

Levels and Characteristics of the Illegal Trade in Conventional Arms

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When it comes to the transfer of conventional arms, there is a large gap in the available data. This gap stems in part from the existence of a substantial black market for military equipment, allowing for conventional arms to change hands undetected. Despite the massive threat this produces, there is very little literature examining the happenings on the illicit conventional arms market. This article aims to highlight some of the data gaps present in the current literature. The most common methods used to illicitly transfer arms are described and it is explained how arms traffickers use these to circumvent regulations. Some select case studies should help to illustrate the matter further.

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I. Introduction

During the Cold War, many countries set up stocks of arms that exceeded their requirements.¹ The political paranoia produced secret arms caches throughout Europe.² The widespread use of restrictions and embargoes,

1 Peter Lock, *Pervasive Illicit Small Arms Availability: A Global Threat* (1999) 4, 9, 10.

2 Ibid; see also Owen Greene, 'Examining International Responses to Illicit Arms Trafficking' in Mark Phythian (ed), *Under the Counter and over the Border* (2000) 151, 168.

intended to hinder the flow of conventional arms to warring countries, did not affect the need for such material, fuelling the demand for arms through illicit channels at a state level.³ A large fraction of illicitly traded weapons has at some stage been exported from European countries.⁴ Today, every country in the world is in some way involved in the global arms trade.⁵ The modern arms trade is largely motivated by economic interests rather than security concerns.⁶ If an attempt is to be made to control the illicit trade and keep the damage under control, it is crucial to determine how the illicit trade works. However, the existing literature provides very little empirical data on the illicit conventional arms trade. Therefore, and in an attempt to shed some light on this data gap, this article examines known cases of illicit trades in conventional arms to try and identify commonalities between them. As the number of exposed incidents is limited, some of the cases examined date back several years, while certain circumstances, such as geographical regions or conflict areas, differed from today's. To avoid distorting the results as much as possible, these cases were examined under the conditions prevalent at the time.

The first section of this article will provide the definitions for the different categories of conventional arms subject to this paper, while the second section illustrates what is known about the illicit trade in conventional arms today and where the major gaps lie. Some possibilities of preventing or hindering the illicit trade are also discussed. This section is intended to be indicative rather than exhaustive, and aims at providing an idea of the nature of the illicit arms trade, as well as the difficulties in exposing it. Finally, the conclusion will summarise the findings and provide some recommendations for filling the gaps.

3 Mark Phythian, 'The Illicit Arms Trade: Cold War and Post-Cold War' in Mark Phythian (ed), *Under the Counter and over the Border* (2000) 1, 20.

4 Greene (n 2) 168.

5 Rachel Stohl, *Understanding the Conventional Arms Trade* (2017) 1.

6 Laurence Lustgarten, *Law and the Arms Trade, Weapons, Blood and Rules* (2020) 441, 442; Stohl (n 5) 7.

II. Definition of Conventional Arms

The term ‘conventional arms’ includes all arms that are neither chemical, biological, nor nuclear.⁷ The United Nations Register of Conventional Arms (UNROCA) includes battle tanks, armoured combat vehicles, large calibre artillery systems, combat aircraft and unmanned combat aerial vehicles, attack helicopters, warships, and missiles and missile launchers.⁸ Excluded are small arms and light weapons, as those are subject to separate regulations and controls, and produce a different set of issues.⁹

A *battle tank* is a tracked or wheeled vehicle with high cross-country mobility.¹⁰ It is armoured for protection and carries combat weapons including a direct fire main gun of at least 75 millimetres calibre.¹¹ Similarly, an *armoured combat vehicle* also has armoured protection and either serves to transport at least four infantrymen or is outfitted with a weapon of at least 12.5 millimetres or, alternatively, a missile launcher.¹² Large calibre artillery systems include guns, howitzers (or combinations of the two), mortars or multiple-launch rocket systems with a calibre of 75 millimetres or more.¹³ They deliver primarily indirect fire.¹⁴ Combat aircraft and unmanned combat aerial vehicles are manned or unmanned fixed wing or variable-geometry wing aerial vehicles that engage targets by employing weapons of destruction.¹⁵ Furthermore, any version of these aircraft that performs specialized electronic warfare, suppression of air defence or reconnaissance missions is also included.¹⁶ Attack helicopters are rotary-wing aircraft that engage targets by employing guided or unguided weapons controlled by an integrated fire control and aiming

7 United States Department of Defense, *Department of Defense Dictionary of Military and Associated Terms*, 12 April 2001 (As Amended Through 31 October 2009) (2001) 122.

8 UN Register of Conventional Arms, ‘Transparency in the global reported arms trade, Categories of major conventional arms’ (Web page, undated).

9 Stohl (n 5) 2.

10 UN General Assembly, *Continuing operation of the United Nations Register of Conventional Arms and its further development*, Note by the Secretary-General, UN Doc A/74/211 (2 July 2019) annex I.

11 Ibid.

12 Ibid annex IV.

13 Ibid annex I.

14 Ibid.

15 UN Register of Conventional Arms (n 8).

16 Ibid.

system including versions of these aircraft which perform specialized reconnaissance or electronic warfare missions.¹⁷ *Warships* are either vessels or submarines, equipped for launching missiles or torpedoes with a range of at least 25 kilometres.¹⁸ Lastly, *missiles* are guided or unguided rockets or missiles that deliver a warhead or a weapon of destruction to a range of 25 kilometres or more.¹⁹ A *missile launcher* is an object modified specifically to launch such rockets or missiles, if it does not fall under the previously listed categories.²⁰

III. Understanding the Term ‘Illicit’

The 1996 report of the United Nations Office for Disarmament Affairs defines illicit arms trafficking as ‘international trade in conventional arms, which is contrary to the laws of States and/or international law’.²¹ Article 3(e) of the *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition*²², supplementing the *United Nations Convention against Transnational Organized Crime*²³, describes illicit trafficking as ‘the import, export, acquisition, sale, delivery, movement or transfer of firearms [...] from across the territory of one state Party to that of another state Party if any one of the state parties concerned does not authorise it in accordance with the terms of this Protocol or if the firearms are not marked in accordance with article 8 of this Protocol’.

While these are valid attempts in defining the illicit trade, there is no commonly agreed definition of what constitutes an illicit international

17 UN General Assembly (n 10) annex I.

18 Ibid.

19 Ibid.

20 Cf *ibid* for more information on the definition of the seven categories of conventional arms.

21 UN General Assembly, *Report of the Disarmament Commission*, UN Doc A/51/42 (22 May 1996) annex I, I(7).

22 Opened for signature 31 May 2001, 2326 UNTS 208 (entered into force 3 July 2005).

23 Opened for signature 15 November 2000, 2225 UNTS 209 (entered into force 29 September 2003).

arms transfer.²⁴ Where there is a formal definition given, it tends to be vague.²⁵ The difficulty in finding an internationally agreed definition may lie in the understanding that defining what the term 'illicit' means is a sovereign act of deciding exceptions.²⁶ The main aspect of working understandings of illicit transfers is the arms flows being unauthorised by the states involved.²⁷ Therefore, for the following article, the term 'illicit' shall be understood as the transfer of conventional arms which has not been properly authorised in accordance with the respective national legislation. What the national legislation dictates, varies according to the countries involved in the transfer.

IV. The Illicit Trade

The arms industry generated high annual earning for select countries during the Cold War period²⁸, not least because many countries acquired stocks of arms greater than their actual need.²⁹ Restrictions and embargoes intended to hamper the flow of military and related equipment to warring countries, but had no effect of the demand, forcing several states to acquire their material through illicit channels.³⁰ Combined with the political paranoia of the time, this led to secret arms caches being set up throughout Europe.³¹

Once the Cold War ended, the demand for conventional arms plummeted due to embargoes and pressure from foreign countries.³² Most western countries engaged in worldwide surplus sales and donations.³³ This meant

24 Mike Bourne, 'Controlling the Shadow Trade' (2011) 32(1) *Contemporary Security Policy* 215, 216.

25 Ibid 217.

26 Ibid 216 – 217.

27 Ibid 217.

28 Phythian (n 2) 32.

29 Lock (n 1) 4, 9, 10.

30 Jana Arsovska and Panos A. Kostakos, 'Illicit arms trafficking and the limits of rational choice theory: the case of the Balkans' (2008) 11(4) *Trends in Organized Crime* 352, 359; Bourne (n 24) 225; Greene (n 2) 153; Phythian (n 2) 32.

31 Lock (n 1) 10; Greene (n 2) 168.

32 Phythian (n 2) 32.

33 Lock (n 1) 10.

a transfer from relatively safe storage towards less protected, more fragile environments.³⁴ Ineffective inventory monitoring and lacking exports controls, as well as official corruption, have enabled some material to leak onto the black market.³⁵ This means that a large proportion of arms sold on the black market was originally manufactured under government control, came from military stockpiles, or was otherwise obtained legally.³⁶

Today, the illicit arms trade is ultimately driven by demand and adjusts to international crises.³⁷ Arms smuggling often involves individuals or institutions who are not part of a criminal organisation, such as national defence ministries, national security agencies, banks, or legitimate arms dealers.³⁸ While there are many different ways of acquiring conventional arms illicitly and there is no 'one size fits all' method, there are some 'actions' that tend to emerge in many cases. While the following means are described separately for better illustration, it must be noted that these methods play together in guiding the actions of perpetrators. It is for this reason that the case studies, while used to demonstrate specific means, often show elements of several methods; it is also important that all means be considered while evaluating an individual case.

1. Conduits

As previously mentioned, most weapons originated from legal sources and were at some point diverted to the black market.³⁹ Since conventional arms are often very heavy and large, it is difficult to hide and smuggle them the same way traffickers would transport smaller equipment. One option is to use conduits, meaning that the material is channelled through intermediate countries to avoid arms embargoes or restrictions.⁴⁰

34 Arsovska and Kostakos (n 30) 359; Lock (n 1) 10.

35 Arsovska and Kostakos (n 30) 359; Glenn E. Curtis and Tara Karacan, *The Nexus among Terrorists, Narcotics Traffickers, Weapons Proliferators, and Organized Crime Networks in Western Europe* (2002) 33; Greene (n 2) 168; Lock (n 1) 10.

36 Greene (n 2) 153; Keith Krause, *Small Arms and Light Weapons: Proliferation Processes and Policy Options* (2000) 18.

37 Curtis and Karacan (n 35) 2; Greene (n 2) 153; Stohl (n 5) 7.

38 Curtis and Karacan (n 35) 2.

39 Bourne (n 24) 219; Greene (n 2) 153; Krause (n 36) 18.

40 Phythian (n 2) 9.

In 1991, two Pinochet-era generals were convicted for arms trafficking from Chile to Croatia, in spite of the UN arms embargo in place at the time.⁴¹ The shipment of eleven tonnes of weapons and ammunition, which was intercepted by UN officials in Hungary, was disguised as humanitarian aid to Sri Lanka.⁴²

In another case, European intelligence reported significant activity by Italian and other European crime organisations in 2001⁴³, where the groups were smuggling arms to Palestinian groups in the Middle East.⁴⁴ The arms were channelled through the Syrian government and sold to various Arab clients⁴⁵, using two routes, namely Brussels-to-Beirut and Milan-to-Beirut.⁴⁶ Italian crime organisations have offered to sell a variety of heavy weapons for a price below standard international rates through Arab intermediaries.⁴⁷ Among the weapons on offer was a French-made guided missile.⁴⁸

The national control measures of the individual countries aimed at fighting the illicit trade in conventional arms differ greatly and show varying levels of success.⁴⁹ While some countries have strong control systems and obey international standards, others fail to fulfil even basic control measures, allowing for more or less porous borders.⁵⁰ One important national measure is the implementation of national arms trade legislation.⁵¹ This legislation presents a legal basis for governments to licence and register arms producers, traders, transporters, brokers, and owners and regulates the process of authorising arms transactions.⁵² The case studies have shown that arms traffickers channel shipments through countries with lacking control measures, while porous borders mean the illicit transfer is less likely to be recognized and exposed than is the case in countries with strong control systems. As a consequence, traffickers use this to their advantage.

41 Arsovska and Kostakos (n 30) 362; BBC News, 'Chile generals convicted over 1991 Croatia arms deal' (Web page, 20 January 2012).

42 Ibid.

43 Curtis and Karacan (n 35) 13.

44 Ibid.

45 Ibid; see also Phil Williams, 'Drugs and Guns' (1999) 55(1) *Bulletin of the Atomic Scientists* 46, 46.

46 Ibid.

47 Ibid.

48 Ibid.

49 Stohl (n 5) 3–4; Nicholas Marsh, 'Two Sides of the Same Coin? The Legal and Illegal Trade in Small Arms' (2002) 9(1) *Brown Journal of World Affairs* 217, 218.

50 Stohl (n 5) 4.

51 Ibid.

52 Ibid.

2. Diversion

Diversion occurs when seemingly legitimate sales are manipulated, leading to the weapons reaching the actual target state by a devious route.⁵³ Such diversion can occur through deceptive practices in obtaining weapons, government disposals, theft from stockpiles, in-transit diversion to different destinations, or by supposedly legal recipients retransferring the weapons to illicit ones.⁵⁴

The communist regime of Enver Hoxha in Albania placed massive emphasis upon weapon supplies and a powerful army.⁵⁵ After communism fell, many weapons were looted from army stockpiles and continue to circulate in Albania today.⁵⁶

To successfully divert the arms, the perpetrators falsify documentation,⁵⁷ hide shipments, mislabel containers, or pay bribes to corrupt officials for them to issue false paperwork, to name just a few practices.⁵⁸

One example is Leonid Minin, who was based in Italy and received documentation in Belgium. He specialized in Kalashnikov rifles, rocket-propelled grenades and launchers, ammunition, and specialized combat equipment, which he sold in return for gems. Much of the material originated in Russia, Belarus, and Bulgaria, while the deliveries were typically transported from Ukraine to Burkina Faso, the shipment's official destination. By using end-user certificates stating the Burkina Faso military as the recipient, the Ukrainian government officials who licensed the transfer were covered. The material was then flown to Liberia with Minin's private jet and subsequently transported to Sierra Leone.⁵⁹

An effective supplement to national legislation can be provided by developing international export criteria.⁶⁰ These criteria are based on international norms and standards, and can provide a reference point as

53 Lustgarten (n 6) 10.

54 Bourne (n 24) 220; Marsh (n 49) 224; Greene (n 2) 153.

55 Arsovska and Kostakos (n 30) 362.

56 Arsovska and Kostakos (n 30) 362; Greene (n 2) 173.

57 Falsifying documents may include forgery, false, misleading, or incomplete information, and unauthorised diversion of authorised shipments, see Mark Bromley and Hugh Griffiths, 'End-user Certificates: Improving Standards to Prevent Diversion' (2010) 3 *SIPRI Insights on Peace and Security* 1, 7.

58 Bourne (n 24) 220; Marsh (n 49) 225; Phythian (n 2) 9.

59 Curtis and Karacan (n 35) 16–17.

60 Since 2008, the eight export criteria given in the EU Code of Conduct on Arms Exports are legally binding to state parties.

to whether or not a transaction should be authorised.⁶¹ The export criteria are often combined with control lists detailing both the weapons and weapons systems that require an export licence and authorisation by the government, and also include lists of destinations subject to restriction, such as arms embargoes.⁶² Unfortunately, the lists specify only certain categories of weapons and do not encompass all weapons.⁶³ For instance, weapons of mass destruction, such as nuclear weapons, are not included in the register.⁶⁴ The licensing process aims to control the movement of weapons subject to the control lists, meaning the export out of, import into, and transit and trans-shipment⁶⁵ through different states.⁶⁶ In cases where the shipment is likely to be diverted, the denial of an export licence can help to prevent the arms from reaching the intended recipient or at least complicate the transfer.⁶⁷

A licence is granted and a transaction is confirmed by using standardised documentation.⁶⁸ The types of documents required in a licence application vary depending upon the nature of the transfer and may include end-user certificates or statements,⁶⁹ import licences or import certificates, official purchase orders, or delivery verification certificates.⁷⁰ The licensing process includes the verification of this documentation, as well as the registration of the actors involved, risk assessment of the end-users, and special systems for the review of high-risk cases.⁷¹ Although various agreements and best practice guidelines stress the importance of end-user certificates,

61 Stohl (n 5) 4.

62 Ibid.

63 UN Office for Disarmament Affairs, *Assessing the United Nations Register of Conventional Arms* (2009) 11–12.

64 Ibid.

65 'Transit' is the carrying of material through a country, while 'Transshipment' means the process of unloading the material in one country and then re-loading it for the further transport to the destination, see Lustgarten (n 6) 11 n 33.

66 Stohl (n 5) 4.

67 Bromley and Griffiths (n 57) 1.

68 Stohl (n 5) 4.

69 An end-user certificate is a government-issued document which identifies, at a minimum, the wares to be transferred, the end-user and the destination country. Additional information, such as assurances regarding the use and re-transfer or information about the end-user, may be included. End-user statements are privately-issued documents issued by the commercial entity buying the wares, see Bromley and Griffiths (n 63) 2, 5.

70 Bromley and Griffiths (n 57) 2; Stohl (n 5) 4.

71 Bourne (n 24) 220.

several states continue to issue certificates that lack the minimum elements needed to properly assess the shipment in question.⁷² With only little information on the transfer provided, the true intention is hard to recognise, which makes such documents vulnerable to abuse and allow for possible diversion of the material.⁷³ The unfortunate lack of guidance relating to the issuing, monitoring and assessment of privately issued end-user certificates (also referred to as end-user statements)⁷⁴, import licences and import certificates means such documentation must rely on the integrity of the commercial entities issuing the documents to ensure the arms are not diverted.⁷⁵ However, the strategic and economic interests of the suppliers may persuade them to turn a blind eye to the illicit trade, allowing potential diversions and rendering the use of end-user certificates ineffective for international arms control.⁷⁶

In Sweden, Nobel Kemi and Bofors, two subsidiaries of Nobel Industries, were involved in a major operation to supply Iran through conduits, violating Sweden's prohibition to deliver arms to warring states.⁷⁷ Singapore was such an important conduit for Sweden that by 1985, it had become the world's second-biggest importer of Swedish arms.⁷⁸ Following the investigation into the case, several senior Bofors officials resigned, including the managing director, Martin Ardbo.⁷⁹ After evidence was uncovered that Bofors had funnelled illicit shipments through conduits to Iran, Ardbo claimed the government had been involved in the deals, recommending the shipments be routed through conduits like Singapore to avoid attracting attention.⁸⁰

Scandinavian Commodity, a Malmö-based company owned by Karl Erik Schmitz, was an important link between the Swedish companies, the other cartel members, and Iran.⁸¹ Schmitz routed a shipment from Italy through Yugoslavia, from where it would be shipped to Iran through the Suez Canal.⁸² Schmitz admitted to paying Kenya 10'000 US dollars for false end-user certificates stating Kenya as the recipient.⁸³ Those

72 Bromley and Griffiths (n 57) 7.

73 Bromley and Griffiths (n 57) 7.

74 *Ibid.* 5.

75 *Ibid.* 9.

76 Phythian (n 2) 8.

77 *Ibid.* 10.

78 *Ibid.*

79 *Ibid.*

80 *Ibid.*

81 *Ibid.* 11.

82 *Ibid.*

83 *Ibid.*

documents were presented at the Suez Canal to avoid the attention of Egyptian authorities, for ships destined for Iran had been seized in the past.⁸⁴

Transparency measures are crucial to maintain an overview of the global conventional arms transfers.⁸⁵ The belief is that by understanding which country is selling which weapon and to whom will increase the security of the international arms trade.⁸⁶ One such control mechanism is the United Nations Register of Conventional Arms ('UNROCA'). Countries can report on the transactions from all the categories of conventional arms described in the registry, as well as on the arms already in their possession, and on the weapons they obtained from domestic production. Additionally, countries can report on their national defence policies or national export legislation.⁸⁷ Unfortunately, the UNROCA specifies only certain categories of weapons and does not encompass all weapons.⁸⁸ Furthermore, the reports to the UNROCA are optional, meaning the individual countries are not obligated to report their transactions.⁸⁹ The degree of transparency depends upon the individual states providing full information on their arms transfers.⁹⁰ Participation levels have fluctuated significantly since the register went into operation.⁹¹ Non-participating states can only be captured indirectly through their role as exporters or importers in the reports or reporting states.⁹² However, should a non-participating state act as importer and exporter in the same transaction, their activities would not be captured.⁹³ In addition, there has been some sensitivity to the full disclosure of information, mainly concerning missiles and missile

84 Ibid.

85 Stohl (n 5) 3.

86 Ibid 3–4.

87 For all three variants the registry includes battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft and unmanned combat aerial vehicles, attack helicopters, warships and missiles and missile launchers as well as small arms and light weapons, see UN Register of Conventional Arms, 'Transparency in the global reported arms trade, About' (Web page, undated).

88 'About', UNROCA – Transparency in the global reported arms trade (web page, undated) <<https://www.unroca.org/about>>.

89 'Home', UNROCA – Transparency in the global reported arms trade (web page, undated) <<https://www.unroca.org/about>>.

90 UN Office for Disarmament Affairs, *Assessing the United Nations Register of Conventional Arms*, UNODA Occasional Paper Number 16, New York: United Nations, 2009 21.

91 Ibid 15.

92 Ibid.

93 Ibid 22.

launchers.⁹⁴ While the UNROCA's objective of transparency is achieved to some extent, the data provided is far from complete, as the register can neither capture all the transfers, nor reliably provide full information on the transactions that are covered by reports.⁹⁵

3. Corruption

Various processes require a certain involvement by the state governments.⁹⁶ Corruption is seemingly endemic in the arms trade and has been central to numerous highly-publicised scandals in countries all over the world.⁹⁷ Enormous amounts of money have been drained from public funds and diverted to the hidden enrichment of officials.⁹⁸ Often governments act as buyers and high civil servants, military officers, prominent business executives, and politicians are their accomplices.⁹⁹ This is particularly detrimental to developing countries, where citizens have health, educational and subsistence needs.¹⁰⁰

Early smuggling channels in Bosnia were set up by the head of the Counter-Intelligence Service.¹⁰¹ Allegedly, he made an agreement with the Bosnian Defense Minister, who himself was involved in arms trafficking from Vienna to Sarajevo, to refrain from interfering with weapons shipments from Serbia through Bosnia to the Serbian-held regions in Croatia.¹⁰² In return, the secret service redirected some of the weapons to the Bosnian-Muslim army.¹⁰³

In the Arms to Iraq affair, Saddam Hussein obtained British arms via a shipment seemingly purchased by Jordan.¹⁰⁴ The Managing Director and two assistants of a machine tool manufacturing company in the UK were prosecuted for selling their products to Iraq, violating export control regulations.¹⁰⁵ However, the trial was aborted

94 Ibid 21.

95 Ibid 22.

96 Bourne (n 24) 226–227.

97 Lustgarten (n 6) 8.

98 Ibid.

99 Lustgarten (n 6) 9; Block, Alan, *East Side, West Side: Organizing Crime in New York, 1930–1950*, London and New York: Routledge, 2017 58.

100 Lustgarten (n 6) 9.

101 Arsovska and Kostakos (n 30) 361.

102 Ibid.

103 Ibid.

104 Lustgarten (n 6) 10–11.

105 Ibid 108–109.

in 1992 by the presiding Judge when it came to light that a Minister who had been involved in making export guidelines more 'flexible' had encouraged the Defendants to mask the possibility of military use and instead highlight the civilian application of the equipment.¹⁰⁶

Legal and constitutional accountability is undermined through different practices.¹⁰⁷ Secrecy is an important factor, as exports are regularly assisted and even encouraged by governments not only for security, but also for economic reasons.¹⁰⁸ This secrecy surrounding the arms trade has made way for corruption to develop.¹⁰⁹ This can be seen in the fact that many exporting countries have experienced scandals relating to corruption in the arms trade.¹¹⁰ The companies engaged in these scandals are often at least partly publicly owned and subsidised by the state, meaning that public funds are being abused.¹¹¹ Investigations into such transactions are often excluded or restricted and any results are withheld from the public.¹¹² Supplementing that is the fact that freedom of information legislation often encompasses general exclusions that fit the arms trade well, undermining its effectiveness for uncovering government cover-ups.¹¹³ This means that evidence of discussions and decisions about how arms deals came to be and what they entailed are excluded from public discussion and parliamentary examination.¹¹⁴ Scandals leading to high profile investigations have managed to penetrate this secrecy, but even then the released documents are often heavily redacted.¹¹⁵

A further prominent example of state-sponsored trafficking is the 'Orao' case.¹¹⁶ The contract was for exporting weapons and military equipment to Iraq, signed between a Serbian arms trading company and the Iraqi government.¹¹⁷ In October 2002, NATO

106 Ibid 109; see also Richard Norton-Taylor, 'Iraq arms prosecutions led to string of mis-carriages of justice', *The Guardian* (online), 9 November 2012.

107 Lustgarten (n 6) 20.

108 Ibid.

109 Ibid.

110 Ibid.

111 Ibid.

112 Ibid 20–21.

113 Ibid 21.

114 Ibid.

115 Ibid.

116 Dejan Anastasijevic, *Organized Crime in the Western Balkans* (2006) 11; Arsovska and Kostakos (n 30) 364.

117 Ibid.

forces searched an air force maintenance facility called 'Orao' in Bosnia.¹¹⁸ They found correspondence with the Iraqi Ministry of Defence, which unveiled 'Orao's' involvement in the maintenance and repair of jet engines for Iraqi MiG fighter jets, thus breaching the UN sanctions.¹¹⁹ Investigations further revealed a whole network of factories helping Hussein strengthen his army.¹²⁰ The contracts resulted in a flow of weapons and equipment to Iraq.¹²¹ In addition, while breaching UN arms embargoes, Serbia was selling arms to Libya.¹²² Serbia's official military procurement agency Jugoimport SDPR avoided controls by using supposedly privately owned letter-box companies.¹²³ The Serbian government denied any knowledge of the 'Orao' affair, however replaced the head of Jugoimport along with numerous other executives after a secretive investigation.¹²⁴ The 'Orao' affair may have been the biggest state-sponsored weapons smuggling operation since the end of the Yugoslav wars, but state-sponsored trafficking continues on a smaller scale.¹²⁵ There is ample evidence that the Serbian government is involved in illicit exports of arms and military equipment on a considerable scale to this day.¹²⁶

One of the biggest scandals in France was the Angolagate affair, which came to light in 1999.¹²⁷ The case involved numerous French politicians who were involved in the covert supply of arms to the Angolan government despite a UN arms embargo in place at the time.¹²⁸ The persons involved set up a front company in Eastern Europe, which they used to channel arms from several Eastern European countries to Angola.¹²⁹ Another company was established in Paris to handle the contracts and finances.¹³⁰ Between 1993 and 1998, a large amount of arms was transferred this way, with a total value of 790 million US dollars.¹³¹ A further 56 million US dollars were paid as bribes to Angolan decision-makers and French politicians as payment for their help in arranging the deals, and to ensure those deals were not investigated by the French authorities.¹³² After a long investigation, 42 suspects were charged for arms trafficking, complicity with arms trafficking, influence peddling (including bribery), abuse of corporate assets, abuse of

118 Ibid.

119 Ibid.

120 Arsovska and Kostakos (n 30) 364.

121 Ibid.

122 Anastasijevic (n 116) 12; Arsovska and Kostakos (n 30) 365.

123 Anastasijevic (n 116) 12.

124 Ibid.

125 Anastasijevic (n 116) 12; Arsovska and Kostakos (n 30) 365.

126 Anastasijevic (n 116) 10.

127 Elizabeth P. Allen, 'Anatomy of a Scandal, Angolagate' (2010) 27(1) *World Policy Journal* 14, 14; World Peace Foundation, 'Angolagate' (Web page, undated).

128 Ibid.

129 World Peace Foundation (n 127).

130 Ibid.

131 Ibid.

132 Ibid.

public assets, money laundering, and tax fraud.¹³³ In the end, 36 defendants were convicted in 2009, though some convictions were overturned in 2011.¹³⁴

4. Networks

Criminal networks are relatively common within the illicit conventional arms trade, as they are flexible, adaptable and capable of reacting rapidly to the efforts of law enforcement.¹³⁵ Weapons trafficking is frequently linked to narcotics trafficking and often involves individuals or institutions who are not part of the criminal organisation itself, such as national defence ministries, national security agencies, banks, or legitimate arms dealers.¹³⁶

A major player in the illicit arms trade is the Basque Fatherland and Liberty ('ETA').¹³⁷ Links have been discovered between the ETA and the Camorra crime organisation in Naples, Italy.¹³⁸ An agreement in 2001 called for heavy arms, explosives, and bombs to be supplied to the ETA from Pakistan and Uzbekistan via the Czech Republic.¹³⁹ The agreement saw the Camorra supply the ETA in Spain with heavy weapons, such as missile launchers and missiles for which the ETA paid for with large amounts of cocaine and cannabis, delivered in special drums attached to the bottom of a ship.¹⁴⁰ The arms orders from the ETA allegedly passed through a criminal group in France.¹⁴¹

The perpetrators involved often use globalised financial, commercial, transportation and communications networks to locate one another¹⁴² and individual networks will often work together against law enforcement.¹⁴³ Research has shown that diaspora networks have played a significant role

133 Ibid.

134 Allen (n 127) 14; World Peace Foundation (n 127).

135 Williams, Phil and Roy Godson, 'Anticipating organized and transnational crime' (2002) 37(4) *Crime, Law and Social Change* 311, 332.

136 Curtis and Karacan (n 35) 2.

137 Curtis and Karacan (n 35) 5.

138 Ibid 9.

139 Ibid 10.

140 Ibid.

141 Ibid 12.

142 Phil Williams, 'Organizing Transnational Crime: Networks, Markets and Hierarchies' in Phil Williams and Dimitri Vlassis (eds), *Combating Transnational Crime, Concepts, Activities and Responses* (2001) 58, 58.

143 Williams 'Anticipating organized and transnational crime' (n 135) 326.

in the development of transnational organised crime and may be an important resource for transnational shipments.¹⁴⁴

Since the Balkan conflicts, Albanian diaspora leaders have been shipping large amounts of arms to Kosovo and Macedonia.¹⁴⁵ They often use routes through Muslim Bosnia and Albania and carry on over the borders of Kosovo and Macedonia.¹⁴⁶ The Albanians were able to obtain sophisticated modern weapons by cooperating with international mafia groups, including the Serbian and Russian mafia.¹⁴⁷ There are also some links between the Albanian mafia and Islamic groups operating primarily in Bosnia.¹⁴⁸ In some smuggling cases, the Albanians have used freight companies and shippers under their control to transfer the arms.¹⁴⁹ A large source of funding has been international wire transfers.¹⁵⁰ The FBI has observed suspicious large funds transfers between Albanians in America and the Balkans.¹⁵¹ Certain Western Union shops licensed to Albanians in Macedonia are suspected of also being involved in terrorist funding activities and are being watched by Macedonian investigators.¹⁵² According to a Serbian intelligence source, 3–5 wealthy Albanian diaspora members with assets in Switzerland and Sweden use a front company for building supplies to hide money and to import weapons.¹⁵³

Albanian, Italian, and Russian organised crime groups in Kosovo are transporting arms through various parts of Greece, over Italy and then onto other parts of Europe. A large number of these illicit arms have been stolen from military stockpiles in Albania.¹⁵⁴ The profits of the trade are laundered in Greece and Cyprus, where especially the Russian mafia has strong links with influential officials.¹⁵⁵ Sicilian mafia groups often cooperate with Albanian groups that had begun exploiting Greece's northwestern coastline back in the 1990s.¹⁵⁶ Romanian groups also have a share of the market in Athens.¹⁵⁷ The biggest centre of the arms trade is Crete, but Albanian arms dealers have also established significant markets in the Evros River Delta (northeastern Greece) and the city of Ioannina (northwestern Greece).¹⁵⁸ Greece's permanent

144 Ibid 330f.

145 [s.n.], 'Update on Albanian Diaspora Money Laundering and Weapons Smuggling to Macedonia Militants' (2003) 2 *Balkananalysis.com*.

146 Ibid.

147 Ibid.

148 Ibid.

149 Ibid.

150 Ibid.

151 Ibid.

152 Ibid.

153 Ibid.

154 Curtis and Karacan (n 35) 14.

155 Ibid.

156 Ibid.

157 Ibid.

158 Ibid.

representative to the UN claimed that ‘the Russian mafia, criminal organisations from Albania, the activities of the UCK’s [Kosovo Liberation Army] chiefs, and the remainder of the Foreign Legion in Skopje have laid a tight net around Greece’¹⁵⁹.

Networks seem to be very skilled at concealing their activities, sometimes among or within licit transactions, making it challenging to predict and uncover illicit transfers.¹⁶⁰ Those efforts are further hindered by the involvement of government officials, which has fostered the rise of organised crime on a global scale.¹⁶¹

V. Conclusion

Overall, little is known about the illicit trade in conventional arms. The study of known cases allows the deduction of certain modus operandi, yet at the same time has shown that each case is different and may not correspond to the same pattern as another. This shows the great flexibility of the illicit trade, allowing for quick adaptation to law enforcement efforts in order to vanish out of sight again. The different methods must all be considered parallel to one another, only then is there a chance to comprehend the approach the traffickers take. Nonetheless, it must be said that even then it remains difficult to predict illicit transfers. One difficulty may lay in the fact that little is known about the trafficking routes, rendering it hard to predict where an illicit transfer might occur. This in turn makes it difficult for law enforcement to intervene.

Without the ability to predict the illicit trade, law enforcement is limited to efforts in recognising such activities when they happen. However, the measures that have been put in place today are hampered by the fact that certain countries simply lack the means to effectively enforce them. This makes it easier for traffickers to bypass control systems and can be accomplished by using conduits to channel the weapons through, diverting the arms to a different destination, and corruption. Perpetrators may use false documentation, hide shipments, or mislabel them to avoid detection.

159 Quoted in Ian Davis, Chrissie Hirst and Bernardo Mariani, *Organised crime, corruption and illicit arms trafficking in an enlarged EU, Challenges and perspectives* (2001).

160 Williams ‘Anticipating organized and transnational crime’ (n 135) 311, 314.

161 Williams ‘Anticipating organized and transnational crime’ (n 135) 312.

The great diversity in legislation, export control systems, documentation and levels of enforcement between the different states makes coordinating transfers between them challenging, especially for transit countries because they have difficulty in determining the authenticity of the transfer.¹⁶² This ultimately renders it near impossible to intercept an illicit transfer without prior knowledge.¹⁶³ A possible remedy may lie in the improvement of information exchange between the countries. This would facilitate the process of verification and help licensing officials determine the authenticity of documents.¹⁶⁴ Combining information exchange with the application of best practice guidelines and international standards for documentation could go a long way in recognising illicit transfers and preventing diversion.¹⁶⁵ To ensure any applicable guidelines are enforced, countries needing assistance should receive help. Such capacity building measures should encompass the assistance and education of customs and other enforcement officials in recognising questionable transactions and investigating shipments and paper trails.¹⁶⁶ This way, illicit transfers could be recognised and the authorities could intercept them earlier. Additionally, increasing transparency should be a goal, for this may also make it harder to obscure the illegality of an illicit transfer. One potential approach may be the further development of the UNROCA. The expansion of the register's scope should be considered in order for it to cover a broader variety of weapons and increase its adaptability to new challenges in the future.¹⁶⁷ Participation in the reporting of transfers should be encouraged as well, the long-term goal being universal participation.¹⁶⁸

Ultimately, restrictions and controls create the illicit markets, as the demand for conventional weapons remains. Unfortunately, the traffickers always seem to be one step ahead; as soon as officials uncover information, the perpetrators change the route and method of their smuggling enterprise¹⁶⁹, effectively vanishing out of sight again. The more officials seeking to uncover the illicit trade in conventional arms know about the happenings,

162 Bromley and Griffiths (n 57) 13.

163 *Ibid.*

164 *Ibid.*

165 *Ibid.* 12.

166 Lustgarten (n 6) 11.

167 UN Office for Disarmament Affairs (n 90) 37.

168 *Ibid.* 30–31.

169 Curtis and Karacan (n 35) 2.

the better their chance of anticipating the reaction of the traffickers. This is why it is crucial to obtain as much knowledge and data and to fill as many gaps concerning the illicit trade in conventional arms as possible.

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