



Intervention on Article 9 on the Controls of Transit and Trans-Shipments

Submitted to: The Office of the General Secretariat of the Arms Trade Treaty

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Introduction

Transit controls have not received much attention in international multilateral systems and agreements governing international arms transfers and in relevant international best practice guidelines. None of the current instruments to control international transfers of all conventional weapons include an explicit requirement for states to establish transit controls. However, many of the mechanisms that seek to put in place robust systems to control international transfers of small arms and light weapons include requirements for transit controls. Hence, the failure to include clear controls on the transit of weapons resulted in the spread of the smuggling phenomenon in all its forms by land, air, and sea.

Smuggling is a global criminal phenomenon faced by most countries of the world as it affects the international community at all levels, especially the economic and security levels, as it is the most economic crime that threatens the national economy. **Maritime smuggling** is one of the most dangerous types of smuggling that requires urgent attention and top priority at the local and international levels through the development of strategies and mechanisms to combat these illegal activities that have come to affect the entity of states, and which have actually raised the concern of the international community due to its difficulty and severity compared to other types of smuggling. Maritime smuggling is among the aggravated smuggling operations that rely on advanced means of transportation and support and



communication devices, and contribute to the transfer of more goods and materials in larger sizes, and its danger and gravity appear in the smuggling of weapons.

Irresponsible transfer of conventional weapons to conflict areas has been included among international preoccupations, as the issue threatens national security and negatively affects the humanitarian side, which expresses the disavowal by states from the humanitarian side, which expresses the states' evasion of the obligations that require them to exercise the necessary care in order to improve the rights of civilians during armed conflicts.

Legal Framework for Transit Controls in the Arms Trade Agreement

Article 9 of the Arms Trade Agreement emphasizes transit or trans-shipment through the need for each State Party, where necessary and feasible to do so, to take appropriate measures to regulate the transit or transshipment of conventional arms provided for in the Agreement through its territory in accordance with its jurisdiction of international law¹.

Through this text, it can be noted that Article 9 did not explicitly provide for transit and trans-shipment controls. However, it was explicitly included in the United Nations General Assembly resolutions on the Arms Trade Treaty and was included in the draft papers of the Chairman of the Preparatory Committee for the Arms Trade Treaty, as they are activities that should be covered by national statutes and laws that should detail the form that transfer controls under the Arms Trade Treaty should take through the adoption of transit control legislation and procedures including:-

- (a) Exchange of information between States Parties.
- (b) Provide public reports on the implementation of controls.

¹ راجع نص المادة 9 من اتفاقية تجارة الاسلحة على الرابط- <https://unoda-web.s3-accelerate.amazonaws.com/wp-content/uploads/2013/06/3.pdf>



- (c) Provide counterparts or experts with guidance on ways to improve national practices once the treaty enters into force, such as a user manual, best practice guidelines, or model legislation.
- (d) A system for arranging international assistance for the design or implementation of transit controls.

Effective enforcement of transit controls requires that relevant non-state entities involved in the international arms trade such as producers, export-import companies, and carriers are aware of diversion risks and penalties for involvement in attempts to divert legitimate arms shipments to entities other than the declared end-user. Therefore, the Arms Trade Treaty (ATT) should also encourage government agencies and non-state entities to share information about arms subject to transit controls, prohibited or suspected end-users, and companies permitted or prohibited from participating in international arms deals.²

States' compliance with arms transit controls

According to the foregoing, effective implementation of arms transit controls allows states parties to monitor, verify, authorize, refuse or seize arms shipments passing through their territories. This is likely to be beneficial to governments for several reasons:

First: perhaps the most important reason is to prevent destabilizing arms transfers.

Second: transit controls enhance state control over arms that are moved at points where they are at risk of diversion to undesirable end-users or illicit arms markets.

However, countries most of the time do not abide by international law in this regard. For example, even before the Decisive Storm began in 2015, Iran used to smuggle weapons by sea to the Houthis. In September 2015, the Saudi-led coalition

- Paul Holtom and Mark Bromley, Transit and trans - shipment controls in an arms Trade Treaty, SIPRI, July 2011, ² link, <https://www.sipri.org/sites/default/files/files/misc/SIPRIBP1107a.pdf>



forces seized an Iranian boat off the coast of the Omani city of Salalah, loaded with a shipment of various weapons³.

The United Nations also announced evidence of Iran's involvement in arms smuggling to the Houthi group. A confidential report of the United Nations prepared by the UN Security Council Committee of Experts on Yemen revealed **Iran's involvement in smuggling thousands of weapons to Yemeni lands through the Arabian Sea.** The report suggested that the Iranian port of Jask on the Gulf of Oman is the source of thousands of weapons confiscated by the US Navy in recent months in the Arabian Sea. According to the report, small wooden boats and land transportation were used in attempts to smuggle weapons into Yemen, and the weapons are of Russian, Chinese, and Iranian manufacture and are being transported through roads that lead to Yemen, but the US Navy has tried to close these roads over the past years⁴.

The smuggling of arms to Yemen by sea is one of the most important ways in which arms flow to the Houthis. Over the past years, a similar community has emerged that works in this field and attracts every day more fishermen and boat owners looking for abundant profit, and work within weapon smuggling networks for Yemen has become less risky and more profitable for those working at sea. So far, no crew has been held accountable for arms shipments in their possession. Since 2014, arms smuggling networks have been active in Yemen, which include Yemenis, sailors, and fishermen of other nationalities. Their only work is to ensure the continuity of the sea bridge's flow of wooden boats loaded with weapons from Iranian ports to the Arabian Sea and then to separate points on the coast of Yemen, which aims to fuel the conflict in Yemen to achieve political goals centered around turning Yemen into a blazing ember that can be used to achieve strategic goals

³ صنع في ايران ، تقرير على موقع العين الإخبارية، 15 مارس 2022، الرابط، <https://al-ain.com/article/iran-yemen-houthi-smuggling-weapons>

⁴ تقرير أممي سري.. أدلة جديدة على تورط إيران في تهريب أسلحة للحوثيين، العين الاخبارية ، 9 يناير 2022، الرابط، <https://al-ain.com/article/secret-un-iran-smuggling-weapons-yemen>



related to redrawing the map of regional influence without taking into account any humanitarian crises resulting from smuggling operations.⁵

The Iranian weapons smuggling to the Houthis also encouraged the transformation of the ports of Hodeidah, Saleef, and Ras Isa into bases for launching piracy operations, planting naval mines, and threatening the international shipping route near the Bab el-Mandeb Strait. In addition to the Houthis' use of the Hodeidah port facilities for military purposes. Above all, the Houthis were intransigent in refusing any maintenance or unloading of the Safer oil tank, which threatens a major marine environmental disaster, as well as the marine mines scattered in the Bab el-Mandeb Strait, which threatens not only the security of Yemen, but also international peace and security, and hinders marine navigation in the Red Sea.⁶

Hence, it can be said that as long as smuggling continues and exists, the possibility of piracy and threatening the security of the Red Sea and international trade is an indisputable result. In addition, Iran's smuggling of weapons to its Houthi allies, in addition to its violation of international laws, contribute to prolonging the war in Yemen. In addition, the illegal flow of weapons enables the Houthis to attack Ma'rib and increases the suffering of civilians. Hence, Tehran's support for armed groups in the region threatens international and regional security.⁷

Accordingly, **Maat for Peace, Development and Human Rights** stresses the importance of controlling the arms trade, especially in areas where armed conflicts are prevalent, and activating arms transit controls, where irresponsible transfers of arms can destabilize an entire region, allow violations of the arms embargo and contribute to human rights violations. The legal and illegal arms trade through black markets contributes to the exacerbation of international conflicts and civil wars

⁵ ما لا يقال عن تهريب الاسلحة لليمن، موقع العرب، 15 مايو 2021، الرابط، <https://bit.ly/3MioDU4>

⁶ عسكريا الحوثيين لموانئ اليمن تشغل المجتمع الدولي، موقع العرب، 12 يناير 2022، الرابط، <https://bit.ly/3On26Y2>

⁷ واشنطن: تهريب إيران الأسلحة إلى الحوثيين يطيل حرب اليمن، العين الاخبارية، 24 ديسمبر 2021، الرابط، [https://al-](https://al-ain.com/article/1640310503)



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Maat, therefore, recommends the following to ensure efficient and safe transit and shipment:-

- States should agree on a monitoring and enforcement mechanism that provides for a prompt, impartial, and transparent investigation of alleged violations of the ATT and that appropriate penalties shall be imposed on the guilty.
- Emphasis should be placed on adopting the necessary measures to enhance the implementation of arms embargoes approved by the United Nations and its associated bodies.
- Transport companies involved in shipping arms and military equipment must provide customs and border services with copies of their export, import, transit, end-user certificates, planned route, arrival, and departure information on time.
- Provide detailed information on the arrangements for transporting the shipment of arms when applying for an export or transit license.
- Effective cooperation between countries in order to take preventive measures to protect the coasts and seaports and combing them to prevent arms smuggling.
- Increased penalties for illegal arms traffickers.