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## How States Facilitate Small Arms Trafficking in Africa: A Theoretical and Juristic Interpretation

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**How States Facilitate Small Arms Trafficking in Africa:  
A Theoretical and Juristic Interpretation**

By

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Abstract

*Small arms' trafficking is complex and involves a host of actors. As numerous court documents, transcripts, United Nations and NGO reports have revealed, many state institutions play a prominent role in the facilitation of, complicity in, and implicit involvement in black and grey arms trafficking. We suggest that if we are to consider the vast number of actors involved in the trafficking of small arms, the issue of controls is highly problematic, given the extent of limited applicable international legal doctrines, such as joint criminal enterprise, criminal organization, or collective criminality. Furthermore, there are broader political issues that hinder efforts of control as highlighted by the state crime literature, including issues of enforcement, political will and states' positions to hinder the advancement of levels of accountability for their own behaviors. Consequentially, our focus here is not to empirically test the etiological factors of states complicit or implicit involvement in arms trafficking, but instead to move the discussion forward to broader theoretical and juristic issues associated with efforts to control arms trafficking. If the goal is to reduce illegal arms trafficking (and subsequent numbers of civilian deaths) policies and controls must be based, not only on the immediate or apparent actors, the role of states in the facilitation of this type of crime.*

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### Introduction

Small arms trafficking (hereafter arms trafficking) is complex and involves a host of actors ranging from the individual rogue seller and buyer to intermediaries, transnational networks, states, corporate organizations, sometimes with the complicity of third, fourth, even fifth parties that facilitate the movement of arms. As with traditional street crimes such as burglary, a network of complicit actors (e.g., the ‘criminal’, the fence or the middle man, the pawn shop, and a buyer) is involved (Wright and Decker, 1994). The level of involvement of individuals and organizations, from the implicit to the complicit, varies accordingly to the specific role played in relation to the actual act(s). Although not all sales of small arms are illegal, known as white sales, a vast number are sold through either the grey or black markets: the line between legal and illegal, ‘intended’ destination, intermediary locations, and final destination, involvement of transnational networks, corporations, and states (buyers, sellers, and those that facilitate the movement through a veneer of legitimacy by providing documentation) reveals a complex system of actors and actions. Black market deals are illegal by the covert nature of the transaction (i.e. the movement of the money and the arms).

Transactions are hidden by concealing weapons through mislabeling, forging of documents, and the laundering of the proceeds obtained through the transaction. This also includes the sale of arms from one country to another when there is an arms embargo placed on either. The grey market refers to those transactions that are not considered illegal, but do not fall within the category of white market dealings. These sales are also covert in nature where governments take risks but minimize the potential dangers (Cragin and Hoffman 2003). For example, although there are violations of arms embargoes directly (black market deals), there are also sales of arms to a non-embargo country (B) with the knowledge that such arms will then be sold to the intended state (A) to bypass the embargo, through the use of proxy individual brokers or insurgency groups. This can also include utilizing existing international networks involving black market organizations and rogue traffickers (United Nations Expert Panel Report on Liberia, October 2001). These networks facilitate transfers originated as legal state-to-state transfers and then divert them into conflict zones (Small Arms Survey, 2006; 2008).

As numerous court documents, transcripts, United Nations Reports, and NGO reports have revealed, many states play a prominent role in the facilitation of, complicity in, and implicitly involved in black and grey arms trafficking. For example, in 2000, weapons were transferred from manufacturers in Bulgaria and the Ukraine to Angola in violation of the United Nations Security Council arms embargo against the rebel group UNITA (United Nations, 2000). In this instance, many other states such as Togo, Zaire, and Burkina Faso, were complicit in the transfer of these weapons by providing falsified end-user certificates,<sup>1</sup> storage, and transit. In another example, a report submitted by the

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<sup>1</sup> End-user certificates provide documentation on the import of the arms and their final destination (end-user). Specifically, they contain what is being sold, who is selling it and to whom it is being sold. This also means that the receiving party does not intend to transfer the weapons to a third country. States trafficking arms that accept such end-user certificates must falsify them and allow for the export of the arms to another country.

European Union to the United Nations Commodity Trade Statistics Database (COMTRADE) stated that France and the UK supplied small amounts of military equipment and small arms to Sudan during 2000 and 2001. In all, thirty countries were directly or indirectly involved in the transfer of weapons to Sudan after the implementation of the 2004-2005 United Nations arms embargo<sup>2</sup>.

Rarely discussed in terms of transnational organized crime is the role of state actors in the facilitation of arms trafficking. In order to do this we apply recent scholarship on state crime to the practice of state involvement in arms trafficking selecting one region of the world (e.g., Africa) where external and internal state institutions and their actors involvement has been particularly noticeable.

### **The State Crime Perspective**

In 1988, William Chambliss, in his Presidential Address to the American Society of Criminology, stated that in his studies of organized crime and countries (in particular the political and economic spheres) he recognized that many state activities are the same in nature, motive, and means as some of the organized criminal relations of today. He called this kind of activity state-organized crime and pointed out the importance of studying this type of criminality. Here Chambliss was making a larger connection to the similarities of many types of state criminality to organized crime such as “a state’s complicity in piracy, smuggling, assassinations, criminal conspiracies, acting as an accessory before or after the fact... selling arms to countries prohibited by law, and supporting terrorist activities” (Chambliss 1989, p. 183). Related specifically to our topic here, Chambliss noted that “in violation of U.S. law, members of the National Security Council (NSC), the Department of Defense, and the CIA carried out a plan to sell millions of dollars worth of arms to Iran and use profits from those sales to support the contras in Nicaragua” (Chambliss, p. 183).

Since Chambliss’ speech, scholars of state crime have made advances in theoretical modeling and analyzing core enactment and etiological factors of crimes of the state (e.g. Barak 1991; Friedrichs 1998; Kauzlarich and Kramer 1998; Kramer and Michalowski 2005; Kramer, Michalowski, Rothe, 2005, 2006; Michalowski and Kramer 2006; Mullins and Rothe 2008 a, b; Ross 1995; 2000; Rothe 2009a; Rothe and Mullins 2010). Overall, the state crime literature has developed a number of useful concepts including providing a distinction between crimes of commission and crimes of omission. This includes highlighting the role of states complicity in crimes of other states as well as corporate criminality (known as state-corporate crime), the problematic nature of defining state behaviors as criminal or illegal given the states position to self-define acts as legal or illegal and the concept of harm based definitions. For example, scholars of state crime have noted that states and by extension their governments, need not plan to commit a

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<sup>2</sup> For example, direct export states included Belarus, China, Cyprus, India, Iran, Kenya, Russia, Saudi Arabia, Senegal, Slovakia, Spain, and Turkey and indirect exporters included Australia, Belgium, Chile, Czech Republic, Denmark, Egypt, Eritrea, Ethiopia, France, Germany, Greece, Italy, Kuwait, Oman, Pakistan, Qatar, Sweden, Switzerland, Syria, Thailand, Tunisia, United Arab Emirates, United Kingdom, and the United States of America (Human Rights First, 2008, p.1).

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crime, or knowingly commit a crime, but because they are entrusted with protecting the public good, they fail in this respect due to incompetence, mismanagement, lack of resources etc. and thus this becomes a crime of omission. The state crime literature has also looked at the facilitative nature of states in corporate crime (Michalowski and Kramer 2006).

State crime scholars have also addressed, to a much smaller degree, state involvement in crimes considered under the rubric of transnational crimes (Andreas and Nadelmann, 2006; Burns and Lynch 2004; Chambliss 1989; Friedrichs 2007; Lenning and Brightman 2008; Pickering, 2007; Rothe 2009a; Stanley 2007).<sup>3</sup> At the heart of this criminological literature, albeit state crime or transnational crime, is the issue of controls. However, when dealing with state criminality, controlling such acts becomes highly problematic. Consequentially, our focus here is not to empirically test the etiological factors of states complicit or implicit involvement in arms trafficking, but instead to move the discussion forward to broader theoretical and juristic issues associated with efforts to control arms trafficking. After all, if the goal is indeed to reduce illegal arms trafficking and subsequent numbers of civilian deaths as a result, one must look beyond the immediate or apparent actors to include in policies and efforts of control the role of states in the facilitation of this type of crime.

The following section presents an overview of arms trafficking and the role of states, implicit and complicit, in the trafficking of small arms,<sup>4</sup> paying particular attention to the case of Charles Taylor, Liberia, Sierra Leone and the Revolutionary United Front (RUF); one of several militias involved in the decade long protracted Sierra Leone conflict (1991-2002).<sup>5</sup> This is followed by a discussion highlighting the difficulties of controlling arms trafficking in general, and in particular, the role of states involved in this type of criminality.

### **The Sierra Leone Conflict and the RUF**

The war in Sierra Leone occurred between 1991 and 2002, claiming some 75,000 lives and leaving scars on thousands more. The conflict, plagued by instability, corruption, and misrule because of power struggles to control Sierra Leone's rich diamond fields, was characterized by mass killings, mutilations, sex crimes, and other grave human rights violations. However, the war in Sierra Leone also had significant involvement of foreign governments and mercenary forces that provided support in exchange for lucrative contracts and mining concessions. For example, the assistance of Charles Taylor's National Patriotic Front of Liberia (NPFL), and later the Liberian government under Taylor's authority, included training, provision of personnel, and considerable logistical

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<sup>3</sup> Likewise, much of the literature on transnational organized crime has neglected to include the role of states in the facilitation of this form of crime.

<sup>4</sup> Small arms can be defined as lightweight weaponry that are man portable and usually impervious to the elements and include hand held weaponry such as assault rifles, mortars, grenades, hand guns and surface-to-air missiles, and ammunition.

<sup>5</sup> This case was selected due to the solid evidence and availability of primary data that provides direct links of arms trafficking to various countries as they are repeated in the transcripts over and over by witnesses, the defendant, and prosecutor (unlike say small arms survey reports or other secondary sources).

support. From the onset in 1991, the Revolutionary United Front (RUF) fought to overthrow the governments of both military and elected civilian regimes, citing corruption and oppression.

By the end of 1998, the rebels had gained the upper hand militarily and were in control of over half of the country. Then they launched the January 1999 attack on Freetown (the capital city). During the RUF occupation of Freetown, thousands of civilians were killed as the militia made little to no distinction between civilian and military targets. On May 18, 1999, the Sierra Leonean government and the RUF signed a cease-fire agreement. Under the agreement, both parties were to maintain their respective positions and refrain from hostile or aggressive acts. Despite the latter peace efforts and the Lomé Peace Accords of July 1999, the conflict reignited in May 2000 when the RUF took 500 UN peacekeepers hostage, renewing its offensive tactics against the government. The situation continued with ongoing violence and thousands more civilians victimized. It was not until 2002, with the disarmament and demobilization phases declared completed, that the violence was subdued. By January 2002, 47,710 combatants had been disarmed and demobilized. On January 18, 2002, the armed conflict was officially declared to be over in a public ceremony attended by many dignitaries (Rothe 2009a).

### **Influx of Arms: State Complicit and Implicit Involvement**

The most widely known state involvement of arms trafficking to the RUF is Liberia. However, even here blame has only fallen on Charles Taylor, former President of Liberia, even though other actors involved under Taylor and agents of the state had significant roles in the trafficking of arms (e.g., Musa Sesay, Taylor's Chief of Protocol and General Ibrahim Badamasi Babangida). Less known is the involvement and criminality of a host of other countries involved in the trafficking of small arms to Liberia that would then be supplied to the RUF and to the RUF directly. Drawing from court transcripts of the Special Court for Sierra Leone, the Sierra Leone Truth and Reconciliation Commission Final Report (2004), and the United Nations Expert Panel on Liberia and Sierra Leone reports, the following provides a brief overview of the level of state implicit and complicit criminality in relation to arms trafficking (see Figure One).

- In 1997 actors “in the British government encouraged Sandline International, a private security firm and non state entity, to supply arms and ammunitions to the loyal forces of the exiled government of President Kabbah” (Sierra Leone Truth and Reconciliation Commission Final Report 2004: para 400). Sandline signed a contract with Ahmed Tejan Kabbah, the then exiled President of Sierra Leone to provide a 35 ton arms shipment from Bulgaria (United Kingdom Parliament Report, 1999)
- Britain shipped arms to the RUF directly: two British firms owned and operated by retired British military generals who have strong connections with the British foreign secretary Robin Cook: Sky Air Cargo of London and Occidental Airlines, partly owned by a British pilot, are at the centre of supplying arms to the

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AFRC/RUF rebels (THE PROSECUTOR VS CHARLES TAYLOR, MONDAY, 10 AUGUST 2009. TRIAL CHAMBER II)

- The United Nations Security Council Report on Liberia (2001) stated that Sharif al-Masri was contracted to deliver arms from Uganda to Slovakia in 2000. These arms were rerouted to a company in Guinea, a front company for the Liberian government. When the weapons arrived in Slovakia, the military refused delivery as they did not meet specifications on the contract. Instead of arranging for the guns to be shipped back to Slovakia, al-Masri sold them to Pecos, New Guinea. Pecos then diverted the sub-machine guns to Liberia through an elaborate 'bait-and-switch' scheme.
- Towards the end of the Doe regime, the United States was using Robertsfield Airport in Liberia to supply arms to UNITA. These would later be used in the trade of diamonds-for-arms with the RUF ((PROSECUTOR VS CHARLES GHANKAY TAYLOR, 24 AUGUST 2009 OPEN SESSION SCSL - TRIAL CHAMBER II).
- Approximately 200 tons of illegal arms shipped from Belgrade to Monrovia between May and August 2002, with the aid of Mr. Slobodan Tezic, director of the Belgrade based Temex company. Temex organized the contracts to send mainly old military equipment from Yugoslavian army stocks. The cargo documents, shown to The United Nations Expert Panel Report on Liberia (October, 2002) as part of its investigation, had stamps from the Nigerian receiver, Aruna Import, yet the two Nigerian End User Certifications were false.
- The government of Cote d'Ivoire played a role in the November 2000 diversion of a large shipment of ammunition to Liberia, providing the 'necessary cover story, documentation, and staging ground for the diversion' (United Nations Security Council Report on Liberia, 2001).
- On 16 February 2003, an arms shipment arrived at Liberian International Airport from Kinshasa in the Democratic Republic of Congo and was subsequently transferred to the RUF (PROSECUTOR VS CHARLES TAYLOR, WEDNESDAY, 9 JANUARY 2008, OPEN SESSION SCSL-TRIAL CHAMBER II).
- The president of Burkina Faso Blaise Compaore in Abidjan directly facilitated Liberia's arms-for-diamonds trade, to the benefit of the RUF in Sierra Leone through sales of small arms to Liberia. (PROSECUTOR VS CHARLES TAYLOR, 24 AUGUST 2009 OPEN SESSION SCSL - TRIAL CHAMBER II).
- In May and July 2002, 45 tons of weapons shipments were delivered to Harper Port, Liberia having originated in Bulgaria with a stop in Nice (The United Nations Expert Panel Report on Liberia October, 2002).

- Shipments of arms from Nigeria regularly made their way to Buchanan Port, Liberia under the guise of shipping food and non-sanctioned supplies after the UN arms embargos were implemented (PROSECUTOR VS CHARLES TAYLOR, PROSECUTOR'S OPEN STATEMENT, OPEN SESSION SCSL - TRIAL CHAMBER II).
- South Africa labeled small arms were sent to Liberia (THE PROSECUTOR V. CHARLES GHANKAY TAYLOR, THURSDAY, 10 JANUARY 2008-TRIAL CHAMBER II).
- Ukraine sold weapons directly to Taylor who then traded the RUF the weapons for diamonds (THE PROSECUTOR V. CHARLES GHANKAY TAYLOR, WEDNESDAY, 16 JANUARY 2008-TRIAL CHAMBER II).
- China shipped arms to Nigeria as a diversion state, from Nigeria to Ghana and from Ghana to Liberia (THE PROSECUTOR V. CHARLES GHANKAY TAYLOR, WEDNESDAY, 16 JANUARY 2008-TRIAL CHAMBER II).
- Burkino Faso soldiers accompanied a shipment of small arms to Cote d'Ivoire where Taylor met with them and loaded the arms onto trucks to return to Liberia which were later provided to the RUF (THE PROSECUTOR V. CHARLES GHANKAY TAYLOR, FRIDAY, 08 JANUARY 2008-TRIAL CHAMBER II).
- Over a dozen occasions, Russian planes transported Russian arms directly to Liberia and at times using the Cote d'Ivoire as a diversion state (THE PROSECUTOR V. CHARLES GHANKAY TAYLOR, WEDNESDAY, 12 MARCH 2008-TRIAL CHAMBER II).
- Small arms shipments to Taylor also came from Burkina Faso, America and Europe. Some of these shipments were re-routed through the Ivory Coast (THE PROSECUTOR V. CHARLES GHANKAY TAYLOR, THURSDAY, 13 MARCH 2008-TRIAL CHAMBER II).
- Source countries of the small arms trafficked also noted include: AK-47, 25 per cent of which came from the USSR or China. M16s, 25 per cent from the USA. Famas, 15 per cent from France. Beretta, 15 per cent from Italy. Uzi, 10 per cent from Israel. Rifles, 5 per cent from the USA, and various others, 5 per cent (THE PROSECUTOR V. CHARLES TAYLOR, MONDAY, 17 AUGUST 2009, TRIAL CHAMBER II).

Sources of the trafficked small arms include Russia and other former USSR states, the United States, Israel, France, Italy, and the United Kingdom to name a few. Additionally, arms were diverted to the RUF through Liberia due to the covert activities of the United States in support of former President Samuel Doe and from the UK support of Sandline (a Private Military Corporation) and through their airlines and linkages with the UK



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government. States sold to Liberia,<sup>6</sup> including Burkina Faso, China, the Democratic Republic of Congo, Nigeria, the Ukraine, and Russia to name a few. Likewise, Bulgaria used Nice as a diversion destination to then ship the small arms to Liberia and from there to the RUF. Other diversion states included Burkina Faso through Cote d'Ivoire to Liberia, and Russia direct to Liberia as well as through the Ivory Coast to Liberia, China to Nigeria to Ghana to Liberia. Uganda used Slovakia as a diversion where the small arms were then re-sold to Guinea and then shipped to Liberia where Taylor and his network provided them to the RUF. The RUF also purchased small arms directly from Guinea (see Figure One).

The above examples serve as a small sample of the various states involved in arms trafficking to supplying only one of several militia groups within the context of the civil war in Sierra Leone (RUF). As such, the implicit and complicit actions of countries are not only criminal, but have aided the massive and systematic crimes against humanity and war crimes committed in Sierra Leone under the direction and support of Charles Taylor and the RUF. We concur with Human Rights Watch (2004: 2) that,

States involved in arms transfers bear a measure of responsibility for the abuses carried out with the weapons they furnish. This is true of arms-supplying states that approve arms deals where they have reason to believe the weapons may be misused. Exporting states in particular—as well as those that serve as transshipment points or as bases for arms brokering, transport, and financing—also must share in the responsibility for abuses.

Nonetheless, we suggest that if we are to consider the vast number of states involved in grey and black market sales of small arms that facilitated the protracted war on Sierra Leone, from the complicit to implicit, the issue of controls is highly problematic given the extant limited applicable international legal doctrines such as joint criminal enterprise, criminal organization, or collective criminality are limited in their ability to address the criminality of these countries. Furthermore, there are broader political issues that hinder efforts of control as highlighted by the state crime literature including issues of enforcement, political will and states' positions to hinder the advancement of levels of accountability for their own behaviors. The following section highlights the shortcomings of these doctrines typically used to prosecute arms trafficking at the international level as well as providing a broader discussion of issues related to controlling state criminality.

### Juristic Precedent, Legal Constructs, and Controlling State Criminality

As scholars of state crime have noted (e.g., Bassiouni 2008; Mullins and Rothe 2008; Rothe 2009a, b), institutionalized impunity has served to protect those most responsible for various forms of state criminality. In the case of arms trafficking, the RUF and Sierra Leone, the only individual in a position as a head of state or high ranking government

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<sup>6</sup> These arms were then provided to the RUF as well as aided in the ongoing repressive tactics of Taylor in Liberia.

official formally charged and under-going trial to date is Taylor. He was charged with complicity under the doctrine of joint criminal enterprise (JCE).

Complicity is an acknowledged principle in international law, although here too the application of the construct has been used in a strict sense. According to the ruling of the International Criminal Tribunal for the Former Yugoslavia (ICTY) “aiding” entails providing practical assistance that has a substantial effect on the commission of the crime though the individual must *intentionally provide* assistance to the perpetrator *with knowledge* of the perpetrator’s intent to commit a crime, but need not himself or herself support the aim of the perpetrator. Likewise, the Special Court in Sierra Leone drew from the ICTY in its indictment of Charles Taylor where he stands indicted for having “aided and abetted” abuses perpetrated by Sierra Leonean rebels through the supplying of arms (indictment para. 20).

The joint criminal enterprise (JCE) doctrine originates in a judgment of the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia and is controversial, especially because the third component of joint criminal enterprise allows the conviction of an individual for crimes committed by those who share a common illegal purpose, including those the individual did not intend to commit. In the case at hand, Taylor was charged with crimes against humanity through the joint criminal enterprise of funding and supplying arms to the RUF (Schabas 2007). JCE has been used in international judicial decisions to combine elements of conspiracy, complicity and direct participation. It is a tool used to assign criminal liability to individuals for activities carried out by a collective (Gustafson, 2007).

However, precedent of use has included the requirement of an *express agreement*, which means that an individual *had to enter* into an express agreement with the perpetrators of a crime. Specifically, the International Criminal Tribunal for the former Yugoslavia Trial Chamber decision in Brdjanin<sup>7</sup> held that, where a defendant is not alleged to have participated in the physical perpetration of the crimes charged, but to have contributed in some other way to the commission of the crimes by a group, the prosecution must demonstrate that the defendant entered into an express agreement with the physical perpetrators to commit the crimes charged (Gustafson, 2007:1). Likewise, the Appeals Chamber in the Armed Forces Revolutionary Council Appeal Judgment from the Special Court for Sierra Leone stated that a shared a common plan, purpose or design (joint criminal enterprise) (Article 33) was necessary. The Rome Statute of the International Criminal Court states that assigning individual criminality includes an individual, working jointly with another or through another person, regardless of whether that other person is criminally responsible (see Article 25, 3).

However, the idea of ‘proving’ a common purpose, as with JCE where an individual must enter into an *express* agreement, such trails are rarely found given the level of actors involved: in this case states. Similar to the precedent and interpretations of command

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<sup>7</sup> Trial Chamber Decision. Case Number: IT-99-36-T. Date of Decision: 01-04-2003.

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responsibility, the requirement of ‘having knowledge’ either *expressly* entering into an agreement or showing a *common* plan, is easily circumvented through various organizational strategies and catalysts such as plausible deniability, diversion of arms, or outright lack of transparency of sales (Rothe, 2009b). Additionally, this applies to individuals, not to states or organizational entities.

Another potential venue to use in efforts to prosecute states and state actors for arms trafficking includes the idea of a criminal organization; however, this assumes the whole of the organization is criminal. Further, and similar to the arguments once used against categorizing corporations as criminals, the notion of state criminal liability has been infused in a political web of power, politics, and debate. As noted during the Nuremberg Trials: “Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.” Yet, there are different institutions that address violations of the state and those of individuals. However, this is not to say that criminal liability cannot be extended to the state as an institution (as the state of Germany was found liable) as well as high ranking individuals within the government: the culpability is not an either-or situation. For example, Articles 9 and 10(10) of the Nuremberg Trials mention the criminal liability of an organization (state), as does the 1996 Draft Articles on the Law on International Responsibilities of States (adopted by the United Nations International Law Commission (Articles 5–15). The latter holds that imputing to a state an international violation of law committed by one of its apparatus amounted, in principle, to concentrating responsibility on the public official. On the other hand, the idea of a criminal state has limited potential as well (Rothe 2009a).

The legal construct of criminal organizations is limited in its application. The recognition of criminal organizations can also be traced back to the Nuremberg Charter, Articles 9 and 10 (Jorgensen, 2000, 2001). Article 9 states, “At the trial of any individual member of any group or organization the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization.” Article 10 continues with, “In cases where a group or organization is declared a criminal by the tribunal, the competent national authority of any signatory shall have the right to bring individuals to trial for membership.” This allowed the Tribunal to declare an individual or organization as criminal. Here though, the understanding was founded on five essential components of collective criminality. The most relevant to our case includes the following: Must be some aggregation of persons in identifiable relationship with a collective purpose or common plan of action; and the aims of the organization must be criminal in that it was designed to perform crimes. The Judgment of the Tribunal then provided a definition of a criminal organization: “A criminal organization is analogous to a criminal conspiracy...there must be a group bond and organized for a common purpose” (Nuremberg Judgment, 1947; 256). The concept of a criminal organization, as historically used, however, limits us again by requiring that it involves a, meaning singular, organization, including its sub-units, and that the individuals *must have a common purpose or plan*. Yet, with the complicit and implicit involvement of states and small arms trafficking, there is not always a common bond or common purpose, as such; the

precedent use of criminal organization would not be applicable in this case, requiring an expansion of conceptualization and application.

As with other forms of state criminality, controls at the international level are highly problematic. Similar to ‘atrocities’ crimes (i.e., genocide, crimes against humanity and massive violations of human rights), the structure of arms trafficking which includes the complicit and implicit involvement of states, is “likely to be such that its various components are kept separate from one another or without knowledge of the ultimate goal”. This allows for compartmentalization of behaviors and actors and it “facilitates the task of those who prefer to ignore the facts by allowing them not to connect the dots” (Bassiouni, 2010). This is especially the case if we are to include complicit actions that contribute to the facilitation of a criminogenic environment and/or criminality. As noted by Nollkaemper (2009, p. 2), the focus on individuals, atomistic organizations or states limits the concern and response to “small cogs in larger systems” and “is only a partial solution...If the goal is termination of the crimes and prevention of their recurrence, individual [or singular organizations] responsibility is unlikely to do the job.” Nonetheless, in its current state, international criminal law lags in its ability to address the involvement of states and organizations (Cassese, 2010; Bassiouni, 1999; 2000a; 2010) where there is no established criminal responsibility of states, and where international crimes apply only to individuals, not organizations (Bassiouni, 2010). This is further compounded by the fact that much of what we have highlighted here may not yet be defined (codified) as illegal, presenting additional difficulties in applying legal doctrines that have yet to catch up to the concept of state omission and commission criminality in a more strict sense.

Additionally, beyond the juristic concerns noted above, state crime literature has highlighted additional factors that impede controlling this type of criminality. Namely, lack of political will, realpolitik, and states’ positions to block efforts to expand juristic doctrine applicability and/or notions of state criminality as well as practices such as plausible deniability, covert actions, hyper-secrecy, and/or refusal to cooperate or participate within the broader complementary international criminal justice system.

Nonetheless, we suggest that if we are truly committed to addressing the complexities of arms trafficking, it cannot be done by holding certain individuals accountable for the totality of a phenomenon, as was the case with Sierra Leone. We must also consider the roles of states that provide the weapons (knowingly-implicit, should have known, or as unknowing complicit actors) including the diversion states and those operating within them (knowingly-implicit, should have known, or as unknowing complicit actors) that oversee or are directly involved in the processes as related from the initial sale through the final point of destination of the arms beyond the individual rogue actor or a head of state directly involved in conflicts and atrocities facilitating additional arms trafficking. As stated by Human Rights Watch (2004, p. 2),

States involved in arms transfers bear a measure of responsibility for the abuses carried out with the weapons they furnish. This is true of arms-supplying states

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that approve arms deals where they have reason to believe the weapons may be misused. Exporting states in particular—as well as those that serve as transshipment points or as bases for arms brokering, transport, and financing—also must share in the responsibility for abuses.

While concurring with the statement above, we also suggest accountability must be broader and include states' implicit involvement as it too feeds into the criminogenic environment within which arms' trafficking thrives.

### Concluding Discussion

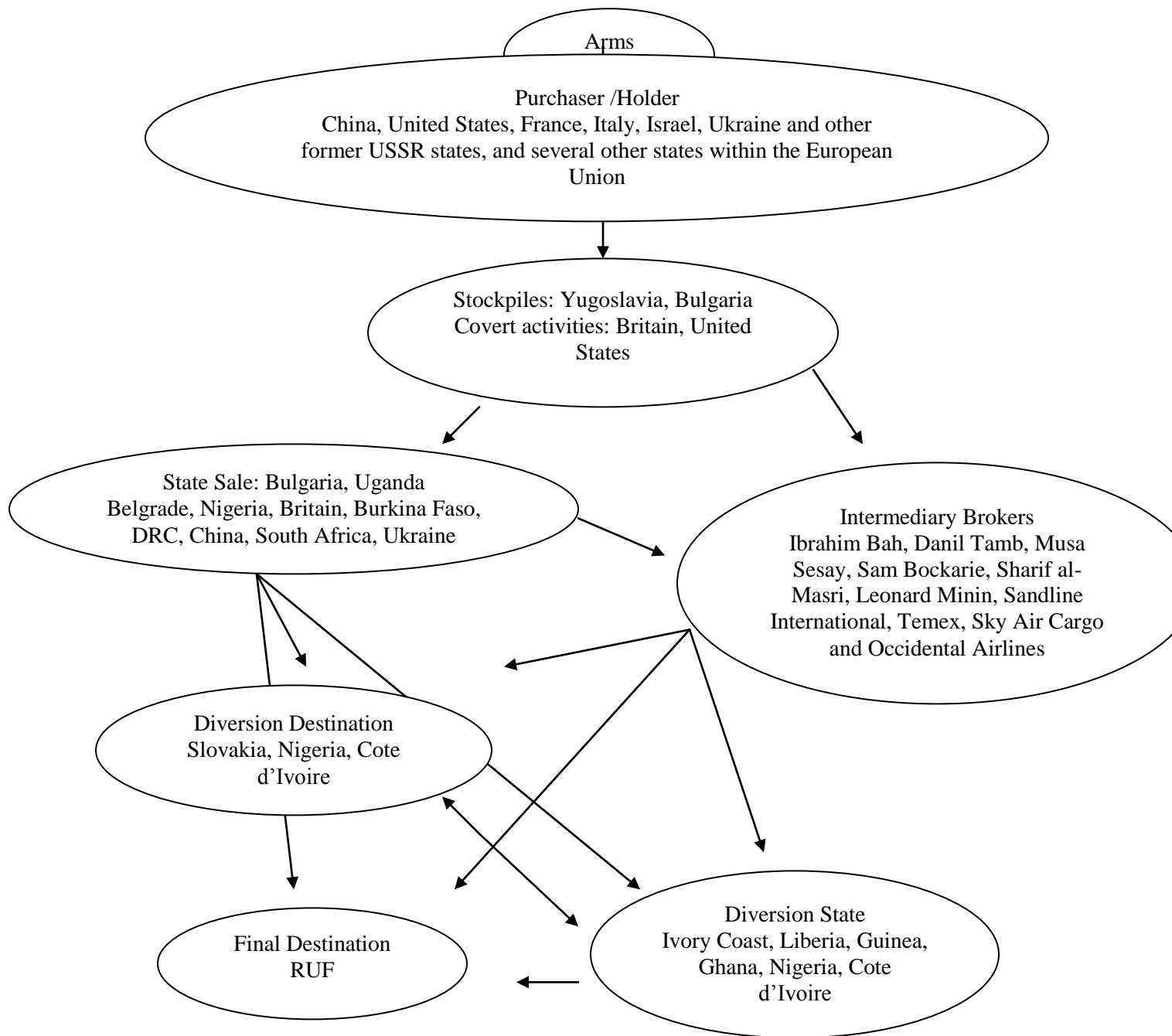
The proliferation and trafficking of small arms has fueled internal unrest and civil wars, leading to the deaths and injury of hundreds of thousands of innocent civilians. On a theoretical level, conceptualizing arms trafficking in terms of state crime does add an explanatory value and should be considered when searching for etiological factors as well as, and perhaps most importantly, for policies and/or remedies to control this type of behavior. Additionally, the primary origins of the small arms market are the states that compose the United Nations Security Council. Consider also that the Security Council has a primary responsibility for the maintenance of international peace. Consequentially, obligations to maintain peace in the global order could well entail addressing the destabilizing affect and latent consequences of arms trafficking.

Given the aforementioned problems with current legal constructs and their application that need to be addressed, this leaves us with normative questions considering the resistance to the idea of responsibility of states with regard, in particular, to authorized transfers—those done during covert activities or their subsequent leftover stockpiles. For example, criminal liability would need to be expanded to include states. Additionally, complicit actions of states prove to be highly problematic for accountability mechanisms, perhaps more so than in the case of heads of state as noted above. Furthermore, given the role of *realpolitik*<sup>8</sup> involved in enforcement of international law in particular, issues of sovereignty and the current limitations of international law, applying accountability in terms of complicity, knowingly or unknowingly, or even those acting implicitly, will indeed prove to be difficult.

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<sup>8</sup> The Westphalian theoretical premise and current state of international relations wherein states' self-interests, in terms of military, political, and economical, dictate foreign policy.

Figure One: Schematic of States Implicit and Explicit Involvement



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