Diversion: issues, scope, and frameworks

Arms Transfers Dialogue, Geneva, 1 Feb. 2017

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Outline

- What is diversion?
- Diversion types and trends
  - Diversion from national/civilian stockpiles
  - Arms transfer diversion
  - Global trends
- Regulatory frameworks
What is diversion?
‘Diversion’

- International instruments do not define

- **Survey definition**: delivery to an unauthorized end user OR unauthorized end use by an authorized end user

- In practice, diversion can occur at any stage of a weapon’s life cycle: manufacture, transfer, storage, disposal

- Two main types …
Diversion types and trends
Diversion from national/civilian stockpiles

- Low order national stockpile diversion
  - Relatively minor quantities
  - Can involve security force personnel with links to local traffickers who steal stored weapons or sell their own issued arms
  - Includes theft by external actors via unauthorized or forceful entry
Diversion from national/civilian stockpiles

- High order national stockpile diversion
  - Large volumes
  - Contributing factors include weak governmental structures, lack of accountability and oversight
  - Examples: state collapse in Libya in 2011, Eastern Europe following 1990s political upheavals
Diversion from national/civilian stockpiles

- Diversion from civilian holdings
  - Targets include private homes, vehicles, gun shops, and wholesalers
  - Targeted by criminals and criminal groups
Figure 2.1 Avenues of diversion from national and civilian stockpiles

THE NATIONAL STOCKPILE
- Manufacturer
- Depot
- Barracks
- Personnel

THE CIVILIAN STOCKPILE
- Manufacturer
- Wholesaler
- Gun shop
- Homes

ILLEGAL MARKET
- Localized crime
- Organized crime
- Major non-state armed groups, insurgents, and terrorist organizations

LEGAL MARKET
- States in conflict, under arms embargo, or other restrictions curtailing state-sanctioned transfers

Small Arms Survey
Arms transfer diversion

- Can occur at point of embarkation, in transit, at point of delivery, or after delivery

- Often involves transport by air and sea (aircraft and ships registered under flags of convenience, owned by offshore companies)

- Often involves the use or misuse of documentation (forged documents/EUCs or genuine documents provided by corrupt officials)
ADVENTURES OF A
WOULD-BE
ARMS DEALER

BASED ON A TRUE STORY

Robert Eilar 2005

WITH THE EUCL TUCKED SAFELY IN MY
INSIDE POCKET, I HANDED CHARLES THE
 PROMISED CASH.

THE NEXT DAY—ON MY HOTEL
BALCONY IN CYPRUS—I BEGAN
TO FILL IN THE EUCL BLANKS.

AMPRO'S REPLY CAME
THAT SAME EVENING.

Further to your request, please find below the required data:

7.62 x 39 mm rounds
Quantity: 2,000,000 rounds
Year of manufacture: 1978
Price: USD 641,000 per FOB Bulgarian port
Packing: 2 metal boxes x 700 = 1,400 pcs in one wooden case
Case dimensions: 450 x 360 x 160 mm
Gross weight: 30 kg.
Volume: 0.008 m³
Case: 1,200 cases

SIR, MY PRINCIPALS
HAVE ASKED ME TO
FIND AN AIRCRAFT
TO FLY FROM YEMEN
TO GPS COORDINATES
IN CENTRAL SOUTHERN
SOMALIA...

THAT TRANSLATES
INTO A TIDY PROFIT
OF... USD 1 MILLION.
Global trends: persistence of old materiel

- Cold war era, unsophisticated weapons and ammunition still prominent in most recent conflicts

- Older weapons are difficult to investigate: many possible chains of custody
Global trends: complex supply patterns

- Involvement of regional actors
- Diversion from national stockpiles
- ‘Game-changing’ weapons acquired from foreign sources
- Weapons marking removal
- Unmarked ammunition
Regulatory frameworks
<table>
<thead>
<tr>
<th>№</th>
<th>Date adopted</th>
<th>Instrument</th>
<th>Legal status</th>
<th>Scope</th>
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<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Legally binding</td>
<td>Politically binding</td>
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<tr>
<td>1</td>
<td>31/05/2001</td>
<td><strong>UN Firearms Protocol (FP)</strong></td>
<td>●</td>
<td>● (firearms)</td>
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<td>20/07/2001</td>
<td><strong>Programme of Action (PoA)</strong></td>
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<td>3</td>
<td>08/12/2005</td>
<td><strong>International Tracing Instrument (ITI)</strong></td>
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<td>●</td>
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<tr>
<td>4</td>
<td>02/04/2013</td>
<td><strong>Arms Trade Treaty (ATT)</strong></td>
<td>●</td>
<td>● (partial)</td>
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</tbody>
</table>
Scope: arms

FP
PoA
ITI

SALW
(+ ammunition)
(+ parts & components)

ATT
Battle tanks
Armoured combat vehicles
Large-calibre artillery systems
Combat aircraft
Attack helicopters
Warships
Missiles and missile launchers
Scope: measures

FP
PoA
ITI
Manufacturing
Marking
Tracing
Stockpile management
Surplus id. & disposal
DDR
Criminalization

ATT
Intl transfer
- Export
- Import
- Transit
Brokering
Transfer diversion
Record-keeping
Reporting
Arms Trade Treaty (ATT)

Measures to prevent diversion:

- For exporting states (Art. 11.2):
  - Prevent diversion through national control system
  - Assessing diversion risks
  - Considering mitigation measures (CBMs, joint programmes involving exporting-importing state)
  - Optional prevention measures (examining the parties, documentation, denying the export, etc.)
ATT

For importing, transit, trans-shipment, and exporting states (11.3):

- Cooperate and exchange information to mitigate diversion risks

For states parties that detect diversion (11.4):

- Take appropriate measures (alert affected states, examine diverted shipments, investigative/law enforcement follow-up)
States parties further encouraged (11.5, 11.6):

- To share information on effective measures to address diversion (including information on illicit activities)
- To report to other states parties on measures taken to address diversion
ATT limitations

- Art. 11 applies only to weapons, not ammunition
- Unclear whether the ATT concept of diversion includes weapons diverted after delivery
- No obligation to deny the export in order to prevent diversion (cf. Art. 7)
- Measures are only described in general terms; other instruments offer more specific guidance (PoA, UN Firearms Protocol)
States undertake (sec. II, paras. 11-12):

- To take account of diversion risks before exporting SALW
- To ensure effective control over the export and transit of SALW, including the use of authenticated EUCs
Article 10

2. Before issuing export licences or authorizations for shipments of firearms, their parts and components and ammunition, each State Party shall verify:

(a) That the importing States have issued import licences or authorizations; and

(b) That, without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, the transit States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit.
International Tracing Instrument

- Using tracing results to determine sources of illicit supply, including sources of diversion
- Marking: for unique identification
- Record-keeping: to help reconstruct the weapon’s transfer history
- Cooperation in tracing: applying agreed rules, states send and respond to tracing requests
Any questions?

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