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Dead on Time – arms transportation, brokering and the threat to human rights



Executive Summary

AI Index: ACT 30/007/2006

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Growing state-sponsored out-sourcing and the increasing private mediation of international arms distribution and procurement is adding to the risk of arms being delivered, diverted and used for grave human rights violations. Yet current government efforts to improve the monitoring and regulation of such intermediate activities in the arms trade are weak and faltering.

This report examines the role of private contractors in arms transfer logistics, brokering and transport. The role of such intermediaries is increasingly integral to the global arms trade, especially to the 35 countries whose exports make up roughly 90% of the world's arms trade. Intensified competition resulting from globalisation has been increasing arms manufacturers' dependency on the global freight transport industry and on brokering activities. Brokering, logistics and transport firms and networks now span the globe helping service the arms trade, while the established freight industry also provides logistical support for the military operations of states, itself a conduit for the proliferation of arms.

The report shows how, partly as a consequence of the "export rush" that followed the end of the Cold War, arms trade routes are becoming more complex, requiring even more differentiated logistical, transport, brokerage, and financial arrangements. The use of private transport contractors and brokers for arms transfers is not adequately covered by national legal and regulatory frameworks, and the responsibility of states for the shipment of hundreds of thousands of tons of weapons and other military and security equipment, ammunition and spare parts to armed forces and law enforcement agencies around the world can be easily obscured by complex supply chains. The resulting lack of transparency, monitoring and effective control of such arms supply chains are contributing to the diversion and easy availability of arms by those perpetrating serious violations of human rights during armed conflicts and law enforcement operations. Examples in the report also show how arms are destined or diverted to arms-embargoed countries, criminal organizations and armed groups, including those believed to engage in terrorism, and are paid for with cash or bartered for narcotics, precious stones, metals, oil, timber and other natural resources.

During the last fifteen years, the world witnessed either the continuation or the outbreak of 50 or more armed conflicts. None of these conflicts could have lasted long without one or both of the opposing forces commanding and replenishing sizeable arsenals, usually relying on brokers and logistics agents to fix deals for the constant supply of ammunition and other military-related equipment, and the hiring of a functioning network of carriers able to deliver them. Frequently, one or more parties to such conflicts have

perpetrated gross human rights abuses , disrupted essential economic activities, and destroyed human habitats. With few exceptions, all of these conflicts have taken place in “developing countries” located in the “South” – as defined by the Brand Report (1980) - whereas most of the arms and ammunition used in these conflicts have been manufactured by more developed countries in the “North”.

In a significant number of situations, arms are brokered and transported where laws and regulations are ill defined or not enforced. This trade is sometimes called the “grey” market. Arms brokers, transporters, traders and unscrupulous officials deliberately exploit lax controls on arms stockpiles, loopholes in export-import regulations, and corrupt officials. Measures to improve international transport security were initiated by the US government following the attacks of September 11. These have included checks on containers, ships and aircraft in an increasing number of international gateways. These post 9/11 security initiatives for international transport operators have shown that strict regulation of cargo is entirely feasible – the only problem is that these initiatives are primarily designed to protect the US rather than having a wider remit of helping prevent human rights abuses, both by armed groups and by governments, worldwide.

The collapse of the Soviet Union in 1991 and the crisis of East and Central European countries also resulted in large and loosely controlled stockpiles of conventional weapons being offered for sale on the international market. Smaller but more determined arms traders and brokers with access to cheap transport networks challenged the export markets of West European and North American arms manufacturers by exploiting these massive surplus stockpiles and aggressively targeting the most promising markets, often located in conflict-ridden ‘developing regions’.

A general lack of restraint in the official and corporate promotion of arms exports has corresponded with failures to improve arms control laws and regulations in the face of the growing scale and complexity of arms supply chains. As a consequence of the “export rush” that followed the end of the Cold War, arms trade routes have become more complex, requiring even more differentiated logistics, brokering, finance and regulation.

It is clear that robust regulation and restraint based on a consistent international legal framework to protect human rights has not kept pace with the number of actors and locations in the global supply chain. One indicator of this shortcoming is the pervasiveness of “grey markets” in arms and other military and security equipment. Another is the ability shown by arms traffickers to deliver arms to areas with active conflicts, even where these are subject to international arms embargoes.

Evidence suggests that using the commercial methods of the supply chain management is not a practice limited to defence logistics and legal arms trade. Shippers, brokers, and importers involved in illegal arms transfers have adopted similar methods and have established a certain degree of networking and cooperation in order to ensure that the volumes of cargo and cash flow are sufficient to maintain the economic viability of the “specialized” carriers, port facilities and agents they utilize. This enables some of them to mix as much as possible legitimate business (sometimes humanitarian aid to conflict zones) and “grey market” business with illegal trafficking, in order to minimize the risk of seizures and law enforcement actions. In addition, such brokers and shippers have exploited the failure of the international community to effectively regulate the international offshore banking system and are able to maintain a network of “shell” or front companies engaged - directly or through offshore subsidiaries - to support illegal arms transfers.

To date, just over 30 states have enacted more or less stringent laws and regulations for controlling the business of arms brokerage - including or excluding related financial and transport services or extra-territorial provisions. Even these existing laws include loopholes

and exemptions that weaken their hold on arms brokers' business practices. Recent agreements aimed at enlarging the number of states that regulate arms brokerage according to international standards have yet to be fully implemented. Moreover, neither the existing laws and international agreements nor the most recent initiatives address the role of government agencies and personnel in de facto brokerage activities.

The tendency towards increased private sub-contracting for the arrangement of arms deals and the delivery of arms and security equipment is highly dangerous when combined with structural weaknesses in the national control systems. This combination has enabled arms brokers and transporters who supply illegitimate end-users to thrive in modern global market conditions. These structural weaknesses include:

- Insufficient customs and other official regulation of the activities of arms brokers, transporters and other sub-contractors involved in arms export, import and trans-shipment;
- The poor management of stockpiles of arms, especially small arms and light weapons, by state officials, especially where those officials are open to corruption;
- The use of flags of convenience by transport companies which operate aircraft and vessels on circuitous routes from poorly regulated airports and seaports; and;
- The use of offshore banking and shell companies that facilitate money laundering, especially in tax havens lacking financial accountability and scrutiny.

The application of modern commercial logistics and largely-uncontrolled brokering practices to international military supply chains has contributed to the heavy toll of innocent lives in present armed conflicts - from Congo to Sudan, from Chechnya to Afghanistan and Iraq. As illustrated below, these practices have greatly enhanced the mobility of troops, the lethality and speed of military operations and number of points of diversion in the global arms transfer process, thereby undermining the protection of civilians and the prevention of human rights abuses. A range of new measures are urgently required, as outlined in the final chapter of this report.

Amnesty's position

Amnesty International is opposed to transfers of military, security or police (MSP) equipment, technology, personnel or training - and logistical or financial support for such transfers - that can reasonably be assumed to contribute to serious violations of international human rights standards or international humanitarian law. Such violations include arbitrary and indiscriminate killing, "disappearances," torture and other ill-treatment.

To help prevent such violations, Amnesty International campaigns for effective laws and agreed mechanisms to prohibit any MSP transfers from taking place unless it can reasonably be demonstrated that such transfers will not contribute to human rights violations. Amnesty International also campaigns for MSP institutions to establish rigorous systems of accountability and training to prevent such violations.

Amnesty International is concerned about the role of intermediaries - arms brokers, logistic firms, transport and other companies - in delivering arms to those who use them for violations and abuses of human rights and international humanitarian law. Although such actors often engage in a servicing role between the sellers and buyers of arms, that servicing role is usually unregulated, secretive and unaccountable. Moreover, the increasing tendency for states to sub-contract the delivery of arms and use the services of brokers can enhance

their power considerably under certain circumstances while blurring the primary responsibility of states to strictly control the arms trade. As an increasing volume of arms are marketed and distributed internationally by private commercial agents and operators, the potential for abuse is heightened.

Amnesty International recognises that the peaceful resolution of conflicts is a prerequisite for the realization of human rights, and that armed conflicts inevitably produce human rights violations but it generally takes no position on the desirability or otherwise of particular military interventions or other forms of armed conflict, other than to demand that all participants must respect international human rights and humanitarian law, and that the military and security transfers related to such interventions do not contribute to violations of such law.

Illustrating the role of logistics and intermediaries

Chinese and US arms routes to Nepal – Despite international concern at the grave human rights abuses being perpetrated by both sides of the conflict in Nepal, the Chinese and US governments decided to provide further arms using obscure routes. The Chinese supplier reportedly used one of the world's most difficult highways to deliver the arms to Nepal. In contrast, just before the King's takeover of absolute power, the US government sponsored a covert arms delivery by air using a Bulgarian private sub-contractor and an extremely circuitous route via Canada and Europe, during the time that it was "reviewing" the possibility of suspending supplies.

Bosnian surplus arms supposedly to Iraq - Hundred of thousands of small arms and light weapons from the Bosnia and Herzegovina's (BiH) war-time stockpiles together with tens of millions of rounds of ammunition were reportedly shipped - clandestinely and without public oversight - to Iraq by a chain of US, Israeli, UK, Swiss, Bulgarian, Croatian, Moldovan, Ukrainian and other private brokers and transport contractors under the auspices of the US Department of Defense between 31 July 2004 and 31 June 2005. One of the air cargo companies used had been named in April 2003 by the UN for violating the arms embargo on Liberia. While such deliveries to the Iraqi security forces at this time would pose a threat to human rights in Iraq, West European officials say that some of the weapons to Iraq "may have been siphoned off". There has been massive corruption involving Iraqi government arms purchases and efforts to sell off surplus Iraqi arms. As yet there is no proof that the weapons flown out of BiH in August 2004 actually arrived in Iraq. The US and local authorities in Iraq and BiH, when questioned, cannot or will not account for the deliveries. This case is detailed in a whole chapter of the report.

Brokering arms to Colombia by US residents and nationals – Two cases from the USA and Colombia show how the US authorities have adopted contradictory approaches to controlling private individuals, including foreigners, and state employees involved in arms brokering and trafficking. In May 2005, two US soldiers as well as several Colombians were arrested in the municipality of Carmen de Apicalá, department of Tolima, on suspicion of arms smuggling following a raid in which over 30,000 rounds of ammunition were confiscated. The two soldiers were reportedly handed over to the US Embassy in line with a 1974 agreement signed between Colombia and the US granting immunity to US military personnel stationed in Colombia. In contrast, US judicial agencies took resolute action to enforce tough US laws on private arms brokering when foreigners were involved. After 50 detailed recordings by the FBI in 2002-2004, seven persons in the USA, including Colombians and a Danish MP, were accused of involvement in an illicit brokering network.

They pleaded guilty to charges of conspiracy to provide material support and resources to the AUC. A former Danish member of parliament living in Fort Bend County, Texas, pleaded guilty on 24 June 2003 to charges that he and a partner had conspired to ship arms to the AUC in return for \$25 million in cash and cocaine. In mid 2002, FBI agents in Costa Rica had captured three Colombian nationals who were arranging the arms smuggling deal.

Brazil arms for Saudi Arabia and Mauritius – A massive cargo of ammunition from Brazil heading for Saudi Arabia and Mauritius in three containerships run by a UK-based company was stopped in mid 2005 by the authorities in South Africa, one of the few countries with adequate laws on the transshipment of arms. Between 29 May and 3 June 2005 South African Police Service seized three ships transporting a huge arsenal of ammunition en route from Santos in Brazil to Mauritius and Saudi Arabia. The ships' operator was accused of violating South Africa's National Conventional Arms Control Act [No. 41 of 2002] because the ships made stopovers in the harbours of Cape Town and Port Elizabeth and the Act required that the representative of the UK-based shipping company, P&O Nedlloyd, to first register as a trader in conventional arms and then apply in advance for a separate permit for each individual consignment of conventional arms. South African law stipulates that arms licences will not be given if the arms are likely to contribute to human rights violations. In contrast, Brazil has no human rights provisions in its arms export law. Despite the pattern of grave human rights violations in Saudi Arabia, the South African court in July 2005 imposed a small fine of about \$4,000 and ordered the ammunition to be disposed of.

European shipping arms for invasion of Iraq – The US government and its allies used a private Danish shipping company to conceal arms deliveries almost certainly for use in the invasion of Iraq before that invasion had been formally announced. In February 2003, some weeks before the start of "Operation Iraqi Freedom" on 19 March 2003, a Danish cargo ship - the "Karin Cat" - foundered in rough conditions in the Mediterranean Sea midway between Malta and the Island of Crete. The ship had departed on 27 January from Antwerp (Belgium) bound to Doha (Qatar), a major U.S. military hub for operations in support of the Iraq invasion, where it was expected to arrive on 6 March. As the US and UK governments denied any decision to invade Iraq, the captain tried to conceal the cargo from the Danish safety inquiry. In addition to 205 tons of equipment and pipes for a natural gas company, the cargo was made up of 158 tons of ammunition, a sophisticated man-portable short-range missile system, and a radar truck. The civil equipment destined for the Ras Laffan Liquefied Natural Gas Co., based in Qatar, was loaded in Antwerp, but the military cargo - part of which was destined to the Omani Ministry of Defence, according the inquiry - was loaded during three stopovers at ports in the UK, France and Italy.

Dutch broker of Chinese arms for Liberia – The first case of an arms broker facing charges under the law regarding crimes against humanity will soon take place. Gus (or Guus) van Kouwenhoven, was arrested in Rotterdam, Netherlands, on 18 March 2005 and the Dutch authorities have charged him to stand trial for aiding war crimes and crimes against humanity. Van Kouwenhoven has been president of the Oriental Timber Company (OTC), a Liberia-based firm that owned the largest logging concessions in Liberia during the late 1990s and early 2000s and was reported by the UN to be owned by Singaporean interests. Evidence has emerged allegedly showing that Kouwenhoven brokered the delivery of large quantities to arms to Liberia from China, in contravention of the UN arms embargo on Liberia.

Other cases mentioned in the report further amplify the lack of effective control of firms involved in arms transportation, military logistics and arms brokering networks, especially relating to the supply of arms to conflicts in Africa for which there is a whole chapter. The report also details in one chapter the role of private contractors in the major military operations of the US and its allies in Kosovo, Afghanistan and Iraq.

From case studies of UN arms embargo violations, it would appear that in many countries there is a lamentable failure by the authorities to cross-check basic transport and customs documents. This is caused partly by lack of political commitment and training, but also results from the design of the documents applicable to moving arms cargoes. Standards for bills of lading, cargo manifests and end user certificates are vague, as are procedures for cross checking them.

Action by the international community to promote and establish the strict control of arms brokers, dealers and transporters according to standards consistent with international law has been very slow, narrow and inconsistent, reflecting a general lack of political will amongst states to come to terms with the widespread negative effects on human security of uncontrolled arms transfers. Current diplomatic efforts in the UN are limited to discussions about the possibility of international action to control only private brokers of small arms and light weapons.

What is Amnesty International calling for?

Amnesty is calling for 13 measures by governments, including the establishment of specific national laws, regulations and administrative procedures, to be taken without further delay to prevent illicit arms brokering, logistics and transport activities, especially to destinations where the arms are likely to be used to facilitate serious violations of international human rights standards and international humanitarian law. States should not issue arms brokering, transport and dealing licenses unless the result is likely to be consistent with the existing responsibilities of states, as set out in the Global Principles (in appendix 1 of the report).

Regarding the control of 'arms brokering activity' the definition in both domestic legislation and international agreements should be broad enough to cover all relevant activities, and include the mediation or finding of arms for buyers and sellers, including in the brokering of transport and financial services, as well as the negotiation as an agent or the dealing as an intermediate trader in arms, in order to facilitate an international arms deal.

Every state should include the brokering, transporting and dealing in international arms transfers by its own permanent residents and companies acting in a foreign country as an activity covered by its national law. Any person or company wishing to engage in arms brokering, transportation or dealing should first be screened for suitability by a state registrar at least every two years and be barred from such activity if, for example, they have been convicted of crimes relating to the arms, violence, trafficking or money laundering.

Annual reports should also include for each transfer: the name/s of all brokering persons or companies, logistic agencies and transport companies; their related licenses for the brokering, arranging and carriage of arms; and a summary of relevant transport documentation such as the Bill of Lading. Arms exports should by law be documented by the shipper using the c.i.f. modality ("cost, insurance and freight") and not the f.o.b. modality ("free on board") in order to ensure that the shipper is responsible for the arms cargo until it is unloaded.

International donor aid should be provided to integrate arms control expertise and data into programs of assistance to licensing authorities and law enforcement agencies, including customs.

The proposed UN Group of Governmental Experts on the illicit brokering of small arms and light weapons to be established in late 2006 should report at least by the end of 2007 on:

- (i) Its proposals for a global instrument, including standards and operative provisions to regulate international arms brokering and transporting;
- (ii) The adequacy and discrepancy of existing national laws and regulations on arms brokering and states' relevant international commitments;
- (iii) Elements for international cooperation and assistance to control arms brokering and transportation, and;
- (iv) Its consultations with recognised non-governmental experts on these subjects.

Violations of UN arms embargoes, which are often perpetrated by the same controllers of international arms brokering and transport networks, should be made a serious criminal offence in all states. Given the high mobility of intermediaries in the illicit arms trade, consideration should be given by the Security Council to establishing serious violations of a UN arms embargo as a crime with universal jurisdiction.

Codes of Conduct on the freight forwarding, handling, safe storage and delivery arms within the transport industry should be encouraged as an addition, but not an alternative, means of deterring illegal arms brokering and transport of arms especially to destinations where the arms are likely to be used to perpetrate serious violations of international human rights law and international humanitarian law. Initiatives on security and safety in the transport industry promoted by the IMO and ICAO, as well as international associations of the transport industry, such as IATA, should address the prevention of arms and ammunition transfers to areas at high risk of conflict and severe human rights violations and consider them as "a common security threat".

Other detailed recommendations are outlined in the report.

This executive summary summarizes a 120-page document (52,843 words), *Dead on Time – arms transportation, brokering and the threat to human rights* (AI Index: ACT 30/008/2006) issued by Amnesty International and TransArms (a small independent arms research organisation) in May 2006. Anyone wishing further details or to take action on this issue should consult the full document. An extensive range of our materials on this and other subjects is available at <http://www.amnesty.org> and Amnesty International news releases can be received by email:

http://www.amnesty.org/email/email_updates.html

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