALW has its own well-developed history, experience, institutions, professional and expert communities, and challenges. This survey has clarified and contributed to information on national regulations, procedures and practices in each of these areas, particularly focussing on selected key aspects of the ways each national control system works:

- Collection and availability of information relevant to ensuring controls of SALW air transport;
- Assessment of such information, to identify risks or problems;
- Authority and capacity to use such information and risk assessments to prevent or combat diversion or destabilising transfers of SALW.

These different elements are critical at each stage of the control process: for transfer licensing decisions; for controlling transportation routes and arrangements; and for control during physical transportation to the authorised end-user.

As is clear from Parts 2 and 4 of this study, different national systems have different patterns and distributions of responsibility, access and authority relating to information collection, assessment, and control. However, any effective or functioning national system must include the same key elements in some way.

As **2.2 “Understanding the reality of States’ practices”** demonstrated, in many existing national systems, there is a major mismatch between:

- those authorities with the most **information about the risk of diversion or undesirable destinations**, and
- those authorities with primary **responsibility and powers to prevent a shipment from taking place** on these grounds.

For example, arms transfer licensing authorities are typically tasked with regulating or restricting shipments based upon *policy* or *risk assessment*, but usually do not have the most information regarding the nature and route of the cargo being shipped. Conversely, customs authorities may receive more detailed information regarding the nature and destination of the cargo, but tend not to have clear responsibility for assessing and preventing risks of diversion, instead seeking to intercept undeclared or mis-declared goods. Similarly, civil aviation authorities may have more detailed information than transfer licensing authorities about whether the route of the shipment includes destinations of concern or presenting a risk of diversion. Yet they are often not properly aware of diversion issues and in any case are typically unable to stop flights they suspect may be diverted in the absence of other irregularities, tangential to the transfer of arms, such as non-compliance with aviation safety or noise standards.

These examples emphasize the clear need for improved systems of cooperation and information sharing between the different authorities that have a role in the control of SALW transfers by air transport.

### **5.3 A Strategic Approach for Enhancing Controls on Air Transport of SALW**

An overall strategic approach should aim to go beyond incremental initiatives within existing frameworks and guidelines, to accelerate and focus efforts to ensure effective controls. It accepts that national controls will, and should, continue to be the main mechanism for controlling SALW

transfers, including their air transport, but it supports initiatives to enhance and strengthen the contributions that existing regional and international organisations can make.



**Our recommended strategic approach is to move away from a fragmented focus on different aspects of national controls on air transport of SALW.** Instead, the focus should shift towards the overall ways in which each country's national regulations, procedures and practices combine as systems to ensure adequate and effective gathering, analysis and use of relevant information and risk assessments at each stage of the control process: transfer licensing systems; authorisation and control of transportation routes, shippers and arrangements; and control of the physical delivery of SALW to the authorised end-user.

Thus, the approach is to build on existing WA *Best Practices* to focus on measures and guidelines to promote and ensure that each national system not only has the key elements required for each different aspect of controls (and not just transfer licensing), but also that the capacities and responsibilities for assessment and control are effectively linked.

Within this framework, initiatives to enhance the contribution from regional and international agencies or mechanisms should be designed to facilitate the development and operation of joined-up national systems of controls as well as to support particular aspects of the control systems.

## **5.4 Priorities for key elements of national control systems**

2.2 “Understanding the reality of States’ practices” and the case studies presented an overview of the information gathered from all of the States covered by the study as well as the more in-depth detail from France, the Netherlands, Sweden, Ukraine and the UK. While the analysis demonstrated that the WA *Best Practices* are not yet widely adopted or used to review and strengthen national controls, it also presented several areas of potential best practice.

Within the framework of the recommended overall strategic approach outlined above, in this sub-section, issues, priorities and emerging good practices are highlighted in relation to a number of key aspects of controls on air transport.

### **5.4.i Further steps by national licensing authorities**

While a number of States request detailed information on transport modalities to be submitted to the licensing authorities prior to the licence being granted, many States do not, and often appear unwilling to create such systems. Moreover, in the case of States that did have such systems in place, it was often unclear how the information was being used: particularly whether it was being actively fed into systems of risk assessment. There is a clear need for greater information exchange among States on the practicalities of integrating information on transport modalities into national licensing procedures, in order to convince States that the creation of such mechanisms are possible.

Good practice examples of national controls in this context include:

**Romania:** exporters must provide the authorities with all elements of the transfer five days before it is due to take place.

**Poland:** companies are obliged to inform Ministry of Economy about any change of mode of transportation, trade partners, air carriers or exit points.

**Sweden:** an air waybill must be submitted prior to authorising a transit licence.

#### **5.4.ii Increased cooperation between transfer licensing and customs authorities**

Several States have well-developed systems of cooperation and information sharing between the licensing and customs authorities. In particular, these involve sharing information on licence approvals and denials as well as other intelligence information collected by the licensing authorities. Sharing this information with customs can assist customs authorities with the development of risk indicators and the identification of illegal or undeclared shipments.

Good practice examples of national controls in this context include:

**The Netherlands:** customs authorities manage a sophisticated risk profiling system, fed by large array of information from other government agencies.

#### **5.4.iii Increased cooperation between transfer licensing and civil aviation authorities**

While several States have well-developed systems of cooperation and information sharing between the licensing and customs authorities, there is less evidence of strong lines of communication between licensing officials and CAAs. Cooperation between licensing and civil aviation authorities can assist licensing authorities with incorporating information on transport modalities into the licensing process. In the opposite direction, such cooperation can also enable CAAs to integrate concerns relating to diversion into their general and flight specific authorisations for dangerous goods or SALW movements. Given the transnational characteristics of many illicit SALW transfers and transfer actors, integrating SALW detection and regulation efforts into civil aviation controls would allow European States to exercise controls not simply on transport actors within their territory, but on *aircraft* connected to their national territories that operate elsewhere, and *flights* passing through their national territories. This would be a valuable means of leveraging European controls on SALW flights in less well-regulated areas. However, this might necessitate a more fundamental reassessment of the role of CAAs in the prevention of illicit or destabilising SALW transfers - something that some national agencies may resist.

Good practice examples of national controls in this context include:

**Ireland:** landing or overflight of any 'munitions of war' are issued by the Department of Transport in consultation with the Department of Foreign Affairs, Department of Justice, the Irish Aviation Authority, and the Department of Defence.

**Estonia:** licensing authorities have initiated a dialogue with the Estonian CAA about the possibility of creating a compulsory SALW air transportation declaration.

#### **5.4.iv Increased cooperation between customs and civil aviation authorities**

Cooperation could also involve joint responsibility on the part of customs authorities and CAAs in carrying out air safety (ramp) inspections. By involving customs authorities in the performance of ramp inspections, authorities would stand a higher chance of detecting cases where an air carrier that is shipping SALW ammunition is flying without the necessary export, transit or transshipment licences. Conversely, the involvement of customs authorities in ramp inspections would also assist with the identification of shipments of SALW ammunition without the appropriate dangerous goods authorisation, since customs authorities are more likely to have information indicating which air carriers are likely to be involved in such transfers.

A good practice example of national controls in this context is:

**The Netherlands:** customs authorities and CAAs are jointly responsible for carrying out air safety inspections, making them ideally situated to spot undeclared SALW.

#### **5.4.v Improving mechanisms used by customs authorities**

Once transfer licences have been approved, customs authorities are central to the control of SALW transfers. However, in many countries it is not clear that customs authorities have the necessary range of powers and responsibilities, access to information, capacities to conduct and use risk assessments, and control capacities. In many countries customs do not appear to have the capabilities, powers or procedures to conduct an appropriately comprehensive risk assessment of shippers and transportation routes. In others there appear to be inadequate verification of documentation against the content and route of the actual shipment.

Good practice examples of national controls in this context include:

**The UK:** comparison of customs declarations and export licence applications performed automatically via the Automatic Licence Verification (ALV) process.

**Estonia:** exporters must notify the customs authorities 24 hours before the transaction takes place, providing the specifics of the transaction.

**Malta:** information demanded by shippers includes copy of bill of landing or air waybill, invoice and accompanying transfer licence.

#### **5.4.vi Develop systems aimed at collecting and systematizing information**

While many States noted the importance of information sharing, either through the WA or the EU Code, no licensing authority provided concrete examples of information being specifically shared on air cargo carriers that had been involved in illicit SALW transfers. There is a clear need for the provision of accurate and timely information on the activities of air carriers that have been involved in illicit or destabilising transfers of SALW in order to inform licensing risk assessments, and to target enforcement efforts.

It seems apparent that this information needs to be based on more than just export licence denials, since too few States have integrated the provision of detailed information on transport modalities into their licensing processes. Developing and maintaining such an information

resource is a challenge. The development and use of SitCen assessments is an interesting case in point. On request, SitCen developed a 'Watch List' of suspect air cargo carriers, on the basis of intelligence available. However, SitCen has had difficulty turning this list from a 'one-off' exercise into a regularly maintained, up-to-date service; and there exist equal obstacles to sharing *nominal* intelligence-based information with 'civilian' authorities. As a result, the country case studies in this report show a relatively low level of exposure to the SitCen list by transfer licensing authorities, customs or civil aviation authorities.

In developing such a service, resources will also need to be made available. In doing so, States should seek to apply lessons learned from the experiences of NGO and UN-led investigations into violations of UN arms embargoes, since these have proved to be the most reliable source of information in this field. States could also devote greater resources to the extraction of available open-source information in order to compile a publicly accessible database on air cargo carriers that have been involved in illicit or destabilising SALW transfers.

A good practice example of recent efforts in this area:

**CIT-MAP** - Created an open source database with information on air cargo carriers that have been named in a UN or other arms trafficking-related report.

#### **5.4.vii - Identifying national authorities as most useful information recipients**

Ensuring that licensing officials have up to date information on the activities of air cargo carriers and freight forwarders that have been involved in illicit SALW transfers is a logical way of preventing such transfers from taking place. However, if States have not integrated the provision of detailed information on transport modalities into their transfer licensing processes, then the licensing authorities cannot use the information received to inform their export licence decision-making. In the case of such States, the provision of a list of air cargo carriers that have been involved in illicit or destabilising SALW transfers will be of little use to the licensing authorities. However, depending on the national control systems in place, the list may be of interest to the customs or CAA. For example, if the customs authorities have systems of risk profiling in place, then they might find such information to be of use.

 If the CAA is involved in granting permissions for foreign carriers to carry dangerous goods on their national territory, it might also be able to operationalise this information. The ostensibly limited dissemination of the SitCen Watch List to national officials with day-to-day responsibilities for licensing or transfer control enforcement, again provides lessons on the need to accurately identify which officials will have an interest in receiving this type of nominal information.

#### **5.4.viii Integration into existing brokering licence requirements**

to the study did not to identify any States which demand information on transport modalities in brokering licence applications. However, there does appear to be some scope for considering the provision of air services to itself be a form of brokering activity. This would then require air carriers that are registered within a particular State to apply for a form of brokering licence when they are going to engage in particular transfers. At least one State, the UK, is introducing such a mechanism into domestic brokering legislation.

A good practice interesting example of national controls in this context is:

**The UK** - has decided to place controls on the provision of transport of SALW supplied by UK companies direct to overseas customers when the service involves the movement of SALW between third States.

#### **5.4.ix Develop improved mechanisms of delivery verification**

Without information regarding the transport agents involved in a shipment, the risk of en-route diversion or concealment of the cargo is evidently difficult to assess. In place of prior risk assessment, licensing authorities may instead require the licensee to demonstrate that deliveries have reached their authorised consignee or end-user after the fact. A number of States covered by the study have well-developed systems of delivery verification in place. However, many do not presently have such systems. Moreover, other States also indicated the need for greater coordination amongst States in the implementation of delivery verification procedures.

Good practice examples of national controls in this context include:

**Romania:** exporters are obliged to provide a DVC (Delivery Verification Certificate) within 4 months of a transfer taking place.

**Sweden:** the licensing authority carries out regular inspection visits to monitor the companies' internal export control mechanisms and programmes.

#### **5.4.x National and international mechanisms limiting involvement in SALW transfers**

A more direct means of tackling illicit and destabilising transfers of SALW would involve placing limitations on which air cargo carriers are permitted to carry SALW. All States are legally obliged under the Chicago Convention to place controls on which air carriers registered with the national authorities are able to engage in the transport of dangerous goods. However, dangerous goods categories only cover SALW ammunition and not many SALW themselves. Moreover, the standards which national CAA's apply in this area typically cover only air safety issues, and not issues relating to the diversion of SALW transfers. Developing systems either at the national or international level would be dependent on the creation of reliable and objective indicators that would be able to identify air carriers that pose a risk of diversion. This, in turn, would be largely dependent on the development of effective mechanisms of information generation and exchange.

Good practice examples of national controls in this context include:

**Romania:** New provisions for the registration of all transporters of defence articles, including SALW.

**The Netherlands:** Requires non-Dutch carriers to have a licence to handle dangerous goods in the Netherlands.

**IATA:** exploring the possibility of developing a single 'quality mark' for air cargo operators that include criteria relating to SALW transfers.

#### **5.4.xi The role for EU air safety regulations in limiting the activities of air carriers**

The EU's targeting of air carriers that violate air safety standards has also served to capture a significant number of air carriers that have been involved in destabilising SALW transfers. The powers at the disposal of the EU, including the implementation of EU-wide flight bans, have proved remarkably effective in terms of their impact upon the activities of the list of air carriers involved in illicit or destabilising SALW transfers. In order for this impact to be sustained, proactive steps are needed to alter the way that EU air safety regulations are designed and implemented to ensure that companies do not simply re-register their assets and continue to operate under a different name. In addition, steps are needed to ensure that the standards of air safety that apply within the EU, also apply in other parts of the world where these air cargo carriers continue to operate.



It is important to consider the possibility of expanding the scope of responsibilities of civil aviation authorities, including regional and international authorities, to contribute to controls against diversion as well as safety.

#### **5.4.xii –Elaborated controls, decision-making and risk assessment**

In assessing the existing implementation of measures similar to the WA *Best Practices*, one significant geographical finding of this study has been that countries which rigidly gather information on transport modalities of SALW transfers, or systematically licence cargo carriers of weapons themselves, are substantially (but not exclusively) concentrated in Central and Eastern Europe; often in States which have nonetheless been subject to allegations of illicit or destabilising SALW transfers by air. Other States in this study rely upon a complex set of overlapping systems and authorities of control in regulating various aspects of export control, air transport and cargo carriage.

This typology is a somewhat crude generalisation of the study's findings, nonetheless it indicates some limitations to elaborated controls on air transport modalities or transport actors.



Elaborated controls can only be effective when accompanied by adequate and transparent decision-making within control authorities, and adequate risk-assessment procedures by those authorities.

From this summary of the findings framed within the recommended holistic strategic approach building on *Best Practices*, it is possible to devise possible initiatives for improving effective controls.

## 5.5 Potential initiatives for effective European controls on air transportation

- **Promote discussions in WA, OSCE and EU** fora on needs, possible guidelines and criteria for effectively linked national systems of licensing and customs regulations and practices for control of SALW transportation. Focus on: ensuring effective and appropriately comprehensive *connections* between information collection and checking; risk assessments; decision-making responsibilities and enforcement powers across the system.
- **Promote ‘peer reviews’ of national systems for controls** on air transportation of SALW amongst EU, WA and OSCE States, thereby taking advantage of existing national good practices identified in this report. Focus on reviewing and reporting on the extent to which national systems are adequately linked in relation to information, assessment and controls.
- **Promote a review of civil aviation authorities’ mechanisms.** The review should identify opportunities to enhance CAAs' awareness and contributions to SALW transfer control systems, consistent with their primary responsibilities. This could include ways of promoting sustainability of their present contributions through air safety regulations.
- **Promote and enhance mechanisms to provide capacity-building assistance** and support to develop effective overall national systems for control of SALW transportation. In addition to bilateral assistance, regional mechanisms or programmes should also be considered, perhaps initially in the form of ‘coalitions of the willing’.
- Consider ways in which **SitCen could contribute more systematically to risk assessments** and controls to prevent diversion of SALW transfers transported by air. Focus on the dissemination of the SitCen air carriers 'watch list' to actors with day-to-day responsibility for risk assessment and enforcement of SALW and air transport controls.
- Further explore the **mechanisms through which EU air safety regulations could be adapted** and modified in order to sustain their already significant impact on the activities of air cargo carriers that have been involved in illicit or destabilising SALW transfers.
- **Promote establishment or development of a series of combined meetings** of relevant national customs control, transfer licensing and civil aviation authorities to consider and promote guidelines for effective collaboration between these authorities to improve controls on SALW transport in EU States.
- **Organise an inter-regional expert workshop**, to share regional experiences and guidelines relating to controls of air transport of SALW, with a view to establishing this as an agenda-item in the 2010 UN Programme of Action Biennial Meeting of States (PoA BMS).



# **ANNEXES**



## Annex 1 - Summary of Questionnaire responses and in-depth case studies

### i) Questionnaires

Questionnaires were sent out to the **34 States** covered by the study at the start of October 2008 (27 EU Member States plus Belarus, Croatia, Norway, Russia, Switzerland, Turkey and Ukraine). Officials were given a deadline of 31 October 2008 to return completed forms. A full version of the questionnaire was sent to either a COARM or Wassenaar Arrangement contact point in national Ministries of Defence or Ministries of Foreign Affairs. They were asked to either fill out the questionnaire themselves or in coordination with other departments.

Section 3 of the questionnaire, which covers national systems for monitoring and control of actual exports and imports of SALW by air transport, was also sent directly to the national customs authorities of each State. Section 8, which covers the role of aviation authorities, was also sent directly to the national Civil Aviation Authorities of each State. In all cases, the main point of contact was informed of this process. Questionnaires were received and processed on a regular basis since mid-October 2009.

- **17 States** submitted fully completed questionnaires:

**Belgium, Bulgaria, Croatia, Estonia, Finland, France, Hungary, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Romania, Sweden, Switzerland and the United Kingdom.**

- **10 States** submitted partially completed questionnaires:

**Cyprus** (section 3 and 8 received), **the Czech Republic** (part of entire questionnaire received), **Denmark** (section 3 received), **Germany** (section 8 received), **Ireland** (section 3 received), **Italy** (section 8 received), **Norway** (section 8 received), **Portugal** (section 3 received), **Slovenia** (section 3 received) and **Spain** (part of full questionnaire and section 3 received).

- **7 States** did not provide responses. Some had indicated their willingness to do so, while others failed to indicate any willingness to complete the questionnaire, with contacts either not being established or not being continued from their side.

In **Austria** and **Slovakia**, time was lost as the questionnaire was passed between various administrations. We believe a response could have been possible if the correct person had been identified more easily.

**Ukraine** did not provide an answer to the questionnaire, However, a field visit to the country was completed which provided more detailed information on issues covered by the questionnaire.

Although officials in **Greece** had promised a response during our numerous contacts with them, we did not secure a response. Furthermore, the French Ministry of Defence had indicated that Greece did not respond to the Wassenaar Arrangement questionnaire sent out by the French government, so response expectancy was low.

The remaining States were **Belarus, Russia** and **Turkey**. As per indications from the French Ministry of Defence that Russia did not respond to the Wassenaar Arrangement questionnaire sent out by the French government, response expectancy from Russia was low.

## ii) In-depth case studies

Successful field trips were conducted in **France, the Netherlands, Sweden, Ukraine, and the United Kingdom** during December 2008 to February 2009. The authors are particularly grateful to the French Embassy in Kiev for assistance received.

Officials in **Bulgaria** demonstrated a strong reluctance to meet for interviews. Emails and faxes were sent to officials within the Bulgarian Foreign Ministry, the Ministry of Economy and Energy, the Customs Authorities and the Civil Aviation Authorities in October and November 2008, requesting interviews in mid-December. While officials said they would be willing to respond to written questions in writing they said they were unwilling to meet for interviews. Officials within the Ministry of Economy and Energy stated that the research team would need to contact the Ministry of Foreign Affairs if face-to-face interviews were needed. However, officials at the Ministry of Foreign Affairs stated that the subject of the study was outside of their competence and that interviews needed to be arranged directly with the Ministry of Economy and Energy.

The French Embassy in Sofia provided assistance and contacted the relevant officials in January 2009 on behalf of the research team. Bulgarian officials pledged their full cooperation with the study and agreement was reached with representatives of the Bulgarian customs authorities on a face-to-face meeting. However, representatives of the Ministry of Economy and Energy and the Civil Aviation Authority continued to decline requests for interviews. Since these two departments were considered to be the most important for the purposes of the investigation, the decision was taken to not undertake the Bulgarian case study. Nonetheless, it should be noted that officials within the Ministry of Economy continued to reply to written questions in writing, providing important information for the overall study. In consultation with the French government, Cyprus was chosen as a replacement case study. However, it was subsequently decided by the French government that Cyprus was inappropriate for the purposes of the study, and the decision was taken not pursue this case study.

## **Annex 2 - Copies of questionnaire responses submitted**

### **Note:**

Due to its length, Annex 2 -, Copies of questionnaire responses submitted (original language) – is not included in this document. It can be found in a separate document.



## **Annex 3 - list of possible checks which might be made by competent authorities on shipments of SALW at each stage of licensing and control**

### **1) Licensing process**

Require import certification and check against:

- consignee and destination
- quantity of SALW

Require delivery verification certificate and check against:

- decrement of licence against quantity of SALW on DVC

For brokering/transit:

- check export licence from country of origin

### **2) Customs**

Export & transit licence checked against customs declaration:

- licence number
- consignee and destination
- decrement of licence against quantity of SALW on customs declaration

Commercial invoice checked against customs declaration:

- consignee and destination (ensure consignee is fully described with address & contact details)
- quantity of SALW (ensure SALW are fully described on customs declaration)

Cargo manifest & air waybills checked against customs declaration:

- consignee and destination
- quantity of SALW (ensure SALW are fully described on air waybills)

### **3) Civil aviation authority**

Require carriage of weapons of war notification

Synchronise weapons of war notification against standardised export categories (either HS codes or military list ratings)

Dangerous goods notification: request licensing documentation for certain UN hazmat codes (list)

Ask for origin and destination countries of goods in carriage of weapons of war notification

Check flight plan request against air waybills

Consignee (or intermediate consignee) should match destination country

#### **4) Ramp inspections**

Check commercial documents:

- check shipping note to see if carrying dangerous goods/weapons
- check aircraft registration certification
- check call-sign against aircraft registration certification
- check captain's log-book against flight plan
- check aircraft landing fee/handling charges against flight plan

## **Annex 4 – flow of information spreadsheet**

The spreadsheet illustrates the flow of information and documentation which may typically take place during a shipment of SALW by air transport. It then compares this documentation flow against three standards for the control of SALW shipments.

### **In the diagram:**

'X' indicates usual inclusion of a piece of information on a document.

'?' indicates that a piece of information is sometimes included on documents in some states in this study.

'W' indicates information recommended by the Wassenaar Arrangement's *Best Practices*.

'O' indicates information recommended by the OSCE's *Standard Elements*.

'EU' indicates information recommended by the EU Code of Conduct's *User's Guide*.

**Where specific standard documents have been used to exemplify particular documents, this is indicated in square brackets after the document name.**

**Flow sheet of documentation and information**

| Information typically included                         | STAGE 1: License Application (export, brokering, transit/transshipment) |                          |                      |                                    |                                  | STAGE 2: Civil aviation procedure |                           |                              |   |  | STAGE 3: Customs Procedure |  |   | STAGE 4: Carrier/ transport documentation |                                |                                       |                | STAGE 5: Ramp Inspection (on occasion)                        |                   |               |                                      |                              |
|--|---|--------------------------|----------------------|------------------------------------|----------------------------------|-----------------------------------|---------------------------|------------------------------|---|--|----------------------------|--|---|---|--------------------------------|---------------------------------------|----------------|---|-------------------|---------------|--------------------------------------|------------------------------|
|  | DOCUMENT  | Licence Application Form | End-User Certificate | Import Authorisation Certification | Export/brokering/transit licence | Delivery Verification Certificate | Flight Permission Request | Dangerous Goods Notification | Carriage of Weapons of War Notification | Aircraft Landing/ Handling Fee receipt | Captain's Voyage Report    | Customs Declaration [Single Administrative Document] | Certificate of Origin (of goods) [EU standard CO] | Decrement (entered on Export Licence)     | Commercial Invoice (for goods) | Air Waybills [IATA Universal Waybill] | Cargo Manifest | Shipping Note (on handling of goods) [Standard Shipping Note] | Captain's Logbook | Technical Log | Certificate of Aircraft Registration | Certificate of Airworthiness |
| SUBMITTED (to authorities) or CREATED (by authorities) | SUBMITTED   | SUBMITTED                | SUBMITTED            | CREATED                            | CREATED                          | SUBMITTED                         | SUBMITTED                 | SUBMITTED                    | CREATED                                 | SUBMITTED                              | SUBMITTED                  | SUBMITTED  | CREATED   | SUBMITTED                                 | SUBMITTED                      | SUBMITTED                             | SUBMITTED      | SUBMITTED   | SUBMITTED         | SUBMITTED     | SUBMITTED                            | SUBMITTED                    |
| Exporter   | X   | X O EU                   | ?                    | X                                  |                                  |                                   |                           |                              |   |  | X                          | X  | X   | X   | X                              | X                                     | X              |   |                   |               |                                      |                              |
| Consignee  | X   | ?                        | X                    | X                                  | X                                |                                   | X                         | X                            |   |  | X                          | X  | X   | X   | X                              | X                                     | X              |   |                   |               |                                      |                              |
| End-User   | X   | X O EU                   | ?                    | X                                  | X                                |                                   |                           |                              |   |  |                            |  | X   | ?   |                                |                                       |                |   |                   |               |                                      |                              |
| Carrier  | W   |                          |                      |                                    |                                  |                                   | X                         | X                            |   |  | X                          |  |   |   |                                |                                       | ?              |   |                   |               |                                      |                              |
| Freight Forwarder                                      | W   |                          |                      |                                    |                                  |                                   |                           |                              |   |  | X                          |  |   |   | X                              |                                       | ?              |   |                   |               |                                      |                              |
| EUC Number/Date  | X   | X O EU                   |                      | ?                                  |                                  |                                   |                           |                              |   |  |                            |  |   |   |                                |                                       |                |   |                   |               |                                      |                              |
| Name and contacts of                                   |   | X O EU                   | X                    |                                    | ?                                |                                   |                           |                              |   |  |                            |  |   |   |                                |                                       |                |   |                   |               |                                      |                              |
| Export Licence Number/Date                             |   |                          |                      | X                                  |                                  |                                   | ?                         | ?                            |   |  | X                          |  | X   |   |                                |                                       |                |   |                   |               |                                      |                              |
| Export Authorisation from SALW                         | ?   |                          |                      | ?                                  |                                  |                                   |                           |                              |   |  | ?                          |  |   |   |                                |                                       |                |   |                   |               |                                      |                              |
| Import Authorisation Certificate                       | ?   |                          | X                    | ?                                  |                                  |                                   | ?                         | ?                            |   |  | X                          |  |   |   |                                |                                       |                |   |                   |               |                                      |                              |
| Contract Date  |   | ?                        | O                    |                                    |                                  |                                   |                           |                              |   |  |                            |  |   |   |                                |                                       |                |   |                   |               |                                      |                              |
| Contract No./Reference                                 |   | ?                        | O EU                 |                                    |                                  |                                   |                           |                              |   |  |                            |  |   |   |                                |                                       |                |   |                   |               |                                      |                              |
| Delivery Verification Certificate                      |   |                          |                      |                                    | X                                |                                   |                           |                              |   |  |                            |  |   |   |                                |                                       |                |   |                   |               |                                      |                              |
| Origin Country   | X W   |                          |                      | X                                  |                                  | X                                 | X                         | ?                            | ?                                       | X                                      | X                          | X  | X   |   | X                              | X                                     | X              | X   |                   |               |                                      |                              |
| Transit Countries                                      | W   |                          |                      | ?                                  |                                  | X                                 | X                         | ?                            | X                                       | X                                      |                            | ?  |   |   | X                              | X                                     |                | X   |                   |               |                                      |                              |
| Destination Country                                    | X W   | X O EU                   | X                    | X                                  | X                                | X                                 | X                         | ?                            | ?                                       | X                                      | X                          | X  | X   | X   | X                              | X                                     | X              | X   |                   |               |                                      |                              |
| Origin Airport   | W   |                          |                      |                                    |                                  | X                                 | X                         | ?                            | ?                                       | X                                      | X                          |  |   |   | X                              | X                                     | X              | X   |                   |               |                                      |                              |
| Transit Airports                                       | W   |                          |                      |                                    |                                  | X                                 | X                         | ?                            | X                                       | X                                      |                            |  |   |   | X                              | X                                     |                | X   |                   |               |                                      |                              |
| Destination Airport                                    | W   | ?                        |                      |                                    | X                                | X                                 | X                         | ?                            | ?                                       | X                                      | X                          | X  | X   |   | X                              | X                                     | X              | X   |                   |               |                                      |                              |
| Date of Shipment                                       |   |                          |                      |                                    | X                                | X                                 | X                         | X                            | X                                       | X                                      | X                          | ?  | X   |   | X                              | X                                     | ?              | X   |                   |               |                                      |                              |
| Flight Number  |   |                          |                      |                                    | X                                | X                                 | X                         | X                            | X                                       | X                                      | X                          |  |   |   | X                              | X                                     | ?              | X   |                   |               |                                      |                              |
| Aircraft Operator                                      | W   |                          |                      |                                    |                                  | X                                 | X                         | X                            | X                                       | X                                      | X                          |  |   |   | X                              | X                                     | ?              | X   | X                 | ?             |                                      |                              |
| Aircraft Owner   |   |                          |                      |                                    |                                  |                                   |                           |                              | ?                                       | ?                                      |                            |  |   |   |                                |                                       |                | ?   |                   | X             | X                                    |                              |
| Aircraft Reg. No.                                      | W   |                          |                      |                                    |                                  | X                                 | ?                         | ?                            | X                                       | X                                      |                            |  |   |   |                                | X                                     |                | X   | X                 | X             | X                                    |                              |
| Aircraft Call-Sign                                     | W   |                          |                      |                                    |                                  |                                   |                           |                              | X                                       | X                                      |                            |  |   |   |                                | X                                     |                | ?   | ?                 |               |                                      |                              |
| Aircraft Flag  | W   |                          |                      |                                    |                                  | X                                 | ?                         | ?                            | X                                       | X                                      |                            |  |   |   |                                | X                                     |                | X   | X                 | X             | X                                    |                              |
| Air Operating Certificate No                           |   |                          |                      |                                    |                                  | ?                                 | ?                         | ?                            |   |  |                            |  |   |   |                                |                                       |                |   | ?                 |               |                                      | X                            |
| SALW Type  | X   | X O EU                   | X                    | X                                  | X                                |                                   | X                         | X                            |   |  | X                          | X  | X   | X   | X                              | X                                     | X              |   |                   |               |                                      |                              |
| SALW Quantity  | X   | X O EU                   | X                    | X                                  | X                                |                                   | X                         | X                            |   |  | X                          | X  | X   | X   | X                              | X                                     | X              |   |                   |               |                                      |                              |
| SALW Value   | ?   | EU                       | ?                    | ?                                  | ?                                |                                   | ?                         | ?                            |   |  | X                          |  |   | X   | X                              |                                       |                |   |                   |               |                                      |                              |
| SALW Weight  |   |                          |                      |                                    | ?                                |                                   | ?                         | ?                            |   |  | X                          | X  |   |   | X                              | X                                     | X              |   |                   |               |                                      |                              |
| Quantity/Size of Packages/Containers                   |   |                          |                      |                                    | ?                                |                                   | ?                         | ?                            |   |  | X                          |  |   |   | X                              | X                                     | X              |   |                   |               |                                      |                              |
| SALW Country of Origin                                 | ?   |                          |                      |                                    |                                  |                                   |                           |                              |   |  | X                          | X  |   |   |                                |                                       |                |   |                   |               |                                      |                              |
| Standardised Customs Code (HS/CN etc.)                 |   |                          |                      | ?                                  |                                  |                                   |                           |                              |   |  | X                          |  |   |   |                                |                                       |                |   |                   |               |                                      |                              |
| UN Dangerous Goods Code                                |   |                          |                      |                                    |                                  |                                   | X                         | ?                            |   |  |                            |  |   |   |                                |                                       | X              | ?   |                   |               |                                      |                              |

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