

Controlling Air Transport

PRACTICE, OPTIONS, AND CHALLENGES

In recent years, attention has increasingly focused on the role of transportation agents—especially in the civil aviation sector—in the execution of illicit arms transfers. This attention has rested on two main arguments. On the one hand is the idea that, despite their centrality in the arms trade, air transportation agents enjoy a level of regulatory freedom that creates situations easily exploitable for illicit ends. On the other is the realization that because transportation leaves physical traces—such as cargo manifests and flight records—it is an area with great potential for identifying and stopping illicit arms flows.

At the political level, these arguments have given rise to an initiative led by the French and Belgian governments aimed at increasing—or better coordinating—states' controls on private companies engaged in the transportation of cargo by air. The initiative produced a set of control guidelines that were adopted within the Wassenaar Arrangement and the Organization of Security and Co-operation in Europe. It also promoted greater controls by European Union member states, including the sharing among relevant national agencies of a 'watch list' of air companies known or suspected of involvement in transporting illicit small arms consignments.

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

In order to contribute to the current debate on the issue—as well as to offer a critical assessment of the recent suggested control measures—this chapter presents an analysis of the laws, regulations, and procedures currently applicable to the transportation sector, particularly by air. The analysis, conducted on the basis of a sample of 23 major small arms-exporting states, covers three main bodies of law: arms export legislation, customs laws, and civil aviation regulations.



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

The chapter shows that there is a significant body of law applicable to the control of the transportation of arms by air, comprising both direct and indirect controls. The application of such controls towards preventing or stemming illicit small arms flows, however, faces several challenges, including the lack of coordination among the various spheres of control within a single state. Most often, this means that all the information concerning an arms transfer is not concentrated in one institution but rather scattered among many.

Additional challenges include: huge variations in the capacity, authority, and effectiveness of civil aviation authorities across countries; overlapping or inconsistent rules; and the practice adopted by many irresponsible air companies of registering in states where transport rules are not strict or not enforced (regulatory gaps).

At a more fundamental level, however, the effective application of existing customs and civil aviation measures to illicit small arms trafficking is prevented by the divergent goals of the various control agencies, and by the different definitions of priorities and 'security risks' held by each institution.

Other main findings of the chapter are the following:

- Concrete initiatives to control (air) transportation agents have been hampered by the debatable claim that the globalized nature of trade, the large number of economic actors, and the tendency to outsource arms transport-related services to third parties make this unfeasible. In this sense, the French–Belgian initiative has marked an important turn in the debate on the illicit small arms trade.
- Arms transfer regimes in the majority of the world's major exporting countries control transportation directly—through licensing—or indirectly—through the submission of transport information by exporters.
- Customs rules and procedures can be used to trace fully the transport segment of an arms transfer.
- Civil aviation rules are not specifically aimed at preventing arms trafficking. Many of their provisions, however, could be adapted to this goal, particularly those relating to aircraft registration and safety and security measures.
- The successful thwarting of small arms trafficking by air will require engaging a much wider spectrum of actors, including customs officials and civil aviation authorities, not only at the policy-making level, but also through monitoring and enforcement.

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