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



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## DEFINITIONS

| Terms  | Definition  |
|--|---|
| Arms   | All conventional military and civilian weapons, ammunition, parts thereof, and military support services, if not otherwise indicated  |
| Arms transfers                               | Transfers of military equipment and services of any nature from a country to another country, irrespectively of the legal or illegal nature of transfers.   |
| Arms transfers, types                        | Government-to-government: transfers of military equipment and services directly arranged between two governments<br>Commercial: transfers of military and non-military arms, weapons, and ammunition between either a manufacturer or a broker and a foreign entity   |
| Arms trade                                   | Transfers of military equipment and services of any nature. The "legitimate" arms trade is that trade which does not violate national and international laws and agreements at the date of transfers  |
| Arms trafficking                             | Arms trafficking: transfers of military equipment and services of any nature that violate national and international laws and agreements at the date of transfers   |
| Arms carriers                                | Transport and logistics companies that carry out or organize arms transfers   |
| Arms dealers                                 | Corporations or individuals whose activities consist of buying and selling arms. Corporations or individuals in command of large stock of arms are often involved in brokerage activities.  |
| Logistics                                    | Activity to plan, implement, control, and forward goods between the point of origin and the point of consumption, including related documentation and storage.  |
| Logistics, Just-in-time                      | The principle of production and inventory control that prescribes precise controls for the movement of raw materials, component parts, and work-in-progress. Goods arrive when needed (just in time) for production for use rather than becoming expensive inventory that occupies costly warehouse space.  |
| Transport documents: the Bill of lading, B/L | In the shipping industry, it is a document that serves three main functions: a) it is a receipt for goods shipped on board; b) it is a document of title for these goods; and c) although not a contract, it is evidence of a previous contract. There are various types of B/L, the most common being: "order bill of lading" and "straight bill of lading" (the latter in two forms: regular and short, the latter not including the contract terms on the reverse side). The aviation industry use a similar document, the airwaybill. |

## 1. Introduction

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.<sup>2</sup> None of these conflicts could have lasted long without one or both of the opposing forces commanding and replenishing sizeable arsenals, usually relying on

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<sup>2</sup> The PRIO/Uppsala Armed Conflict Dataset, Armed Conflict (Version 3-2005b), Centre for the Study of Civil War at the International Peace Research Institute, Oslo (PRIO) & Department of Peace and Conflict Research, Uppsala University, September 6, 2005; Monty G. Marshall, Ted Robert Gurr, CIDCM Center for International Development & Conflict Management, 2005; Center for Defense Information (CDI) *Military Almanac 2001-2002*. Washington, DC, 2002; CDI The Defense Monitor *The world at war January 1, 2003*. CDI, Washington, DC, January/February 2003; Ernie Regehr, Project Ploughshares *Armed Conflicts Report 2000-2002-2003*. Waterloo, Ontario, Institute of Peace and Conflict Studies, Conrad Grebel College; Parker, K., A. Heindel *Armed Conflict In The World Today: A Country By Country Review*. Humanitarian Law Project/International Educational Development and Parliamentary Human Rights Group, UK. Spring 2000; Waddoups, S., S. Wolfe *Armed Conflicts in the World Since the End of the Cold War (1989 - Present)*. Washington, D.C., Congressional Research Service, August 2000.

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<sup>3</sup>, 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 Brandt Report (1980)<sup>4</sup>- whereas most of the arms and ammunition used in these conflicts have been manufactured by more developed countries in the “North”.<sup>5</sup>

PICTURE A AND CAPTION: “WORLDWARS” 1990s AND 2000s

In many countries not suffering armed conflict, governments nevertheless conducted and condoned violations of human rights using armed force, relying upon an international network of transport companies, brokering agents and arms dealers to renew their weapons and munitions. “Non-lethal” or “less-than-lethal” weapons and other security equipment have widely been traded, brokered and delivered to security and law enforcement agencies, many of which have regularly committed serious violations of human rights, including the suppression of dissenters and demonstrators, as well torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment) of prisoners.<sup>6</sup>

Moreover, evidence suggests that some transport companies and brokering agents have also been involved in the unauthorized or illegal delivery of military equipment to embargoed recipients. Such cargoes have included infantry weapons and other small arms and light weapons, as well as ammunition, explosives and other conventional arms, such as armoured vehicles, helicopters, howitzers and even sophisticated aircraft and dual-use equipment. Seizures of such arms shipments, as well as inquiries and reports on arms embargoes, show that a significant amount of what was transported came from the sale of surplus stocks, as illustrated below.

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

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<sup>3</sup> See Amnesty International “*Report 2005. The state of the world’s human rights*”, AI Index: 10/001/2005, May 2005; “*Shattered Lives: the case for tough arms control*” (Amnesty International, Oxfam International, 2003), Chapters 2 and 4.

<sup>4</sup> Report of the Independent Commission on International Development Issues, Chairman Willy Brandt: *North South: A Program for Survival*. Cambridge, M.I.T. Press, 1980. A map with the North-South divide appears on the cover of the report.

<sup>5</sup> Amnesty International “The G8: global arms exporters” June 22, 2005; “*A Catalogue of Failures: G8 Arms Exports and Human Rights Violations*”, May 19, 2003.

<sup>6</sup> See Amnesty International “The Pain Merchants: Security equipment and its use in torture and other ill-treatment,” December 2, 2003.

– 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.

### ***Facing the squeeze - export south***

Intensified competition resulting from globalisation has been increasing arms manufacturers' dependency on the global freight transport industry and on brokering activities. After the dissolution of the Warsaw Pact in the early 1990s and the end of the Cold War, traditional arms-producing countries experienced a visible decline of military expenditure and government defence procurement for new weapons systems. In 1999, the cumulative military expenditures of industrialized countries amounted in real terms to only 55% of the 1989 value while the personnel of the industrialized countries' armed forces declined from 11.6 million in 1989 to 6.5 million in 1999.<sup>7</sup>

Faced with falling domestic markets, arms manufacturers started to seek solutions through mergers, consolidation of core business activities, and a focus on exporting to foreign markets, often regardless of the ethical consequences.<sup>8</sup> Governments favoured these policies in order to maintain the viability of military production lines and lower the cost of domestic arms procurements (the higher the exports of military products, the lower the cost per unit produced). Other methods used by arms manufacturers to adapt to the post-Cold War conditions included the establishment of joint ventures and licensed production facilities in countries with low operational and labour costs. As a result, however, the number of arms manufacturing countries grew and has expanded to include the more developed of the 'developing countries,' many of which lack the political will, legal frameworks and enforcement capacity to effectively control arms transfers.

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.<sup>9</sup> 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'.

The major arms producers also exported large quantities of arms which required well-established transport and logistic networks. The hope was expressed by some that this period

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<sup>7</sup> U.S. Dept. of State, *Military Expenditures and Arms Transfers 1999-2000*. Washington, D.C., Bureau of Verification and Compliance, June 2002. Table I.

<sup>8</sup> See for example, Finardi, S., C. Tombola "*Le strade delle Armi*," [The Arms Routes] Milan, Jaca Book, 2002

<sup>9</sup> Bertsch, G.K., Potter, W.C. (eds.) *Dangerous Weapons, Desperate States. Russia, Belarus, Kazakhstan, and Ukraine*, New York, Routledge, 1999; Musah, A., Castle, R. *Eastern Europe's Arsenal on the Loose: Managing Light Weapons Flows to Conflict Zones*. BASIC Paper #26, May 1998; Anthony, I. *Russia and the arms trade*, Oxford, New York, Oxford University Press, 1998; Pierre, A.J. (ed.) *Cascade of arms, managing conventional weapons proliferation*, Washington, DC, Brookings Institution Press, 1997.

would open the world to the “peace dividends” brought by the end of the Cold War – redirecting the world’s resources away from military expenditure. However, between 1989 and 1999, the major arms producers and suppliers exported and delivered worldwide no less than 16,000 main battle tanks; 43,000 artillery units; 30,000 armoured vehicles; 1,600 military ships and submarines; 5,200 combat aircrafts; 5,100 military planes; 3,200 helicopters; 47,700 surface-to-air missiles; 3,300 surface-to-surface missiles; and 3,200 anti-ship missiles.<sup>10</sup> In the same period, ‘developing countries’ absorbed on average 54% of world imports of defence articles and services.<sup>11</sup>

More recently, in the eight-year period 1997-2004, ‘developing countries’ (European ‘developing countries’ excluded) imported from the major arms suppliers at least 5,502 tanks and self-propelled guns; 4,685 artillery units; 6,658 armoured vehicles; 609 military ships and submarines; 1,591 combat aircrafts; 979 other military planes; 1,291 helicopters; 13,547 surface-to-air missiles; 60 surface-to-surface missiles; and 1,493 anti-ship missiles.<sup>12</sup> In addition, ‘developing countries’ imported hundreds of thousands of infantry weapons and security devices, millions of land mines and other lethal ordnance, and billions of rounds of ammunition. In the same period, the ‘developing countries’ share of world imports of defence articles and services grew to 68.5%.<sup>13</sup>

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. The number of items exported and imported needs to be measured against the number of destinations. In 2001, for example, the world’s top eleven arms exporting countries (by value of exports) - United States, Russia, United Kingdom, Israel, France, Germany, China, Ukraine, Italy, Sweden, and Canada - delivered military equipment and services to 163 other states and 15 dependent territories. The only countries in the world that did not officially receive arms and military services from the world’s top eleven exporters in 2001 were Iraq, Liberia, Somalia, Swaziland, and Tajikistan.<sup>14</sup> According to their official arms trade statistics and declarations for the same year, the United States delivered military equipment and services to 136 countries and territories; Germany to 122; France to 86; United Kingdom to 69; Russia to 67 (2002); Italy to 66; Canada to 57, Sweden to 51. An even larger geographical distribution can be observed at the level of commercial transfers (which include so called “civil” arms and ammunition): for example, during 2001 Germany exported military and non-military arms and ammunition to 124 countries; Italy to 114, France to 111, United Kingdom to 104, China (including Hong Kong and Macao) to 89, Russia to 73, Canada to 56, Israel to 43.<sup>15</sup> Similar patterns can be observed in the following years.

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<sup>10</sup> Military Expenditures and Arms Transfers 1999-2000, 2002, quoted.

<sup>11</sup> Military Expenditures and Arms Transfers 1999-2000, 2002, quoted.

<sup>12</sup> F. Grimmett *Conventional Arms Transfers to Developing Nations, 1997-2004*. US Congressional Research Service, 8/29/2005.

<sup>13</sup> F. Grimmett, 2005, quoted.

<sup>14</sup> The Principality of Monaco and some small islands and archipelagos of the Pacific and Indian Oceans did not imported arms during 2001. The Holy See imported military equipment from Italy in 2000 for €7,365. The Holy See bought 20 submachine guns Mod. PM12-S2 from Beretta SpA.

<sup>15</sup> The list is drawn from the combined records of the known destinations of arms deliveries mentioned in the arms trade statistics of the cited arms exporting countries, in media reports, and in the U.N. COMTRADE database.

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: the “North-North” routes serving the NATO and the former Warsaw Pact countries, and the “North-South” routes for arms transfers from ‘industrialized’ to ‘developing’ countries, were supplemented by the “South-South” routes, established by emerging arms producers in ‘developing’ regions such as Brazil, Israel, Singapore and South Africa. Significant changes in the global transport industry and in defence logistics<sup>16</sup> have facilitated this process. For example, the radical privatization of the transport industry in the East European and former-USSR countries helped extend their reach beyond the boundaries of the habitual customers of the former Soviet Union, in Africa in particular, to support the expanded arms trade. This radical privatization and the growth of “South-South” routes<sup>17</sup> make the task of controlling and curbing arms transfers to conflict zones even more difficult. This is compounded by the occurrence of arms brokering activities, especially in countries where these activities are poorly regulated or not regulated at all.

### ***States failing to address the chain***

The wider geographical distribution of the arms trade and the significant amount and diversity of articles traded worldwide have had important consequences on the way arms shipments are organized and delivered. Governments and commercial entities involved in arms transfers have increasingly used the services of (a) brokers and financial firms able to deal with the diverse political, economic, and military contexts of potential buyers and sellers; (b) transport companies able to organize and deliver arms shipments worldwide by using their global networks of commercial routes and their large fleet of container and ro/ro<sup>18</sup> ships or cargo planes; and (c) air transport companies specializing in serving difficult destinations as well as cargoes that require particular types of aircraft.<sup>19</sup> Arms transfers have consequently become more integrated in the broader context of the international trade and in the business and logistic practices that are used to ship other manufactured products. Moreover, military supply chains are now being increasingly sheltered in a web of other trade flows and outsourced services.

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

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<sup>16</sup> Logistics is “that part of the supply chain process that plans, implements, and controls the efficient, effective forward and reverse flow and storage of goods, services, and related information between the point of origin and the point of consumption in order to meet customers’ requirement” (U.S. Council of Logistics Management). Present defense logistics is the application of the principles of commercial logistics to the management and movement of military and military-related equipment and personnel.

<sup>17</sup> See Finardi, S., C. Tombola *Le Strade delle Armi* [The Arms Routes]. Milano, Jaca Book, 2002.

<sup>18</sup> The ro/ro (roll-on roll-off) vessels are basically similar to ferries and wheeled vehicles (trucks, trailers, armored and tracked vehicles, etc.) can drive straight on and off the ship.

<sup>19</sup> For example, airports with short or rough runways and cargo that cannot be transported in normal cargo planes with insufficient dimensions and weight.

arms traffickers to deliver arms to areas with active conflicts, even where these are subject to international arms embargoes. In effect, illegal arms cargoes have been detected in various world regions, from the Balkans to the Middle East, from Africa to Latin America and Southeast Asia.

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<sup>20</sup> 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, about 35 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.<sup>21</sup> Even these existing laws include loopholes and exemptions that weaken their hold on arms brokers’ business practices.<sup>22</sup> Recent agreements aimed at enlarging the number of states that regulate arms brokerage according to international standards<sup>23</sup> have yet to be fully implemented. Moreover, neither the existing

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<sup>20</sup> In 2000, the OECD’s Financial Action Task Force (FATF) made public the results of its multi-year inquiry on “fiscal paradises” and targeted fifteen non-cooperative countries with offshore banking and fourteen countries with serious deficiencies in their banking regulations, including Switzerland. The FATF had in the same time advanced a plan for countering money laundering activities and tax evasion in the same “fiscal paradises.” Then US Treasury Secretary Paul H. O’Neill made it clear in several occasions (including a G7 financial meeting in February 2001) that the United States opposed any implementation of the plan. The plan remained unimplemented. After the terrorist attacks of September 11 2001, the J.W. Bush Administration rescued the plan, but only for targeting possible financial activities of terrorist groups. The “non-cooperative” fifteen countries targeted by FATF were at that time Bahamas, Cayman Islands, Cook Islands, Dominica, Israel, Lebanon, Liechtenstein, Marshall Islands, Nauru, Niue, Panama, Philippines, Russia, St. Kitts e Nevis, St. Vincent and Grenadines. Most of them also hosted “open shipping registries”, also known as “flags of convenience,” where a massive share of the world ship tonnage is registered to avoid scrutiny and taxes.

<sup>21</sup> Information from Silvia Cattaneo; See also Holger Anders and Silvia Cattaneo, “*Regulating Arms Brokering: taking stock and moving forward the United Nations process*”, GRIP, September 2005, and Graduate Institute of International Studies “Targeting the Middlemen: Controlling Brokering Activities,” in Small Arms Survey 2004: Rights at Risk, Geneva, 2004.

<sup>22</sup> For example, the US law (Arms Export Control Act, Section 38[b][1][A][ii]; International Trade in Arms and Regulations [ITAR] Part 129), generally considered a model for regulating arms brokering, includes exemptions that, in the real world, severely narrow its scope.

<sup>23</sup> See: Inter-American Drug Abuse Control Commission, “*Model Regulations for the Control of the International Movement of Firearms, their Parts and Components and Ammunition*,” adopted by the OAS General Assembly, AG/RES. 1543 (XXVIII-O/98), 2 June 1998; United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects “*Report of the Group of Governmental Experts established pursuant to General Assembly resolution 54/54 V of 15 December 1999*”, UN Doc. A/CONF.192/2, May 11, 2001; OAS-CICAD, “*Draft Study on Small Arms Brokering*.” Presentation by the Executive Secretariat of CICAD to the Committee on Hemispheric Security, February 19, 2003. European Union “*Council Common Position 2003/468/Cfsp of 23 June 2003 on the Control of Arms Brokering*”, Official Journal of the European Union L 156/79, June 25, 2003. OSCE “*Handbook of best practices on small arms and light weapons: Best Practice Guide on National Control of Brokering Activities*”, The Organization for Security and Co-operation in Europe, September 2003. OAS-CICAD “*Amendments to the Model Regulation for the Control of the International movement of Firearms, their Parts and Components and Ammunition, proposed by the Group of Experts – Brokers Regulation. Update*” Montreal, CICAD, November 2003. The Wassenaar

laws and international agreements nor the most recent initiatives address the role of government agencies and personnel in de facto brokerage activities that, on behalf of the national defence and security industry, go in many cases far beyond the institutional role of these agencies and personnel.<sup>24</sup> For example, specialized personnel of government agencies, as well as government-sponsored brokers, have used security assistance and arms surplus programs, offers of financial credits and offsets policies, as well as barter trade, bribes and corruption<sup>25</sup> to induce other countries to acquire armaments and military-related services well beyond their reasonable defence needs.<sup>26</sup> Such activities have steadily increased since the beginning of the “export rush” and often take place at the defence industry’s international promotional events worldwide.

Overall, global arms markets and conflicts are being significantly changed by the application of methods used in commercial logistics and by the growing dependency of buyers and sellers on arms brokering activities. In particular, the methods used in commercial logistics chain together - wherever located - various actors, functions, and communication systems in order to rationalize and monitor the flow of “goods”, personnel, services, information, and finances. For example, “supply chain integrators”<sup>27</sup> and “brokers networking services”<sup>28</sup> have already entered the domain of arms brokering and transfers.

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

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Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, “*Elements for Effective Legislation on Arms Brokering*” Agreed at the WA Plenary, December 11-12, 2003, <http://www.wassenaar.org>. United Nation General Assembly, Resolution 58/241 adopted January 9, 2004 “*The Illicit Trade in Small Arms and Light Weapons in all its Aspects*”, <http://disarmament.un.org:8080/vote.nsf>.

<sup>24</sup> For example, the US law (Arms Export Control Act, Section 38[b][1][A][ii]; International Trade in Arms and Regulations [ITAR] Part 129), generally considered a model for regulating arms brokering, includes exemptions that, in the real world, severely narrow its scope

<sup>25</sup> The most recent “arms deal corruption saga” has allegedly involved - among others - Durban businessman and ANC’s banker during the apartheid era Shabir Shaik and South Africa’s deputy-president Jacob Zuma, in relation to a massive 1999 weapons deal that favored Thales Group’s Thomson-CSF (now Thint Holdings) and African Defence System. Jacob Zuma was dismissed from his functions in June 2005, while Shabir Shaik was sentenced to 15 years in jail. The alleged corruptors have not yet been prosecuted. See for the alleged involvement of other executives, brokers, and companies: Sam Sole “Jacob Zuma’s other sugar daddies,” *Mail and Guardian*, August 31, 2005

<sup>26</sup> “Guns or Growth?: Assessing the impact of arms sales on sustainable development.” Control Arms Campaign, Saferworld, Project Ploughshares, June 2004. See also: Powell, Kristiana “The Impact of Arms Transfers on Sustainable Development: A Review of the Literature.” Project Ploughshares, September 2004. See also Transparency International (UK)’s *Defence Anti-Corruption Digest*, 2006

<sup>27</sup> A supply chain integrator (fourth-party logistics) is a company that “assembles and manages the resources, capabilities, and technology of their own organization with those of complementary service providers to deliver a comprehensive supply chain solution.” See Connor, Michael D. “*Emerging Opportunities for Fourth-Party Logistics (4pl) Service Providers in The United States Defense Industry*.” SOLE 2003, 38th Annual International Conference and Exhibition “Melding Defense and Commercial Logistics,” Huntsville, AL, August 10-14, 2003.

<sup>28</sup> “Military brokers networking services” in the USA are firms that offer producers of military equipment a centralized purchasing, administrative, promotional, brokering and distribution service for products to be placed in the military marketplace, for example, the New Jersey-based firm, ASAMNet.

abuses. A range of new measures are urgently required, as outlined in the final chapter of this report.

**AMNESTY INTERNATIONAL'S POSITION ON THE ARMS AND SECURITY TRADE<sup>29</sup>**

Amnesty International takes no position on the arms trade per se, but 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 subcontract 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.

For a general introduction, see Amnesty International and Oxfam, *Shattered Lives: the case for tough international arms controls*, October 2003 (AI index: ACT 30/003/2003)

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<sup>29</sup> Amnesty International positions on arms trade, intermediaries, and wars do not necessarily coincide with TransArms positions on the same subjects

## **2. The problem of delivery – some illustrations**

### *Chinese and US arms to Nepal – by truck and by air*

In 2005, the major suppliers of military aid to Nepal - India, the United Kingdom, and the United States - temporarily suspended their arms shipments to Nepal under pressure from human rights activists and organizations that exposed the grave violations perpetrated as a consequence of the arms build-up in Nepal's long-standing civil war with the Communist Party of Nepal (Maoist), and in particular after Nepali King Gyanendra had seized absolute power in February.<sup>30</sup> King Gyanendra and his officials had responded to this halt of military aid with a quest for arms in international markets especially from Pakistan and China whose arms export policies do not in practice involve human rights considerations.<sup>31</sup> Prior to 2005, China had not been a major provider of military assistance to Nepal, which historically has received the bulk of its supplies from India.

Despite international concern at the grave human rights abuses being perpetrated by both sides of the conflict in Nepal, the Chinese government decided to provide further arms, but reportedly used one of the world's most difficult highways to deliver them. 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, during the time that it was "reviewing" the possibility of suspending supplies.

As the conflict in Nepal escalated, the government in 2001 created a paramilitary police force, named the Armed Police Force (APF). After the collapse of the cease-fire in August 2003, the APF and police were brought under the unified command of the Royal Nepalese Army, RNA, and in 2003, an elite Rangers' Battalion was formed to carry out offensive operations.<sup>32</sup> The

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<sup>30</sup> Amnesty International, "Nepal: Military assistance contributing to grave human rights violations," June 15, 2005; Arms Trade Resource Center "Nepal: U.S. Weapons at War. 'We own the country for the next three years,' Nepali Army Captain said while kicking a blindfolded student." World Policy Institute, April 6, 2005. Amnesty has documented transfers by India of 25,000 5.56mm infantry rifles (INSAS) in August 2003 and of Lancer helicopter gunships, produced under license from the French company Eurocopter, which have been used by the Royal Nepalese Army to attack mass meetings called by the Maoists in villages often resulting in the killing of civilians; the transfer of 20,000 M16 automatic assault rifles to Nepalese security forces by the US along with over US\$29 million in military funding since 2001; provision by the UK of Islander Short Take Off and Landing aircraft for logistic purposes without a system of end use monitoring to ensure that these planes are not later fitted with armaments; the granting in 2001 of UK export licences for various shipments of small arms, including 6,780 assault rifles; the sale by Belgium of 5,000 Minimi light machine guns to Nepal in 2002; these arms exports to Nepal from EU countries were in apparent contravention of the terms of the EU Code of Conduct on Arms Exports (1998) which requires EU Member States to refuse arms export licenses where the arms are likely to be used for serious human rights violations; training was provided to Nepalese security forces by the US, UK and India; and military communications equipment was supplied to Nepal from South Africa in 2003, also in apparent contravention of South Africa's arms export legislation requiring the government to avoid exports that would help facilitate human rights violations.

<sup>31</sup> See "Pakistan offers arms to Nepal," United Press International, March 31, 2005; "Pakistan envoy rouses out arms for Nepal," BBC Monitoring International reports, May 4, 2005; "Nepal on its knees for arms," by Sujan Dutta, Telegraph India, May 20, 2005; "Nepal floats global tender to buy arms," Navhindtimes, June 7, 2005; "Kathmandu looks beyond Delhi for arms," by J. Hemanth, Telegraph India, June 19, 2005.

<sup>32</sup> Amnesty International, "Nepal: military assistance contributing to grave human rights violations" June 2005 (ASA 31/047/2005). The US President also requested \$4million for Foreign Military Financing (FMF) and \$650,000 for International Military Education and Training (IMET) for Nepal for 2006. According to his budget request, the priorities for this funding

Nepalese security forces have been responsible for thousands of “disappearances”, a rise in unlawful killings, and continuing arbitrary arrests and widespread torture.<sup>33</sup> The CPN (Maoist) armed opposition abducted civilians, recruited child soldiers and committed torture and unlawful killings. There has been a culture of impunity and disregard for the rule of law among the security forces, which systematically obstructed the courts and the National Human Rights Commission (NHRC).

On November 25, 2005 a Kathmandu-based newspaper<sup>34</sup> reported that during the previous two days 18 Chinese military trucks had arrived at the Nepal-China border in Kodari accompanied by People’s Liberation Army officials. At the border, the trucks, loaded with Chinese arms, had been taken into the Nepalese territory by “plainclothes Royal Nepal Army personnel.”<sup>35</sup> The choice to use such a difficult land route – the 910 km-long “friendship highway” that connects Lhasa, the capital of the autonomous region of Tibet, with Kathmandu – could indicate that either the truckloads of arms - possibly 70 to 90 tons - came from deposits near the China-Nepal border that are under the Chengdu Military Region command, or that the partners wanted to avoid the publicity entailed in Chinese military flights directly arriving at Kathmandu airport.

In October 2005, following earlier diplomatic contacts<sup>36</sup>, the chief of army staff of the Royal Nepalese Army (RNA), General Pyar Jung Thapa, returned from a visit to China and announced that he had secured a commitment from the Chinese government for military aid worth 72 million Nepali rupees (just over US\$ 1 million). In June, China had reportedly shipped military equipment including six armoured personnel carriers to Nepal<sup>37</sup> and by 2006 China was apparently authorising further military supplies to the RNA despite its ongoing violation of human rights.<sup>38</sup>

Earlier, in September 2004, before the King had seized total power, an Antonov 12 cargo plane operated by the Bulgarian Vega Airlines had been held up at the Indian airport of Ahmedabad (Gujarat) and carefully inspected by Indian customs and secret services agents.<sup>39</sup> The plane was reportedly ferrying military equipment sent to Nepal by the U.S. Department of Defense. Further research reveals that the Vega cargo plane had departed from Baltimore

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would be small arms, grenade launchers for the Rangers Battalion, night vision goggles, body armour, secure communication equipment, spare parts for mobility platforms and armour plating.

<sup>33</sup> Amnesty International Annual Report 2005.

<sup>34</sup> “China arms RNA,” Kantipur Online, November 25, 2005, [www.kantipuronline.com](http://www.kantipuronline.com); “China supplies truckloads of arms to Nepal: Report,” Nepalnews.com, November 25, 2005; “Import of arms from China as per the agreement: RNA,” Nepalnews.com, November 25, 2005.

<sup>35</sup> Kantipur Online, November 25, quoted.

<sup>36</sup> In March 2005, arms sales to Nepal by China were reportedly discussed during a visit to Nepal by Chinese Foreign minister Li Zhaoxing and later in the Fall during a visit of Nepal’s Foreign minister Ramesh Nath Pandey to Beijing. “Chinese FM to visit Nepal, sale of arms likely to be discussed,” by Kedar Man Singh, Agence France Presse, March 17, 2005; “China agrees to sell Rs 1.6 billion worth arms to Nepal,” Nepalnews, September 11, 2005.

<sup>37</sup> “China supplies truckloads of arms to Nepal,” 25 November, quoted; *Chinese arms ‘supplied to Nepal’*, BBC report, June 17, 2005, [http://news.bbc.co.uk/1/hi/world/south\\_asia/4105036.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4105036.stm)

<sup>38</sup> In February 2006, an Indian news agency reported that Nepal had paid \$10 million for Chinese-made rifles, and that a consignment of nearly 25,000 rifles was due to arrive in Kathmandu. The report stated that in 2005, Nepal’s defence ministry spent nearly US\$800,000 for 7.62 mm rifle ammunition and 18,000 grenades manufactured in China. A well-regarded Nepal-based weekly reported that a shipment of US \$890,000 worth of ammunition and grenades from China had arrived in December 2005

<sup>39</sup> See “The Tribune”, 29 September 2004

(Maryland, USA) on a route that included stopovers in Gander (Canada), Shannon (Ireland), Plovdiv (Bulgaria), Muscat (Oman) and Tribhuvan airport (Ahmedabad). After an intervention by the US Embassy in India, the Vega Airlines plane was released.<sup>40</sup>

According to the Times of India, a US embassy spokesman in Delhi had clarified that “the plane was carrying simulated ammunition and arms for Police’s training exercises and arms intended for training and equipping the Nepalese anti-terrorist police unit.”<sup>41</sup> On September 28 the Vega plane eventually reached Kathmandu, where the US Embassy spokesperson declared that the delivery consisted “of training equipment and it is part of the (US government’s) regular training assistance to the Nepal Police. The US has already provided assistance worth \$22 million to Nepal in the last three years to fight terror but, as far as today’s delivery is concerned, it is not military assistance.”<sup>42</sup>

However, the “training equipment” reportedly included, as set out in a document released on September 16, 2004 that granted Vega Airlines permission to transport highly dangerous goods:<sup>43</sup> explosives “*blasting, type D*” (plastic explosives such as Semtex, used in many terrorist attacks) up to a maximum amount of 910 kg, and detonating cords (high-speed fuses which explode and are suitable for detonating high explosives). Both “items” are normally forbidden in air transport and require complex documentation and special transport permissions.<sup>44</sup> If such items were needed in explosive charges for simulating attacks, they could easily have been procured in commercial markets nearby Nepal, instead of being loaded in a large cargo plane along a route of 14,546 km with five stopovers. The U.S. Department of Defense statistics show that Nepal received military equipment worth \$6.7 million in 2003 and had additional sales agreements with the U.S. Department of Defense for \$15.3 million.<sup>45</sup>

Early in 2005 the US President also requested \$4million for Foreign Military Financing (FMF) and \$650,000 for International Military Education and Training (IMET) for Nepal for 2006. According to his budget request, the priorities for this funding were small arms, grenade launchers for the Rangers Battalion, night vision goggles, body armour, secure communication equipment, spare parts for mobility platforms and armour plating. However, due to US Congressional opposition led by Senator Leahy to such proposals for military aid to Nepal, the US government said it was stopping lethal U.S. military assistance to Nepal. At the end of March 2006, the US quickly denied reports that it was planning to resume assistance. A senior US state department official also publicly said that “*the Leahy amendment prohibits*

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<sup>40</sup> This incident was commented upon fairly widely in the Indian and Nepali news media (see, for example The Hindu, The Tribune, Times of India, Nepal News, September 29 and 30, 2004). The U.S. Department of Defense statistics report that Nepal received military equipment worth \$6.7 million in 2003 and had sales agreements with the US DoD for \$15.3 million (US DSCA, *Foreign Military Sales, Foreign Military Construction Sales and Military Assistance Facts*, September 30, 2003. [www.dscamilitary.com](http://www.dscamilitary.com)).

<sup>41</sup> “*Mystery cargo plane creates stir*,” The Times of India, September 30, 2004.

<sup>42</sup> Nepal News, September 29, 2005.

<sup>43</sup> Government of Canada, “Safety and Security Transport of Dangerous Goods Directorate, “*Permis de niveau équivalent de sécurité TMD 8196*,” Permit SA 8196, Vega Airlines. The permit was granted for the route mentioned in text and was valid until September 30, 2004.

<sup>44</sup> Cord, detonating (Class 1.1D, UN0065) and Explosive, blasting, Type D (1.1D, UN0084) are forbidden items in normal civil aviation flights. See Part 3, Chapter 2 of ICAO *Technical Instructions, Transportation of Dangerous Goods Regulations*.

<sup>45</sup> US DSCA, *Foreign Military Sales, Foreign Military Construction Sales and Military Assistance Facts*, September 30, 2003. [www.dscamilitary.com](http://www.dscamilitary.com)

*financing security assistance to Nepal until Nepal has returned to democracy and certain conditions on human rights have been fulfilled.”*

There had been a few improvements in the conduct of the Nepalese security forces in 2005, including a drop in reports of further ‘disappearances’ and unlawful killings. Some observers told Amnesty International that these improvements were due to the human rights conditions that were attached to U.S. military assistance to Nepal, and also to the recognition that Nepalese troops implicated in human rights violations could be kept out of UN peacekeeping operations. Increased scrutiny provided by the establishment of a field presence of the UN Office of the High Commissioner for Human Rights in Nepal also led to some changes, though the fundamental problem of impunity for human rights violations was not addressed.

### ***Brokering logistics for US clandestine operations***

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 private brokers and transport contractors under the auspices of the U.S. Department of Defense, DoD, between July 31, 2004 and June 31, 2005, according to sources within the European Union Force in Bosnia and Herzegovina (EUFOR), the Organisation for Security and Cooperation in Europe (OSCE) and the Office of the High Representative (OHR).<sup>46</sup> However, whether these weapons and ammunition reached or remained in Iraq remains in doubt. Even if they remained in Iraq, Amnesty International and TransArms are concerned that such arms are likely to have been used for human rights violations and abuse.

As shown in the chapter below, some of the transport and brokering companies currently engaged with the US government in transferring weapons from Serbia & Montenegro to Iraq and Afghanistan have reportedly been involved in arms smuggling in the past. The firms have operated from a private apartment building in Zagreb, Croatia, and a gun shop in a provincial Swiss town, as well as locations in Bulgaria, Kyrgyzstan, Russia, Serbia and the Ukraine.

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*”. In fact 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. Private arms brokers claim that the situation in Iraq – chaos, poor coordination, multiple government agencies, poor record- keeping, and high staff turnover rates heightens the possibility that “things” can “get lost or confused”. However, private contractors have been unable or unwilling to supply documents relating to the flights that could certify whether the aircraft arrived at their intended destination.<sup>47</sup>

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<sup>46</sup> Figures and information on arms came from multiple senior EUFOR sources. Additional information was provided by the Arms Control Section at the OSCE at a meeting also attended by OSCE public affairs officials in August 2005, and by a source at OHR.

<sup>47</sup> Correspondence with Artic group, Speedex and recorded telephone conversation with Taos chief executive

New documents gathered for this research relate to a case of arms and ammunition transfers approved by the BiH and US authorities from Tuzla to Rwanda in December 2004 despite reports by the United Nations implicating the Rwandan authorities in aiding armed groups in the eastern part of the Democratic Republic of the Congo (DRC). The actual delivery the BiH government reportedly cancelled or postponed at the last moment on 10 December.<sup>48</sup> These documents record that, on 18 November 2004, SFOR approved a notification of the BiH authorities to export a large quantity of small arms and light weapons to Rwanda using the services of a Croatian broker and a company which is part of Unis Promex arms manufacturing company, owned by the Bosnian government. EUFOR then approved the transport of four consignments of arms and ammunition on December 8 to leave from Tuzla airport on the following evening.<sup>49</sup> On 9 December, SFOR approved the transport of a consignment of almost 47 tonnes of arms and ammunition from Tuzla airport in BiH to Rwanda<sup>50</sup>, while on the same day the BiH government announced publicly that arms and ammunition transfers to Rwanda would not proceed.<sup>51</sup> It should be noted that SFOR had ceased its controlling authority in BiH on December 2, 2004, when EUFOR took over the overseeing of the military implementation of the Dayton Agreement. The question of whether one or more of these consignments was delivered to Rwanda remained in doubt and could have been related to one or more of the outbound flights of Ilyushin 76 cargo aircraft observed in Tuzla between December 10 and 22. The BiH authorities and SFOR had previously approved the export of large quantities of small arms, light weapons and ammunition from late 2001 to mid 2003 to Uganda using a brokering firm in Cyprus, at a time when Ugandan armed forces were aiding armed groups committing human rights abuses in eastern DRC, and to Guinea in 2003 using a broker in the UK. (See further in Chapter 8)

The security situation in Iraq continued to be extremely serious in 2005 and 2006. US-led forces were responsible for gross human rights violations against Iraqi civilians, including excessive use of force, often resulting in deaths; torture and other ill-treatment, long-term detention without charge or trial and arbitrary arrests. Thousands of civilians were killed and thousands more injured in attacks by armed groups. Some died or were wounded in attacks aimed primarily at US-led or Iraqi forces but others were victims of direct attacks intended to cause the greatest possible civilian loss of life. While most of the violence reported in the media has been taking place in Baghdad and in the areas west and northwest of the capital, killings, revenge-killings, and abductions do take place in the Kurdish areas in the north and in southern Iraq, but they rarely receive media coverage.<sup>52</sup> The ready availability of guns has

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<sup>48</sup> The background to this case can be found in Amnesty International report, "Democratic Republic of the Congo: arming the east," July 5, 2005.

<sup>49</sup> On December 8, EUFOR Colonel Jacono approved and signed other four shipments to Rwanda for roughly the same volume of the SFOR-approved shipment.

<sup>50</sup> On December 9, 2004, SFOR Major Kauer - on behalf of Lt. Colonel Costeira, SFOR Chief of Current Affairs and Compliance - approved and signed a shipment to Rwanda of 46 pallets (2,760 cases) of 12.7mm DSK ammunition for a total weight 46.7 tons (a cargo that could fill the maximum capacity of a Ilyushin 76). This shipment was intended to leave Tuzla December 12.

<sup>51</sup> On 10 December 2004 the Bosnian newspaper Dnevni Avaz, published a story entitled 'Export of weapons from FBiH to Rwanda stopped' in which it stated that "the Federation of BiH has postponed delivery of the first amounts of weapons and military equipment to Rwanda following a request by the international community to do so. It was about weapons and ammunition intended for infantry including hand grenades prepared to be sent to Rwanda late on Thursday from the Tuzla Airport . Rwanda is under UN embargo as their troops are being deployed on the border with Congo." <http://www.avaz.ba/>

<sup>52</sup> Amnesty International Annual Report 2005

facilitated a rise in violent attacks, and in particular abductions, by criminal gangs. Following the fall of the government of Saddam Hussein in April 2003, an estimated seven to eight million firearms were looted from military and police premises, many of them automatic and semiautomatic assault weapons.<sup>53</sup> The chaotic security situation only heightens the need to ensure that the weapons are secured and inventoried, and that only properly trained forces receive them.

### ***Arms brokers and trafficking to the Colombian paramilitaries***

Most states have no laws that specifically ban or control arms brokering. In the minority of states where laws have been enacted, the definition and treatment of “illegal brokering” by private individuals and security forces can take contrasting forms. The following cases from the USA and Colombia show the different approaches to controlling private individuals, including foreigners, and state employees involved in arms brokering and trafficking.

In May 2005, two US soldiers, reportedly a sergeant and a lieutenant-colonel, as well as several Colombians, including a retired Colombian army officer, 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.

Colombian police allege the munitions were destined for Colombian paramilitary groups, known as the *Autodefensas Unidas de Colombia* (AUC) or United Self-Defense Forces of Colombia, an army-backed paramilitary umbrella organization.<sup>54</sup> The AUC groups are supposedly engaged in demobilization talks with the Colombian government. For decades, paramilitaries operating under the coordination and with the support of the Colombian army have been responsible for most killings and “disappearances” of civilians. Several thousand killings and “disappearances” have been attributed to paramilitaries since they announced a “ceasefire” in December 2002.

The US soldiers reportedly claimed to be weapon instructors at the *Centro Nacional de Entrenamiento del Ejército*, National Army Training Centre, in nearby Tolimaida. The US Embassy in Bogotá confirmed that two US soldiers were detained and held in the custody of the Office of the Attorney General, *Fiscalía General de la Nación*. The two soldiers were reportedly handed over to the US Embassy in line with a 1974 agreement signed between Colombia and the US which grants immunity to US military personnel stationed in Colombia. AI understands that the soldiers were subsequently sent back to the US. According to reports received, the US Embassy had allowed Colombian criminal prosecutors to interview the two soldiers but AI has received no information indicating that criminal proceedings against the two soldiers have advanced or any effort to establish the possibility of chain-of-command responsibility.

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<sup>53</sup> See *Small Arms Survey 2004: Rights at Risk*, op cit [www.smallarmssurvey.org](http://www.smallarmssurvey.org), chapter 2

<sup>54</sup> The AUC is a paramilitary organization originally designated a “foreign terrorist organization” by the United States Secretary of State on September 10, 2001.

It is of particular concern that criminal investigations into the possible collusion between US military personnel and paramilitaries have not been pursued especially since this is not the first time that US security forces have been linked to paramilitary activity<sup>55</sup> and the role the US has played in funding Colombia's counter-insurgency strategy against left-wing guerrillas. This strategy has been characterized by the systematic and widespread violation of human right committed by the Colombian security forces and army-backed paramilitaries. Guerrilla forces have responded to this strategy with serious human rights abuses and breaches of international humanitarian law.

In a separate contrasting case, on 14 April 2005 Fanny Cecilia Barrera de Amaris, a/k/a "Rachel", from Colombia, pleaded guilty<sup>56</sup> to charges of conspiracy to provide material support, resources and a huge arsenal, including two surface-to-air missiles, to the AUC. She was arrested in the northwestern city of Medellín - Colombia's second largest city - by the *Departamento Administrativo de Seguridad* (DAS) intelligence police force and then extradited to US authorities on December 1, 2004.

"Rachel" was an arms inspector for an international arms-for-cocaine trafficking network involving Colombians and a Danish arms broker who were caught in the US FBI "Operation White Terror" investigation. FBI agents impersonated arms dealers in Puerto Rico and Panamá to get evidence. The trail led to clandestine meetings in Mexico City, London, St. Croix, Panama City and San Jose, Costa Rica.<sup>57</sup>

A former Danish member of parliament living in Fort Bend County, Texas, had pleaded guilty on June 24, 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. Uwe Jensen, 67, who served from 1977 to 1979 in the Danish Parliament and in the European Parliament in 1977-78, and later became a naturalized U.S. citizen, was the second person to plead guilty in the plot.<sup>58</sup>

After 50 detailed recordings by the FBI, seven accused in the illicit brokering network pleaded guilty to charges of conspiracy to provide material support and resources to the AUC. In mid 2002, FBI agents in Costa Rica captured three Colombian nationals who were arranging the arms smuggling deal. Carlos Ali Romero Varela, Elkin Alberto Arroyave Ruiz and Edgar Fernando Blanco Puerta were arrested in October 2002 and subsequently extradited to the United States.<sup>59</sup> Jensen met an undercover FBI operative and introduced the FBI source to Romero in Texas who then arranged to have a copy of a CD-ROM displaying samples of Russian-made weapons delivered to Barrera in Colombia.<sup>60</sup> The brokered deal would involve

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<sup>55</sup> US military aid has been received by Colombian military units operating closely with paramilitary forces and in the 1990s evidence emerged suggesting that the PEPES paramilitary structure, which was created to hunt down drug-trafficker Pablo Escobar, was operating with possible support of US security agencies

<sup>56</sup> U.S. Department of Justice, press release, 14 April 2005. This case was the result of an Organized Crime Drug Enforcement Task Force investigation conducted by the Houston offices of the Federal Bureau of Investigation and the Drug Enforcement Administration.

<sup>57</sup> A.M. Costa Rica, October 27, 2003, <http://www.amcostarica.com/index.htm>, and Cindy Horswell, Houston Chronicle, April 4, 2004

<sup>58</sup> Associated Press, November 8, 2002 and June 24, 2003; El Tiempo, 2 July 2003; Houston Chronicle, June 26, 2003; Reuters, June 24, 2003

<sup>59</sup> "Colombian Woman Bound for US to Face Arms Smuggling Charges", ACAN, February 6, 2004, from Bogota, February 2004 (EFE)

<sup>60</sup> U.S. Department of Justice, press release, 2005, op cit

an exchange of \$25 million in cash and cocaine for an arsenal consisting of "53 million cartridges for AK-47 rifles, grenade launchers, grenades, pistols and two SA-7 anti-aircraft missiles" that were packed inside five sea freight containers and procured from the U.S. illicit market in the FBI sting operation, according to the court papers.<sup>61</sup>

The agents discussed transporting the weapons in an Ilyushin 76 cargo plane. On 28 April 2002, the FBI agents moved a cache of Warsaw Pact weapons to St. Croix, United States Virgin Islands, where "Rachel" introduced herself as a weapons inspector for the AUC. Inside an undercover warehouse, during a consensually recorded meeting, Romera and Barrera were shown the weapons. During the inspection, "Rachel" handled many of the weapons presented, and she asked detailed questions about the effectiveness of various weapons, about ammunition, and about other technical aspects of the weapons. She had apparently been impressed with the weapons and indicated she would compile a report to be forwarded to higher-ranking members of the AUC.

Arming of the AUC has undermined efforts to stop human rights violations in Colombia. Negotiations between the Colombian government and members of the AUC have led to the reported "demobilization" of more than 25,000 paramilitaries. But Amnesty International continues to receive reports of grave human rights abuses committed by paramilitaries in areas where they had supposedly demobilized sometimes operating under new names, while evidence of links between paramilitaries and sectors of the security forces remains compelling.

Serious concerns have remained about aspects of the process, principally over the issue of impunity not only for paramilitaries but their security force and other backers and even guerrilla forces who enter into future processes of demobilization, violations of the AUC ceasefire, government initiatives that threaten to "recycle" paramilitaries into the conflict, and continuing serious and widespread human rights violations by paramilitaries which continue to operate with the support of the security forces. The easy availability of arms is one important factor adding to fears that paramilitary activity in Colombia will be re-engineered into private security firms or into new paramilitary groups. Similarly, the smuggling of weapons to guerrilla forces is also fuelling the on-going Colombian human rights crisis.

### ***The Karin Cat – helping prepare a major invasion***

On February 19, 2003 a general 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 January 27 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 March 6.<sup>62</sup> One day before the foundering, seven members of the crew had abandoned the

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<sup>61</sup> See for example, United States District Court, Southern District of Texas, November 1, 2002, Affidavit of Special Agent Mark C. Kirby

<sup>62</sup> Until February 22, 2003 the website of the company that owned the ship reported the destination as Doha. (<http://jpship.dk>). Doha hosts

ship and had later been rescued by the Malaysian ship “*Bunga Pelangi Dua*”.<sup>63</sup> The foundering of *Karin Cat* was caused by a shift of the cargo, insufficiently secured to withstand the movement of the vessel during rough sea. The ship’s Danish owner, Anders Poulsen, announcing the foundering of the *Karin Cat*, declared that it was carrying equipment for the oil industry.<sup>64</sup>

However, this was not the only cargo that the *Karin Cat* was transporting to the Persian Gulf. The inquiry by the Danish Maritime Authority<sup>65</sup> that followed revealed that, 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 equipment destined for the Ras Laffan Liquefied Natural Gas Co., based in Qatar,<sup>66</sup> 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 in different ports. However, the ship’s voyages and history cast doubt on the real destination of part of its military cargo and its owner’s activities.<sup>67</sup>

#### PICTURE C AND CAPTION OF KARIN CAT

The *Karin Cat* was a general cargo ship<sup>68</sup> and belonged to the Odense-based company K/S Puma (Denmark), a subsidiary of the Danish group J. Poulsen Shipping, based in Kørsor.<sup>69</sup> The ship had a history of carrying military cargo and a document of compliance with the special requirements for a ship carrying dangerous goods. Its name appeared in a 1997 list of ships chartered by the U.K. Ministry of Defence<sup>70</sup> for military logistics support. Allegedly, “pirates” had attacked the ship in July 1999 while it was anchored near the port of Chittagong, Bangladesh, with a military cargo on board.<sup>71</sup> The *Karin Cat* was not the only ship of J. Poulsen involved in the transport of military equipment: the “*Sarah Poulsen*,” had also been used along with other Danish ships for the transport of various arms cargoes to South Africa during the apartheid regime, in violation of the UN arms embargo.<sup>72</sup>

<sup>63</sup> A hole was punched in the ship’s plating through which seawater poured into the ship.

<sup>64</sup> See the Danish newspaper “*Søfart*”, February 21, 2003

<sup>65</sup> Division for Investigation of Maritime Accidents Danish Maritime Authority, Case: 199932267/12, “*Casualty Report, the Foundering of Karin Cat*”, July 29, 2003.

<sup>66</sup> The company is part of one of the world largest provider of liquefied natural gas and its majority stock belongs to Qatar General Petroleum Company.

<sup>67</sup> Tombola, C. “*Le armi di Talamone affondate nel Mediterraneo*,” in “*Il manifesto*,” Rome, April 4, 2003.

<sup>68</sup> IMO number 8615576, call sign OXK16. It was originally named *Faroe Island* (1986), then *Puma* (1988), then *Karin Cat* (1997), Denmark International Register-flagged. The ship had a medium-low cargo capacity and was 72 m long.

<sup>69</sup> The group has been the owner of about twenty ships.

<sup>70</sup> The list included 71 ships and it was made public November 12, 1997 by John Reid, minister of Defense in the first Blair government, after an interrogation by MP Gwyn Prosser.

See <http://www.parliament.the-stationery-office.co.uk/pa/cm199798/cmhansrd/vo971112/text/71112w09.htm>

<sup>71</sup> See “*Casualties for Karin Cat*” in SeaSearcher.com; and U.S. Maritime Security Council, July 7, 1999, Ref. 1999-79, *Anti-Shipping Activity Warning Messages*.

<sup>72</sup> See the documentary “*Operation Armscore*”, TV-Kulturafdelingen, 1983, and “*Embargo. Apartheid’s Oil Secrets Revealed*,” ed. by the Shipping Research Bureau, Amsterdam University Press, Amsterdam 1995.

The routes followed in 2002 by the *Karin Cat* before reaching Antwerp were complex, calling at many ports with military-related activities, such as La Spezia (Italy), Gdynia (Poland), Poti (Georgia), Bar (Serbia) and Lymassol (Cyprus). The ship had also docked at St. Petersburg (Russia) and Tor Bay (Devon, U.K.) a small port near the Plymouth U.K. Naval base, before going to West Africa ports and Nigeria with, again, a cargo destined to the oil industry. On January 25, 2003 the ship arrived in Antwerp and started to load the equipment for Ras Laffan. The owner, according to the casualty report,<sup>73</sup> had given instructions to let space for additional cargo.

On January 27, the *Karin Cat* left Antwerp and on January 28 docked at Ridham Dock, near the mouth of the River Thames, a port of the U.K. Ministry of Defense utilized for “for shipping abroad armaments and explosives.”<sup>74</sup> At Ridham, the *Karin Cat* loaded 141 tons of ammunition on pallets “destined for the Omani Minister of Defense”. On January 29, the ship left the British port and anchored near the French port of Cherbourg, where it was admitted to dock February 4. At Cherbourg - one of the four military arsenals of the French Navy - the ship loaded 35 tons of cargo, described by the inquiry report as “Mistral Air Defence System” and a truck for the radar, more likely a Matra-BAe Dynamics’ ALBI anti-air defence system that fires Mistral 2 missiles.<sup>75</sup> The ship left Cherbourg the same day, bound for the Mediterranean and arrived at the port of Talamone on February 13. At Talamone, a small port in central Italy widely used for military shipment,<sup>76</sup> the *Karin Cat* loaded 17 tons of ammunition on 18 pallets and left the following day, bound for the Suez Canal. The secretive and irregular way these arms were collected in various ports casts many doubts about Oman defence forces as the real destination of the military cargo some weeks before the start of “Operation Iraqi Freedom” on March 19 – see further below for details of that Operation.

### ***Arms from Brazil seized in South Africa***

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<sup>73</sup> See *Casualty Report*, quoted.

<sup>74</sup> May 1993, sir Archie Hamilton, minister of Defense, stated that for “routine movements the Department uses the ports of Marchwood military port, Ridham, Liverpool, Felixstowe, Pool, Hull and Colchester. During the Gulf crisis, the ports of Southampton, RNAD Crombie, Cliffe Jetty (River Thames) and Newport were also used. Cliffe Jetty and Newport are routinely used for movement of United States forces equipment, the arrangements for which are made by my Department.” (Answering an interrogation by MP Llew Smith “*To ask the Secretary of State for Defence which ports are used by his Department for shipping abroad armaments and explosives.*” The Stationery Office.

<http://www.parliament.the-stationery-office.co.uk/pa/cm199293/cmhansrd/1993-05-25/Writtens-4.html>);

<sup>75</sup> Oman already had this system in service, ordered in 2000 and delivered in 2001 (IISS, *Military Balance* 2003/2004, Oman). The French company is a joint subsidiary of the EADS and BAe Systems groups and MBDA that also includes Aerospaziale Matra and the Italian Finmeccanica (see [www.mdba.net](http://www.mdba.net)). The surface-to-air Mistral missile weight about 18 kg and has a range of 6.5 km

<sup>76</sup> The port has been used by a company of the automaker FIAT, FIAT Avio (Colleferro), for shipments of aviation ammunition and missile parts (Peter Gomez, “*Vigilantes tuttofare*”, in «L’Espresso», October 3, 2002); by ships hired to transport military cargo destined for the U.S. troops in Iraq (among them the Danish Thor Chartering’s ships Thor Mette, January 2003, and Arktis Crystal, December 2002, Lloyds Sea Searcher.com, Talamone movements); by the ammunition manufacturer SEI - Società Esplosivi Industriali, since 1998 owned by the French group Société Anonyme d’Explosifs et Produits Chimiques (Gheddi, confidential information); and in the past by the infamous and now-defunct Valsella (Montichiari), FIAT group, producer of anti-personnel mines that in the 70s and 80s were traded with several countries, among them the apartheid regime of South Africa in 1979 (Giancarlo Summa, “*Mina a scoppio ritardato*” Il Mondo, November 18 1993, and “*Mine, il cammino che resta*,” report of the Italian Campaign for the Ban of Anti-personnel mines, 1999.

Between May 29 and June 3, 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 shipping company, P&O Nedlloyd,<sup>77</sup> first register as a trader in conventional arms and also apply in advance for a separate permit for each individual consignment of conventional arms. These progressive provisions in the Act were established to control and monitor arms transfers in transit through South Africa, especially to control transshipments to other African countries given a previous history of arms trafficking to embargoed destinations.

The three containerships operated by the Dutch-based company P&O Nedlloyd - *P&O Nedlloyd Surat* (Germany-flagged), *Mol Miracle* (Panama-flagged), and *P&O Nedlloyd Dejima* (Germany-flagged) – were carrying a large quantity of explosives and ammunition. This included 12,7×99 mm armour-piercing incendiary ammunition, one million rounds of 38 Special LRN 158 GR, 173,000 rounds of 7,62 x 51 mm ammunition, 210,000 rounds of 9 mm Luger ammunition, 145,000 rounds of 38 LRN ammunition, 5,000 rounds of 32 Auto ammunition, 25,000 22 LR LRN rounds, 75,000 357 Magnum rounds and 54,000 12/70 Shot 7 rounds.

The huge quantity of ammunition was manufactured by the Brazilian company “*Companhia Brasileira de Cartuchos*”, and was apparently destined for the General Directorate for Military Affairs, Weaponry and Explosives in Riyadh, Saudi Arabia, as well as to the Commissioner of Police in Port Louis, Mauritius.<sup>78</sup> Despite a possible maximum sentence for this offence of 15 years' imprisonment, the representative of the London-based shipping company in South Africa was only fined R50,000 (about US\$4,000) and the court ordered all the ammunition on the three ships to be ‘disposed of’ in July 2005.<sup>79</sup>

It appears that the problem started because Brazil does not have an arms export law preventing the transfer of arms to those who would most likely use them to commit grave human rights violations, such as the Saudi Arabian security forces. In contrast, South Africa does have such a law. The Guiding Principles and Criteria in Section 15 of South Africa's National Conventional Arms Control Act requires that when considering a request for a permit to trade in conventional arms, the committee authorised under the act to issue such permits, must amongst other things, “(c) avoid contributing to internal repression, including the systematic violation or suppression of human rights and fundamental freedoms; (d) avoid transfers of conventional arms to governments that systematically violate or suppress human rights and fundamental freedoms.” However, the South African Government's record of compliance with this law has been criticised for allowing arms exports to states that persistently violate human rights, and in 2003 it did approve the export to Saudi Arabia of

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<sup>77</sup> P&O Nedlloyd is now a part of the A.P. Moller - Maersk Group

<sup>78</sup> “*Firm fined for trying to smuggle munitions.*” by Hendrick Mphande, The Herald, July, 14, 2005.

<sup>79</sup> “*Shipping firm fined R50,000 for arms smuggling.*” Cape Times, July, 14, 2005.

small arms and light weapons worth nearly R33 million and other major conventional arms worth R18 million.<sup>80</sup>

In Saudi Arabia killings by security forces and armed groups escalated during 2004, exacerbating the already dire human rights situation in the country. Scores of people, including peaceful critics of the state, were arrested and over two dozen suspected in connection with the “*war on terror*” were detained following their forcible return by other countries. Allegations of torture by the state were reported and flogging remained a routine practice.<sup>81</sup>

### ***International shipping network for arms from China to Liberia***

On January 1, 2006, the South China Morning Post<sup>82</sup> reported that “evidence that could lead to the conviction of a suspected international war criminal has been unearthed by Hong Kong authorities. Investigators have handed prosecutors in the Netherlands a file detailing the Hong Kong business connections of a man suspected of having been a key accomplice of exiled African tyrant Charles Taylor.” The man, Gus (or Guus) van Kouwenhoven, had been arrested in Rotterdam, Netherlands, March 18, 2005<sup>83</sup> and the Dutch authorities have charged him to stand trial for aiding war crimes and crimes against humanity committed in Liberia. 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.<sup>84</sup>

According to the South China Morning Post, the Hong Kong authorities have in particular provided the prosecutor’s office in Rotterdam with information on the connection between van Kouwenhoven and Hong Kong companies that were linked to OTC’s logging and arms business: a company called Global Star (Asia), a ship (“Antarctic Mariner,” presently the “Raffles”) that allegedly transported arms (in particular Chinese-made AK-47s, machine guns and rocket-propelled grenade launchers) to Liberia between 2001 and 2003,<sup>85</sup> when Liberia

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<sup>80</sup> Mail and Guardian, “SA sells arms to hot spots”, March 23, 2005. For a list of export destinations of arms from South Africa, including Saudi Arabia, see the reports of the National Conventional Arms Control Committee. No data was available for 2004 or 2005 at the time of writing this report.

<sup>81</sup> Amnesty International Annual Report 2005

<sup>82</sup> “Evidence exposes HK link to African tyrant. Local firms and ship implicated in arms smuggling to Liberia,” South China Morning Post, January 1, 2006.

<sup>83</sup> “Dutch Arrest Suspected Arms Trader for War Crimes Committed in Liberia,” Agence France Press, March 21, 2005; “Dutchman on Liberia war charges,” BBC March 21, 2005; International Justice Tribune, “Netherlands prosecutes two businessmen,” The Hague, March 29, 2005; The Analyst (Monrovia), “Gus on trial for war crimes in Liberia,” July 1, 2005

<sup>84</sup> The U.N. Security Council’s Expert Panel Report on Liberia (S/2001/1015, October 26, 2001) reported that OTC’s parent company was the Singapore-based Borneo Jaya Pte. The report stated that “the Panel has received a bank document which indicates that a payment for weapons delivery was made directly from the Singapore accounts of the company, Borneo Jaya Pte Ltd, a mother company of OTC. This document shows transfer of US\$ 500,000 to the arms trafficking company San Air (one of the companies of Victor Bout) through Sanjivan Ruprah, paid by order of Dato Seri Bong Uray on 26 August 1999 using Chase Manhattan Bank N.Y.” See also: Singapore Business Times, “Singapore to probe alleged involvement of company in arms smuggling in Liberia,” November 6, 2001; and The Analyst (Monrovia), “Liberia: Singapore frustrates Taylor, Cronies, Orders freezing of Assets,” May 12, 2004.

<sup>85</sup> Agence France Press, March 21, 2005, quoted.

was under a UN arms embargo,<sup>86</sup> and a list of crews who served on the same ship. Along with other companies variously connected to arms traffickers, such as the Ukrainian arms trafficker Leonid Minin<sup>87</sup> and Victor Bout's business partner Sanjivan Ruprah,<sup>88</sup> OTC and Global Star (Asia) had served as a conduit for arms shipments that fuelled Liberia's and Sierra Leone's bloody conflicts and were responsible for severe human right abuses.

In 2004, Amnesty International reported that in Liberia, "as armed conflict worsened, government forces and armed opposition groups were responsible for widespread abuses against civilians including killings, torture, rape and other forms of sexual violence, and forcible recruitment of children. Hundreds of thousands of civilians were forced to flee their homes. Despite cease-fire and peace agreements, hostilities and human rights abuses continued [...]. Those responsible for human rights abuses enjoyed almost total impunity."<sup>89</sup> In 2001, Amnesty International had reported that in Liberia "torture, ill-treatment and other human rights violations continued to be carried out by the security forces. Human rights defenders and journalists were arrested, assaulted and forced into exile. Political prisoners were sentenced to prison terms after trials which failed to meet international standards for fair trial. There was no progress in investigating past human rights abuses. The international community continued to accuse the Liberian government of assisting rebel forces responsible for atrocities in neighbouring Sierra Leone."<sup>90</sup> Van Kouwenhoven is the first person to stand trial on a charge of crimes against humanity committed in Liberia.

The role played by Kouwenhoven and OTC in supporting the regime of Liberia's former president Charles Taylor<sup>91</sup> was first exposed by inquiries carried out by the magazine, *The Perspective*, and by the non-governmental organization, Global Witness.<sup>92</sup> The role of

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<sup>86</sup> U.N. Security Council Resolution 788 (November 1992) established an arms embargo on Liberia (implemented from 1995 under Resolution 985). The type of embargo adopted by this resolution was terminated by U.N. Security Council Resolution 1343 (2001) in March 2001 and it imposed a new arms embargo on Liberia. See also U.N. Security Council Committee List (SC/7068), June 4 2001 (Travel Ban List) that included Kouwenhoven. On 5 July 2000, the Security Council had also adopted resolution 1306 that imposed a ban on the direct or indirect import of rough diamonds from Sierra Leone.

<sup>87</sup> For Minin's involvement in Liberia's arms smuggling schemes see in this report the chapter "Arms brokering and plausible denial," paragraph "The case of Leonid Minin." See further below for more on Minin's involvement in Liberia's logging industry.

<sup>88</sup> Ruprah himself acknowledged his and OTC role in providing military equipment for Taylor in an interview that US Customs agents carried out in January 25, 2002.

<sup>89</sup> Amnesty International, "Annual Report, Liberia," 2004, [www.amnesty.org](http://www.amnesty.org)

<sup>90</sup> Amnesty International Report 2001. See also Amnesty International, "*Liberia, Civilians face human rights abuses at home and across borders*," 1 October 2002.

<sup>91</sup> "In June 2003, the then Liberian President Charles Taylor was indicted for war crimes and crimes against humanity by the Special Court for Sierra Leone - the first time such a measure had been taken against a serving head of state in Africa. He was forced to step down in August after increasing pressure from the international community and following an escalation in the conflict in Liberia [...] Charles Taylor was given refuge by the government of Nigeria which offered him implicit guarantees that he would not be prosecuted in Nigeria or surrendered to the Special Court," Amnesty International Annual Report 2004. In late March 2006, the Nigeria government announced that it has ended Taylor's asylum status and arrested him while he was reportedly trying to escape to Cameroon (BBS News, March 28, 2006). In the same days Liberia's authorities arrested three of his former generals (Andy Quamie, Alex Toweh, and Edward Tibbie), see *The News* (Monrovia), "Liberia: former generals arrested; government informs UNMIL on secret meetings," March 27 2006.

<sup>92</sup> *The Perspective*, "Investigative report on Oriental Timber Company," March 20, 2000, [www.theperspective.org](http://www.theperspective.org) and Forest.org, "Malaysian loggers extend unscrupulous logging to Liberia, Africa," March 25, 2000, <http://forests.org>; Global Witness, "The role of Liberia's logging industry on national and regional insecurity," briefing to the UN Security Council, January 2001; "Global Witness calls on UN Security Council to embargo Liberian 'logs of war'," press statement, January 22, 2001; and in conjunction with the International Transport Workers Federation, "Taylor-made: the pivotal role of Liberia's forests in regional conflicts," September 2001; Greenpeace, "Liberian timber trade fuels regional insecurity," March 2002; *The*

Liberia's logging industry in providing the financial means and transport routes for weapons destined to support Liberia's warring parties was the subject of several reports dating back to the late 1990s.<sup>93</sup> Reports by UN Security Council panels of experts on Liberia and Sierra Leone<sup>94</sup> and by other official inquiries<sup>95</sup> confirmed the accusations and exposed the network of logging companies that spoiled Liberia's rain forests and were variously connected with Taylor's schemes to circumvent the UN arms embargo. According to these reports, China and France were the main importers of wood logs exported by Liberia, but the list of Liberia's trade partners included another 17 countries.<sup>96</sup> Early in 2001, the governments of China and France objected to the inclusion of timber in the UN sanctions on Liberia<sup>97</sup> and a U.N. Security Council report argued that timber companies were playing ...an essential role in Liberia's economic and social development.<sup>98</sup>

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Perspective, "Occupation: President Aspirant," June 21, 2004; Coalition for International Justice, Farah, D., "Following Taylor's money: a path of war and destruction," May 2005. See also by Global Witness: "Logging Off: How the Liberian Timber Industry Fuels Liberia's Humanitarian Disaster and Threatens Sierra Leone", September 2002; "The Usual Suspects. Liberia's Weapons and Mercenaries in Côte d'Ivoire and Sierra Leone. Why it's Still Possible, How it Works and How to Break the Trend," March 2003; "Dangerous liaisons, the continued relationship between Liberia's natural resource industries, arms trafficking and regional insecurity. A briefing document submitted by Global Witness to the UN Security Council," December 8, 2004; "Liberian timber industry and sanctions busting under international scrutiny," March 22, 2005.

<sup>93</sup> The Society for the Renewal of Nature Conservation in Liberia (USA, California), "Logging Used To Fund Civil War In Liberia," Press Release, 15 September 1997, <http://www.hartford-hwp.com/archives/34/055.html>.

<sup>94</sup> See: U.N. Security Council, "Report of the secretary-General in pursuance of paragraph 13(a) of the resolution 1343 (2001) concerning Liberia," October 5, 2001 (S/2001/939); U.N. Security Council's Expert Panel Report on Liberia (S/2001/1015), October 26, 2001; U.N. Security Council's Expert Panel Report on Sierra Leone (S/2000/1195), December 20, 2000.

<sup>95</sup> Pratt, D., "Sierra Leone: Danger and opportunity in a regional conflict," Report to Canada's Minister of Foreign Affairs, The Honourable John Manley, P.C., M.P. Nepean-Carleton, Special Envoy to Sierra Leone, July 27, 2001.

<sup>96</sup> See for example: The Perspective, March 20, 2000, quoted; Watson, I., "Liberia's rain forest vanishes as foreign logging expands," Boston Globe, May 20, 2001; "Liberia's vanishing rain forests: President, foreign firms ravage nation's lush jungles for profit," San Francisco Chronicle, May 21, 2001; Global Witness, "Taylor-made," 2001, quoted, Unimondo, "Traversine e traffico d'armi," November 13, 2001, <http://unimondo.oneworld.net/article/view/47809/1/2101>; Barnett, A. "Bloody logs of war linked to English idyll," in Observer, April 14, 2002; Kistner, W., "U.S. Consumers Help Finance Liberia's Bloody Regime," Center for Investigative Reporting, July 18, 2003; Global Witness, "Against the People, for the resources," September 2003; Thomson, J., et Al., "Conflict Timber: dimensions of the problem in Asia and Africa," Volume I (2004) and Volume III "African Cases, Liberia," (June 30, 2003), ARD Inc., reports submitted to USAID, [www2.usaid.gov](http://www2.usaid.gov); Thornton, A., "Chinese involvement in African illegal logging and timber trade," Testimony to the US House of Representatives, Committee on International Relations, Subcommittee on Africa, Global Human Rights and International Operations, July 28, 2005; Greenpeace, "Latest facts on the Swiss timber giant Danzer Group," January 28, 2005; Danzer Group, "[Statement of the Danzer Group on reports from Greenpeace and SF DRS \(Swiss television\)](#)," media release, November 25, 2004, [http://www.danzer.com/en/d/411StellungnahmeGP\\_112004.pdf](http://www.danzer.com/en/d/411StellungnahmeGP_112004.pdf).

<sup>97</sup> See: Pratt, D., July 27, 2001, quoted. Pratt wrote: "It was argued that this [timber sanctions, ndr] would hurt ordinary Liberians. In fact, an estimated 600 Asians have been granted Liberian work permits and according to the IMF much of the timber revenue never enters the formal Liberian economy. The International Monetary Fund (IMF) reports also indicate that expenditure by the Office of the President consumed 28 per cent of total government outlays in the first half of 2000 much of it for security purposes. The IMF also repeated earlier concerns about 'off-budget expenditure.' In a September 2000 report, it stated: "The use of tax offsets and credits to new forestry concessions has recently become an important means of off-budget expenditure... As this practice raises concerns of management and transparency, it should be ended and the revenue allocated through existing budget procedures and accounts."

<sup>98</sup> U.N. Security Council, "Report of the Secretary-General in pursuance of paragraph 13 (a) of the resolution 1343 (2001) concerning Liberia, October 5, 2001. This report stated: "The largest, most modern and newest operator, the Oriental Timber Company (OTC), has invested US\$ 100 million in its activities in Liberia since 1999 and shipped a little more than half of all timber exported in the year 2000 [...] Timber companies provide health and education services to their employees, their families and the local communities in which they operate. A ban on timber exports would reduce or eliminate these services. OTC, for example, renovated and reopened the Buchanan port hospital and provides US\$ 30,000 a month for its operation." See also: Africa News, "Liberia: UN Expert Recommendation on Timber-Industry Leaves a Platform for Continued Arms Trade," October 30, 2001.

Reports published in 2000 and 2001<sup>99</sup> had already exposed Global Star (Asia), the Antarctic Mariner and other ships to Taylor's and OTC's logging and arms business and the U.N. Security Council's Expert Panel Report on Liberia (S/2001/1015, October 26, 2001) stated that "*OTC is linked to the Hong Kong-based Global Star Holdings, which is part of the Djan Djajanti group of Indonesia, with offices in Singapore and Hong Kong and major investments in Indonesia and China. Djan Djajanti has taken responsibility for 70 per cent of the capital investment of the concession. Gus Kouwenhoven remains the chairman although he owns, according to documentation he showed the Panel, only 30 per cent of the capital and Joseph Wong Kiia Tai, son of Djajanti's chairman, was made the manager. The Djajanti group has invested some US\$ 110 million in the project. President Taylor has publicly defended OTC calling it his "pepper bush", a Liberian phrase for something important and personal.*"

Documents from the trials of Leonid Minin<sup>100</sup> and Sanjivan Ruprah<sup>101</sup> established links between Charles Taylor, OTC and Gus van Kouwenhoven. For example, Fernando Robleda, Minin's business partner in Liberia, stated in an interview to Belgian inquiring authorities: "*Gus is a good friend of mine. President [Charles Taylor, ndr] has a partnership in OTC (Oriental Timber Company). The president has a stake in every company.*"<sup>102</sup> Ruprah, in one of the seized documents entitled "Liberia, Key Figures of Taylor inner Circle," stated that: "*Gus/OTC [apparently in error, Ruprah spelled the acronym as Overseas Trading Company, ndr] belongs to a wealthy Malaysia family with interests in Logging and Timber processing in Malaysia, France and Spain. They started a new Logging Company in the early part of 2000 with a declared investment of \$110 million, they are very successful with a export revenue exceeding investment in the first 14 months of operations, they have been providing funding to Taylor who is a 40% shareholder in that venture.*"<sup>103</sup>

A U.N. report in 2000<sup>104</sup> stated that Van Kouwenhoven was "*responsible for the logistical aspects of many of the arms deals*" to Liberia and the travel ban list drawn up by the United Nations<sup>105</sup> summarized Kouwenhoven's activities in the following terms: "*Owner of Hotel Africa [base for his gambling business in Liberia, ndr]<sup>106</sup> and President of the Oriental Timber Company; Arms dealer in contravention of UNSC resolution 1343. Funds purveyor to the*

<sup>99</sup> See The Perspective, March 20, 2000, quoted, and Global Witness, September 2001, quoted.

<sup>100</sup> Minin was firstly arrested August 5, 2000, near Milan, Italy, and briefly detained. He was re-arrested in June 21, 2001 and put on trial.

<sup>101</sup> Ruprah was arrested in Belgium February 2002 and released on bail. He escaped to Italy but was again arrested in Crema in early August 2002 for carrying a forged Belgian passport.

<sup>102</sup> Minin had been involved in Liberia's logging industry in the late 1990s, through a company called ETTE (Exotic Tropical Timber Enterprises) in which he owned a 34% stake. ETTE was found in 1998 in partnership with Fernando Robleda (who in October 1996 had obtained the Cavalla teak wood plantation from Liberia's Provisional government) and Vadim Semov. In 1999, Minin - who was then close to the Liberia's former President Charles Taylor - tried to exclude both Robleda and Semov from ETTE. See Minin trial's Court documents, "Interview with Fernando Robleda" by Belgian inquiring authorities, October 13, 2001.

<sup>103</sup> Undated document from Ruprah's trial in Crema, Italy, August 2002

<sup>104</sup> U.N. Security Council's Expert Panel Report on Sierra Leone (S/2000/1195).

<sup>105</sup> See: U.N. Security Council Committee (resolution 1521, 2003; and 1579, 2004), March 16, 2004 (last updated November 30, 2005).

<sup>106</sup> According to The Perspective ("MDCL Lobbies United Nations," August 23, 2002) Gus Van Kouwenhoven "became noticeable on the Liberian scene in late 1980s at which time he was interested in, and became the 'Las Vegas' of Liberia, controlling Hotel Africa with his gambling casinos. After the NPP victory in the 1997 elections that ushered in President Charles Taylor, Gus became the 'financier' for the newly arrival of the 'Monrovia Establishment.'" "

*Taylor regime; Close associate of Taylor. Supported former President Taylor's regime in effort to destabilize Sierra Leone and gain illicit access to diamonds and funds.*" On July 23, 2004, Van Kouwenhoven was also put on the U.S. Denied Person List.<sup>107</sup>

According to Global Witness, various ships related with the OTC business unloaded military equipment in Liberia while waiting for their cargoes of wood logs. For example, on April 5, 2001, the "MV *Senorita*, owned by OTC's associate company *Global Star* arrived in the port of Buchanan amid tightened security [...]. In early July 2001, the *Antarctic Mariner* arrived at Buchanan having left China via Singapore, and was unloaded amidst heightened security, mostly at night, by armed troops and OTC personnel, rather than by the usual stevedores. The vessel was then loaded with over 30,000 mc of OTC's logs, an enormous cargo, for shipment to China."<sup>108</sup> In addition, an investigative report published by the Washington Post in June 2002<sup>109</sup> stated that ships chartered by OTC delivered weapons to Taylor's forces at the port of Buchanan on September 28, October 28, and November 16, 2001. According to the article, the shipments contained 7,000 boxes of ammunition for AK-47 assault rifles, 5,000 rocket propelled grenades, 300 howitzer shells and other equipment. Global Witness in another report,<sup>110</sup> listed five more ships suspected to have delivered arms to the OTC's controlled port of Buchanan and at port of Harper in the first part of 2002: the *Panormos Pride* (January 9); the *Rubin* (January 15); the *Sea Liberty* (January 16); the *Dimitrios Nanios* (January 28); and the *Arktis Fighter* (May 8).

*Global Star (Asia) Holdings Ltd* was said to be the parent company of OTC and part of the *Global Star Group* in a year 2000 article published by the Perspective. The article stated that "the Director of OTC is named *Joseph Wong (or Joseph Wong Kiia Tai)* and his father said to be the owner of *Global Star Group*. They are based at 4212-5, Hong Kong Plaza, 186-191 Connaught Road West, Hong Kong. They are ethnic Chinese, perhaps with Malaysian passports. However, the workers are mostly, if not entirely, Indonesian. Many if not all were recruited from Sumatra [...]. Another report is that the logs are being exported to the *Djan Djanti Group* which makes plywood from the logs, although this company is not listed as one of *Global Star's* direct holdings."<sup>111</sup>

It is not known what the documents provided by the Hong Kong authorities have revealed, but further research carried out for this report has revealed the complexity of OTC's and Gus Kouwenhoven's network of transport companies and ships. In 2004, a business intelligence company<sup>112</sup> carried out an inquiry on *Global Star (Asia) Holdings Ltd*, at that time domiciled in Room 4211, 42/F Hong Kong Plaza, 186-191 Connaught Road West, Hong Kong. According to the report, the senior company personnel were listed as "Enlightenment Incorporated" (Director), *Global Star (Asia) Holdings Limited* (Director), and "S.A.T.

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<sup>107</sup> OCR, Regulatory Compliance Newsletter, Denied Person Update, Vol. 0903-2004. "Privileges affected: President, Oriental Timber Company; Owner, Hotel Africa; Villa # 1, Hotel Africa Virginia, Monrovia, Liberia; P.O. Box 1522, Monrovia, Liberia; DOB 15 Sep 1942; nationality Dutch." The List also reports his alias as Kouenhaven, Gus; Kouenhoven, Gus; Kouvenhoven, Gus. <http://www.ocr-inc.com/Vol.0903-2004.asp>

<sup>108</sup> Global Witness, "Taylor-made: The pivotal role of Liberia's forests in regional conflicts," September 2001

<sup>109</sup> Farah, D., "Liberian Leader Again Finds Means to Hang On," Washington Post, June 4, 2002

<sup>110</sup> Global Witness, "Logging Off," September 2002, quoted.

<sup>111</sup> The Perspective, "Investigative report on Oriental Timber Company," 20 March 2000, [www.theperspective.org](http://www.theperspective.org)

<sup>112</sup> <http://www.icperedit.com>. Report ID 500504, September 2, 2004.

Services Limited Company” (Secretary). The firm was defined as an offshore company and, as such, not allowed to engage in local business in Hong Kong and not required to submit accounts and financial information. The company was incorporated in Hong Kong July 22, 1998 (C.R. number 650409), with an authorized capital of HK\$10,000, divided into 10,000 ordinary shares of HK\$1 each and a paid up capital of HK\$2. The company shareholders had 1 share each and were listed as “Enlightenment Incorporated, P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands,” and Global Star (Asia) Holdings Limited, P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands.” The Company Secretary was listed as the “S.A.T. Services Limited (CI#079046), 15/F, Blissful Building, 247 Des Voeux Road Central, Hong Kong.”

The business report on Global Star added that “from local enquiries it has not been possible to determine the exact nature or the extent of the company’s operations and where they are actually conducted.” The company’s name did not appear on the directory of the building it was located. The inquirer visited Room 4211 and found that it was actually vacant and interviewed a member of staff from management office, who divulged that he has never heard of that company, which was not a registered tenant there. In addition, the report stated, there was no telephone listing for either the company or its directors and the company itself did not appear in local trade directories or reference books. In fact, a certified public accountant, S.B. Chow & Co, domiciled at the same address and suite of the company’s Secretary (the S.A.T. Services Limited) acknowledged that the company was one of its clients, but declined to disclose any other detail.

Further research with Lloyd’s Register-Fairplay,<sup>113</sup> has shown that a Global Star (Asia) Ship Management (ID number 1755511) is domiciled in Hong Kong, Pacific Plaza, 410 Des Voeux Road West, room 1803. The same company instead appeared in a directory<sup>114</sup> for the year 2000 as domiciled at the same address and room that hosted Global Star (Asia) Holdings (Room 4211, 42/F Hong Kong Plaza, 186-191 Connaught Road West, Hong Kong, as stated in the Perspective’s article in the same year 2000. The Lloyd’s Register-Fairplay lists three other companies under Global Star: a Global Star Overseas Inc. (ID 1834386), registered in Panama, without a known address; a Global Star Shipping Ltd (ID 4080740), registered in Hong Kong; and a Global Star Shipping Ltd (1767663), registered in Hong Kong and domiciled c/o Global Star (Asia) Ship Management Ltd.

Regarding the ships reportedly used by OTC for arms shipments, research carried out for this report has unveiled a web of companies and ships managers based in Hong Kong, Singapore, Bahamas, and Panama,<sup>115</sup> as well as a significant amount of inspections and detentions carried out on those same ships by various Port authorities during the last ten years.<sup>116</sup>

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<sup>113</sup> See: <http://imonumbers.lrfairplay.com/authenticated/detail.aspx?owcode=1755511>. On behalf of the International Maritime Organization (IMO), Fairplay Ltd maintains a database of all the companies that have been assigned a IMO number, either as a company or a registered owner. The number does not change when the company change its name.

<sup>114</sup> Maritime Global Net, [www.mgn.com](http://www.mgn.com). Global Star Ship Management Ltd, Hong Kong.

<sup>115</sup> See: Lloyd’s Register-Fairplay, IMO numbers, quoted. At the time *MV Senorita* (a bulk carrier, IMO number 8324385, of 25,982 tons [gross tonnage, GT], built in 1985) served the Liberia route she was registered under the Norway International Ship Register flag (Flag of Convenience, FOC). The the ship registered owner was Ugland Bulk Partners IV K/S (ID 1450290, Norway) and the ship manager was Ugland Marine Services A/S (ID 1669581, PO box 128, 4891 Grimstad, Norway). She was re-named *Pretty Lady* from February 14, 2005, under the Malta Register (FOC). At the time of the alleged arms deliveries to

### 3. Organizing military supply chains and arms transfers

In the last two decades, the world of the freight transport industry experienced a sea change that has helped make the arms trade very different from the past. Central to this change is the new role of transport companies in facilitating an increasingly differentiated world trade. Transport companies have gradually applied new techniques that significantly cut transfer times and the costs to move goods. But, more importantly, most of them have increasingly offered to organize and manage all the processes involved in the chain that starts at the production point and end up in the consumer markets.<sup>117</sup> A significant proportion of transport companies have moved up from the role of carrier to the role of “manager” of the whole

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Liberia, the *Antarctic Mariner* (a bulk carrier, IMO 8316273, 22,009 GT, built in 1984) was registered under the the Panama FOC (from May 16, 2000; under Bahamas FOC until May 12, 2000). Her registered owner was Antarctic Shipping Ltd (ID 1885651, Hong Kong) and her ship manager was Global Star (Asia) Ship Management. Subsequently, her registered owner were “Superior Success (Panama),” “Headfirst Assets (Hong Kong),” and eventually “Raffles Marine Corp. (Hong Kong),” while her ship managers were “Seaway Shipping (domiciled in Hong Kong at the same present address and room of the Global Star, Asia, Ship Management),” “Jackson Shipping (Honduras),” and “Courage Maritime Technical Services (Hong Kong).” The ship changed name five times. Before May 16, 2000, she was called “Sinela,” then “Antarctic Mariner” (until September 15, 2003). She later became “Superior Leader,” to change in “Marine Pioneer” March 26, 2004 and then to “Raffles” February 28, 2005 to date. The *Panormos Pride* (a bulk carrier, IMO number 8018015, 21,030 GT, built in 1982) was registered under the Bahamas FOC (since May 12, 2000). The ship registered owner was “Paragon Marine Corp. (ID 1913932, Liberia)” and the ship manager was “Rigos Marine Enterprises (Piraeus, Greece).” The ship previous name was “Aspidoforos” (until May 12, 2000) and was re-named “Go Pride” August 8, 2005. The *Rubin* (general cargo, IMO number 7817361, 6,742 GT, built in 1981) was registered under the Cyprus FOC since May 12, 2000. Her registered owner was Agat Navigation Co. Ltd (ID 1551010, Cyprus). Since June 3, 2003, the registered owner changed and she is presently under a company called “Gulf Solar Shipping,” also registered in Cyprus (ID 1655136) and with an address c/o Euroafrica Linie Zeglugowe (ID 1453419, ul Energetykw 3-4, P.O. Box 511, 70952, Szczecin, Poland), a company that has been the Rubin’s manager since 1995. The *Sea Liberty* (a bulk carrier, 22,009 GT) was registered under the Malta FOC. After a collision with the MV Arabian Express in the Singapore Strait September 21, 2003 (Maritime Port Authority of Singapore, press release, September 22, 2005, was set to demolition in November 2003 (Compass Maritime Services, Weekly Report, November 21, 2003). The *Arktis Fighter* (general cargo, IMO 9076325, 4,980 GT, built in 1994) was flagged under the Denmark Register until October 8, 2001, then registered under the Isle of Man FOC until July 18, 2002, when she was re-registered under the Bahamas FOC. She changed name four times from May 2000 to July 2002 (from Arktis Fighter to CEC Fighter, then again Arktis Fighter and eventually again CEC Fighter), and she is presently named “CEC Fighter.” Her registered owner was “Elite Rederi A/S” (ID 0931879, based in Copenhagen, Denmark) until July 18, 2002 and her ships manager was “Clipper Elite Carriers A/S (ID 1956071, also based in Copenhagen) since October 8, 2001. The present registered owner is CEC Fighter (ID 1983971, based c/o Clipper Elite). No records were found for a ship called “Dimitrios Nanios.”

<sup>116</sup> See: Equasis database at [www.equasis.org](http://www.equasis.org). *MV Senorita* was inspected 15 times between 1998 and 2005 by Port State Controls that found a total of 58 either crew or technical deficiencies. The *Antarctic Mariner* was detained by the Hong Kong Port authority in July 2003 for crew, technical and radio communications deficiencies and in January 2004 for similar deficiencies (Ship detained in Hong Kong by PSC Section, July 2003 and January 2004, <http://www.mardep.gov.hk>). The Antarctic Mariner has been also called at Tanzania’s port of Dar es Salaam, a known hub of arms trafficking (see for example, Human Rights Watch, “Rwanda/Zaire: Rearming with Impunity. International Support for the Perpetrators of the Rwandan Genocide,” May 1995). The *Panormos Pride* was inspected 5 times between 1998 and 2005 by Port State Controls that found a total of 44 either crew or technical deficiencies and detained one time in Finland (1998) for 10 severe deficiencies. The *Rubin* was inspected 13 times between 1998 and 2005 by Port State Controls that found a total of 23 either crew or technical deficiencies. The *Arktis Fighter* was inspected 17 times between 1999 and 2006 by Port State Controls and the US Coast Guard that found a total of 14 either crew or technical deficiencies.

<sup>117</sup> Finardi, S., C. Tombola “Le strade delle Armi,” op cit

physical supply chain, or logistician, a role that entails far more complex functions and responsibilities than simply carrying goods.

These techniques have deeply affected the way civilian goods move around the world<sup>118</sup> and have been increasingly applied to arms transfers, military supply chains, and military operations. The direct involvement in military deliveries of transport companies with significant experience in supply-chain management has helped facilitate this process. Organizing arms transfers or a military supply chain is a complex operation in which several factors are involved. These factors need careful consideration especially as regards:

- timing (ordinary, urgent, emergency);
- characteristics of the goods and type of packaging needed;
- atmospheric conditions during transport and storage;
- sensitivity of the equipment to external factors such as corrosives and collisions;
- most appropriate type of documentation and rights to information access;
- land routes available to reach the facility from where the goods are shipped;
- availability of inter-modal platforms allowing for easy changes of mean of transport;
- availability of sea port and airport facilities for loading and unloading operations;
- land routes available to reach the location where the goods are finally received;
- risks related to transiting difficult areas or reaching conflict zones

Each of the above factors can strongly influence the type of actors and means involved and the final operating costs. Some of these factors are inelastic. Spare parts, small arms, light weapons and ammunition do not present particularly onerous technical problems for experienced logisticians, making it easy for unscrupulous operators to divert such cargoes on the illicit or “grey” markets. In contrast, heavy armaments, armoured vehicles and large weapon systems are often “over-size” cargo and need peculiar handling techniques and special transportation,<sup>119</sup> but are more difficult to conceal and divert.

Tanks, armoured fighting vehicles, military trucks and self-propelled artillery may be shipped in either dedicated railcars or special trucks and then loaded directly or by roll trailers in roll-on/roll-off ships (a dedicated ro-ro ship of 25,000 Deadweight Tonnes (DWT)<sup>120</sup> is able to carry up to 150 tanks or 400/600 vehicles for ship unit); in containerships, when dimensions allow for the use of standard or open-top containers, or in containerships that are configured

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<sup>118</sup> See Chapter 4.

<sup>119</sup> For example, the German battle tank “Leopard” cannot be forwarded by rail through the European Alpine tunnels because of its gauge and assault helicopters usually need disassembling and packaging of body and rotors, while large caliber ammunition and missiles are packed and loaded in special holders and crates that need custom-tailored transport solutions. See further below for arms transport techniques

<sup>120</sup> Deadweight Tonnes is the weight of cargo, fuel, stores, passengers and crew carried by a ship when loaded to her maximum loadline

to accept special 35-foot containers or 40-foot Heavy Duty Flatrack. When circumstances require fast delivery, as in the case of special forces deployment, they may also be shipped in medium or large cargo planes - such as Antonov-22, Antonov-124, C-5AC Galaxy, C-17A Globemaster, Ilyushin-78MD, and C-130 Hercules aircraft (see Table), that can carry heavy equipment up to 60-120 tonnes. Where international rail networks are available, heavy military equipment is also directly shipped to destinations in dedicated railcars. Often, the manufacturer's facility includes rail tracks connected with the major networks. The equipment is usually Customs-precleared and may be directly forwarded to military deposits of other countries.

In contrast, spare parts for military equipment, small arms, light weapons, ammunition, and explosives are often shipped in cranes and boxes, palletized and then containerized, and may travel alongside with shipments of other manufactured goods on commercial ships and aircraft, provided certain rules and packaging dispositions for the transport of hazardous materials are observed. This type of military equipment is usually shipped in large quantities and its relative flexibility allow for different types of containers.

Military aircraft and helicopters are usually shipped partially or entirely disassembled, or at least with wings and rotors folded or removed, more frequently by ship, but also in cargo planes. These can therefore be concealed from unsuspecting customs authorities. For example, when a giant Antonov-124 Ruslan cargo plane landed in Baku on March 18, 1999, the first statements of the crew and subsequent declarations by the director-general of the Kazakhstan-based Metallist plant claimed that the plane was en route from Kazakhstan via Bratislava to Bosnia. However, Azeri customs authorities discovered that the plane was loaded with six disassembled MiG-21 jet fighters and seized it on the grounds of a national law that does not allow unauthorized arms cargo to over-fly the national territory. It was later alleged that the cargo was the fourth similar shipment of old jet planes that the Czech firm Agroplast had illegally arranged to supply to North Korea. The planes were possibly still air-worthy but more probably destined to provide spare parts.<sup>121</sup>

Of course, various other factors need to be considered. If the military cargo is part of a covert or illegal consignment, the shipping "requirements" may focus on the possibility of

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<sup>121</sup> The illegal shipments provoked a scandal both in Czech Republic and Kazakhstan. The Czech government investigated Agroplast (that was also embargoed by the U.S. for dealing with North Korea). Early in August 1999, Kazakh president Nazarbayev dismissed Defence minister Mukhtar Altynbayev and the chairman of the country's security committee, Nurlan Balgymbayev, for failing to "properly" investigate the case. "Neither Kazakhstan's President nor the Government were aware of the MiG-21 export to North Korea, Kasymzhomart Tokaev, Kazakh Minister of Foreign Affairs said yesterday" (ITAR-TASS, September 14, 1999). On 10 November 2000, during the trial against the Kazakh officials accused of arranging the deal, Gen. Bakhytzhan Yertayev, chief of staff of Kazakhstan's armed forces - one of the officials accused, along with the businessman Alexander Petrenko - revealed that the deal was actually for the sale of 40 Mig-21s from Metallist to Agroplast and claimed it was arranged with the knowledge of the Defence ministry. The deal was worth eight million dollars. Agroplast, located in Liberec, Czech Republic, was actually a company registered as a mining and recycling firm, but the Czech intelligence services believe that the firm could be one of the leading international weapons smugglers. RFE/RL's Slovak Service reported that, since 1993, "Agroplast has used Bratislava airport (the alleged destination of the Russian cargo plane that transported the MiGs) for illegal arms shipments. It added that Agroplast has delivered arms from unnamed CIS states to third countries" (RFE/RL, Transcaucasia & Central Asia "Kazakh Official Says Impounded Migs Intended For Bosnia," April 2, 1999. See also: Reuters, March 23, 1999; Reuters, April 20, 1999; ITAR-TASS, September 2, 1999; Flight International, September, 9, 1999; Venik, September 17, 1999; Stratfor.com, November 18, 1999; Radio Prague, November 23, 1999, "US sanctions for the sale of fighter planes to North Korea"; Radio Free Europe/Radio Liberty, January 21, 2000; AP, January 11, 2000, *Kazak General Suffers Heart Attack*; Interfax, January 14, 2000. .

concealing the equipment amongst other shipments and/or disguising the equipment by falsely invoicing and mislabelling it.<sup>122</sup> Sometimes, the means of transport itself can serve as a cover as for example when illegal military cargoes were shipped in oil tankers, refer ships (carrying refrigerated goods and in particular fish), v.i.p. planes,<sup>123</sup> and in cargo planes or railcars assigned to relief and humanitarian missions.

Nevertheless, after all such factors are taken into consideration arms transfers and military supply chains follow procedures similar to those applied to the supply chain of civilian cargoes. Once ready to be shipped, even large military articles enter the general trade flows and routes, often making them difficult to detect. In this sense, the transport and logistics services relating to arms transfers, military supply chains, and military operations are not really a special or separated part of the freight transport industry. Rather, the companies that transfer arms and other military equipment and supplies are mostly those firms involved in other commercial freight transport operations. This makes monitoring their military-related activities difficult and thus requires special measures.

In general, the growing role of commercial organizations and agents in arms supply chains, arms transfers and military operations contributes to lower transparency and makes the implementation of arms control policies more difficult. It tends to blur the responsibilities of the firms and their governments for the human rights consequences of their activities.

#### GLOBAL SCALE MEANS THAT MILITARY CARGO DO NOT MOVE IN EMPTY SPACES

##### Maritime transport

- In 2004, the world fleet had a transport capacity of 857 million dwt, of which about 399 million were under flags of convenience.
- In 2004, there were about 16,600 general cargo ships moving in international trade, of which 3,054 containerships.<sup>124</sup>
- In 2004, the world top container ports (Hong Kong and Singapore) handled 21.9 million and 21.3 million TEUs, respectively.<sup>125</sup>
- In 2004, a typical container ship able to carry 3,500 TEUs had daily charter rate of US\$30,000.<sup>126</sup>
- In 2004, the revenues of the ocean container transport services approximately reached US\$139 billion.<sup>127</sup>

<sup>122</sup> See, for example, the case of 32 crates of Scud jet propulsion systems and other missile parts that were discovered and seized by the British Customs at Gatwick airport, near London, on 24 November 1999. The shipment, according to a report by the Sunday Times, was sent to Britain by a knit-wear company in Taiwan and loaded on a British Airways plane bound for Tripoli via Malta. The accompanying documents stated that the crates were loaded with automotive spares. “*The export of missiles to Libya is illegal under a European Union arms embargo and an international treaty against the proliferation of ballistic missiles.*” (Reuters, January 10, 2000, Susan Cornwell).

<sup>123</sup> See, for example, the case of Leonid Minin’s BAE-111 for the arms shipments to Liberia in March 1999.

<sup>124</sup> UNCTAD, Review of Maritime Transport 2004. See also: Drewry Shipping Consultants Container Market Quarterly, June 2004. In Journal of Commerce, Radar Screen, July 12, 2004; ISL Shipping Statistics and Market Review 2003 ([www.isl.org](http://www.isl.org)) on data by Global Insight ([www.globalinsight.com](http://www.globalinsight.com)).

<sup>125</sup> See port statistics at [www.mardep.gov.hk](http://www.mardep.gov.hk) and [www.mpa.gov.sg](http://www.mpa.gov.sg). TEU stands for Twenty Foot Equivalent Unit and refers to a container of 20 feet x 8 feet x 8 feet

<sup>126</sup> ISL Shipping Statistics and Market Review 2003, quoted.

<sup>127</sup> Tirschwell, P.M. *Beyond the spreadsheet*. In Journal of Commerce, October 4, 2004. Figures from Drewry Shipping Consultants

- In 2003, general cargo ships (including containerships and ro/ro ships) moved goods for 1.65 billion tons, a major share of which transported in containers.<sup>128</sup>
- In 2003, world ports moved (loading and unloading) about 266 million TEUs,<sup>129</sup> 39% of which at ports in Developing Countries.
- In 2003, despite being a small fraction of the world port traffic, African ports loaded (exports) of more than 63 million tons of dry cargo and unloaded (imports) 136 million tons.<sup>130</sup>

#### **Air cargo transport**

- In 2004, international air cargo handled at Hong Kong, the world top cargo airport for international traffic, totalled 3.1 million tons. In total, the top ten airports for international cargo traffic<sup>131</sup> handled 18.8 million tons.<sup>132</sup>
- In 2004, the total cargo handled at Africa's top 15 airports<sup>133</sup> totalled 1 million tons.<sup>134</sup>
- In 2003, the number of Western-type freighter planes in service totalled 1,766 units.<sup>135</sup> To this figure should be added more than 300 freighters based in former USSR countries (CIS) and hundred of former Soviet cargo planes in service outside the CIS, in Africa in particular.
- In 2004, the cargo fleet (all-cargo and combi) registered in 37 African countries by 140 airlines totalled 262 all-cargo and 103 combi planes. Most of them were old Soviet-built Antonov and Ilyushin freighters.<sup>136</sup>
- In 2002, freight tonnes transported by air in international scheduled (regular) services totalled more than 27 million, including 9.7 million tons transported by all-cargo planes.
- In 2002, charter (non-scheduled) services transported about 18 million tonnes.

### *Arms transfers by sea*

The main part of international trade travels by sea, where structural changes are quite slow. Over the last few decades, the role of the leading countries has increased and in 2004 the top thirteen countries controlled more than 70% of the world merchant fleet.<sup>137</sup> Leading the top two positions, Greece and Japan held 31% of the total cargo capacity, followed by Norway, Germany, China, the United States, Hong Kong, Korea, Singapore, Taiwan, the United Kingdom, Russia, and Denmark.

All the world top thirteen countries have at least 50% of their tonnage registered under flags of convenience (“open registries”),<sup>138</sup> since the “open registries” of Panama, Liberia, Bahamas, Malta, Cyprus, etc., allow the ship-owners to substantially avoid the levels of taxation and the kinds of safety standards required by major registries, and to shelter the real ownership of the ships in an array of shadow or shell companies. The role and “weight” of the countries whose

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<sup>128</sup> UNCTAD, *Review of Maritime Transport 2004*, quoted.

<sup>129</sup> UNCTAD, *Review of Maritime Transport 2004*, quoted. Number of movements measured in TEUs. A TEU is the measure of a typical container that on average can load 20/25 tons of cargo.

<sup>130</sup> *Review of Maritime Transport 2004*, quoted. Dry cargo excludes all liquid cargo, including oil.

<sup>131</sup> Narita, Japan; Seoul, South Korea; Anchorage, Alaska; Changi, Singapore; Frankfurt, Germany; Taipei, Taiwan; Miami Intl., Florida; Schiphol, Netherlands; Shanghai Pudong, China.

<sup>132</sup> Hong Kong International Airport, [www.hongkongairport.com](http://www.hongkongairport.com)

<sup>133</sup> Johannesburg; Nairobi, Kinshasa, Lagos, Brazzaville, Accra, Entebbe, Casablanca, St. Denis-Gillot, Addis Ababa, Algiers, Dakar, Lusaka, Mwanza, Tunis.

<sup>134</sup> Airports Council International

<sup>135</sup> Boeing Co. *World Air Cargo Forecast 2004/2005*.

<sup>136</sup> Data elaborated from JP *Airline-fleets International 2004/2005*.

<sup>137</sup> It is worth to note that Industrial Countries controlled sixty percent of the shipyard order-book, directly or through free registers. New orders of general cargo and specialized ships accounted for more than 50% of the totals new orders.

<sup>138</sup> UNCTAD *Review of Maritime Transport 2004*, Geneva, Unctad Secretariat., 2004. Tables 16 and 17.

companies control large ship fleets but register them under flags of convenience (the ship-owners based in Greece, for example, maintain 68% of their fleets under open registries) would therefore be far more prominent if the real nationality of those fleets were taken into consideration. Moreover, the countries where the open registries are located regularly and grossly under-report, or do not report at all, their accounts to international financial organizations such as the International Monetary Fund.<sup>139</sup> In fact, in 2004, the major open-registry countries (Panama, Liberia, Bahamas, Malta, Cyprus, and Bermuda)<sup>140</sup> “controlled” 46.6% of the world fleet’s transport capacity.

In maritime transport, which is the main modality of the international freight transport system, the typical vessels that carry military cargo are “general cargo” ships, the largest component of the world fleet that include containerships (60% of the general cargo traffic), reefer (refrigerated) ships, “ro/ro” (roll on/roll off) vessels, car/truck carriers, specialized ships, and combined ships (general cargo/containers).

For a single large transfer of arms or other military and security equipment, in particular if directed to a developing country, the most common method is to use companies that operate tramp ships, i.e. ships that take the cargo when and where it is offered. “Tramping” is a traditional non-specialized service, a declining niche market constantly eroded by the improving specialization of other general cargo markets. This segment of the maritime transport may include well managed and modern commercial fleets, such as the general cargo branches of the Chinese colossus COSCO and the Iranian national-owned shipping company IRISL, but more frequently tramping markets use ships that have been in service for 30 or even 40 years but are still profitably involved. These ships have been usually registered in less than accountable open-registers, or “flags of convenience”<sup>141</sup> - such as Bahamas, Bermuda, Bolivia, Cambodia, Cyprus, Honduras, Liberia, Malta, Marshall Islands, Panama, and St. Vincent & Grenadines - or in countries with loose maritime controls.<sup>142</sup>

For regular international transfers of large consignments of arms and other military or security equipment the companies of choice are usually shipping lines, whose regular services have state-of-the-art technologies for tracking and controlling the delivery and are integrated with other modalities of transport (by rail, road, air etc.). The most requested ships are the ro/ro (roll-on roll-off) vessels, where wheeled vehicles (trucks, trailers, armoured and tracked vehicles, etc.) can drive straight on and off the ship. The world merchant ro/ro fleet amounts

<sup>139</sup> The I.M.F. annually publishes the “International Balance of Payments” with a section dedicated to the exchange of Transport Services for passengers, cargo, ports and airports.

<sup>140</sup> Other significant open-registry countries are: St. Vincent and the Grenadines; Antigua and Barbuda; Cayman Islands; Luxembourg; Vanuatu; Gibraltar.

<sup>141</sup> The International Transport Workers’ Federation’s “*Flags of Convenience Campaign*” maintains and regularly updates a list of open registries whose substandard ships and practices pose high risks for seafarers and the international maritime industry. The list presently includes the following countries: Antigua and Barbuda, Bahamas, Belize, Bermuda (UK), Bolivia, Burma, Cambodia, Cayman Islands, Comoros, Cyprus, Equatorial Guinea, French International Ship Register, German International Ship Register, Georgia, Gibraltar, Honduras, Jamaica, Lebanon, Liberia, Malta, Marshall Islands (USA), Mauritius, Mongolia, Netherlands Antilles, North Korea, Panama, Sao Tome’ & Principe, St. Vincent, Sri Lanka, Tonga Vanuatu. See ITF’s “*Campaign against flags of convenience and substandard shipping*” Annual Report 2004, [www.itfglobal.org](http://www.itfglobal.org)

<sup>142</sup> The “*Paris Memorandum of Understanding on Port State control*” maintains and regularly updates a list of ships and flags that have severely violated international safety standards and regulations. See: [www.parismou.org](http://www.parismou.org) and MOU Annual Report 2004. See also Michael Richardson “*Crimes Under Flags of Convenience*,” May 19, 2003 in Yale Center for the Study of Globalization <http://yaleglobal.yale.edu>

to about a thousand ships with an average age of 20 years. The most modern of them, about one third of the total fleet, are large “pcc/pctc” (pure car carriers/pure car truck carriers), managed by companies with a global networks of routes and services.<sup>143</sup> However, due to the large number used in civilian commercial traffic flows, ro/ro ships available for defence transportation are chronically scarce and neither the civilian conversion of the former Soviet Bloc’s ro/ro fleet, nor the recent efforts of the specialized shipyards,<sup>144</sup> have made up for this scarcity.

Also in high demand for regular shipments of military equipment are containerships. These are the most advanced segment of the maritime transport industry, usually operated by major maritime companies capable of meeting their high maintenance costs. Containerships that can carry thousands of containers in each voyage may easily become a conduit for unauthorized arms shipments organized by unscrupulous brokers and shippers or for covert operations by unaccountable government agencies.

For example, on June 28, 2003, U.S. Department of Homeland Security officers<sup>145</sup> seized a container on board the Cyprus-flagged 2,280 TEU containership “Nordstrand”<sup>146</sup> that had arrived in Portland, Oregon, the previous day from Vancouver. The cargo on the non-refrigerated container had been labelled “*chilled rainbow trout*” and had been transferred to the Nordstrand in Vancouver from another containership, the then Liberia-flagged and 2,100 TEU “Lykes Voyager”<sup>147</sup> that had departed from Shanghai, China, on June 6. The transferred cargo included 450 shotguns, 780 handguns, 950 ammunition magazines, 150 pistol-grip shotguns, and 300 pump shotguns, destined, according to the DHS officers, to an El Salvadorian arms dealer. The shipper was a Chinese arms manufacturing company already in the Office of Foreign Asset Control’s list of companies denied the right to conduct business with the United States. The container was scheduled to pass through Oakland and Long Beach ports, California, before arriving in El Salvador.

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<sup>143</sup> Such as, for example, the company Wallenius Wilhelmsen that employs these ships in long-term charter contracts for carrying new and second-hand cars in Northern Europe-Northern America-Far East routes.

<sup>144</sup> In the last two years major shipyards launched 75 new ships, at an average cost of \$50 million each. In the past decade, the U.S. government raked together all the ro/ro ships for sale or charter and fed the shipyards’ order book. The same buying-up strategy has been pursued by the ministries of defence of several other industrial countries.

<sup>145</sup> U.S. Department of Homeland Security, “*CBP inspectors seize major weapons shipment destined to El Salvador*,” DHS press release, July 10, 2003; “*The small arms were bound for El Salvador from China*,” by Sarah Linn, Associated Press, July 3, 2003; “*Guns bound for El Salvador seized at port*,” by Camille Spencer, The Oregonian, July 7, 2003;

<sup>146</sup> Formerly called “Nautic” and owned by the Lymassol/Hamburg company Reederei “Nord” Klaus E. Oldendorff ([www.rnkeo.com](http://www.rnkeo.com)). The ship’s IMO number is 9003299 - the unique International Maritime Organization (IMO)’s number identifies a ship regardless of whether it has undergone a name change.

<sup>147</sup> The IMO number of this ship is 9062996. Until October 2001, the ship was former Cyprus-flagged “P&O Neddloyd Bandar Abbas” and changed its flag to the United Kingdom in December 2003 and its name in August 2005 to “CP Voyager”. The ship has been owned by the Canadian Pacific Railways, which, in 1997, took over Lykes Lines. Lykes Lines is a US company that has been awarded several contracts by the U.S. Department of Defense, - for example in 2000, 2001, and 2005. See “CP Ships’ Lykes Lines Awarded \$145 million ten-year contract by US government.” CP press release, January 5, 2005 <http://investors.cpships.com>; U.S. Department of Defense, Army, contract n. 316-01, July 16, 2001 and February 7, 2000. CP also owns Italia di Navigazione, an Italian company that has been a contractor of the Italian Ministry of Defence (interview with the marketing director of Italia di Navigazione, D’Amico Group, October 11, 2001).

### *Arms transfers by air*

International air cargo transport<sup>148</sup> is usually limited either to parcel services and high-value-added products, or to support expeditionary military operations and the delivery of arms into difficult areas. International air cargo traffic, in which U.S. and European companies hold a dominant position, accounts for about 16% of the total air traffic and 25% of total air cargo revenues. The most dynamic growth is in time-sensitive goods (like perishable goods) and intra-regional (intra-American, intra-European) connections. However, some world regions, namely Africa and Central Asia, make a higher than average use of air transport, because of the great distances and poor condition of railroads and roads, particularly, in the case of Africa, during the rainy seasons. The transport of arms and other military equipment by air is usually reserved for:

- Rapid deployments of military equipment and troops;
- Authorized shipments to destinations far from ports or difficult to reach by land;
- Deliveries that need as little attention as possible - such as illegal arms shipments.

Currently, there are 5,930 active aviation companies worldwide - including more than 600 main cargo airlines - flying with their own or leased aircraft (both planes and helicopters) under 204 aviation registries, plus 69 major aircraft leasing companies. Dozens of other small airlines - in particular cargo charter companies - have a business life too short or shadowy to be recorded.<sup>149</sup> The failure of the international community to closely track the latter companies makes the monitoring of arms embargoes extremely difficult, as numerous UN and other reports testify.<sup>150</sup> A large number of air operators that can offer cargo space favour the outsourcing of arms transfers by air. These operators may be graded in three main groups:

- Large airlines with all-cargo, “combi” (passenger/cargo), and passenger aircraft with substantial cargo space in their bellies;
- Express air companies or “integrators,” such as Federal Express, DHL, UPS, TNT;
- Small charter companies that offer their planes by a pre-determined period or by trip.

Major airlines and integrators, under the supervision of government authorities, carry the main portion of arms and other military and security equipment that is legally transported by air. With few exceptions,<sup>151</sup> major airlines and integrators usually accept business involving

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<sup>148</sup> See Doganis, R. *Flying Off Course. The Economics of International Airlines*. Chapter 11 “The economics of air freight.” London, Routledge, Third Edition, 2002.

<sup>149</sup> JP Airline Fleets International, 2005/2006.

<sup>150</sup> See for example the United Nations investigative reports on the arms embargoes on Rwanda, Unita (Angola), the RUF (Sierra Leone), Liberia, the DRC and Somalia.

<sup>151</sup> Among these exceptions, the Italian subsidiaries of some important international air couriers, such as DHL and TNT that consider arms as «non transportable goods». In the TNT Global Express SPA web site (<http://www.tntitaly.it/>) the company says that arms, even for sports purposes, and arms spare parts, cannot be either accepted or transported, since “the law provides that

the transport of weapons, ammunition and other military and security equipment, provided they are accompanied by proper official authorizations. For the safety of passengers, restrictions apply to the transport of ammunition, classified by ICAO and IATA as “dangerous goods” of Class 1,<sup>152</sup> There are 9 classes of dangerous cargo and *Class 1* includes explosives such as substances or devices having an explosive effect, e.g. toy caps, detonators, igniters, grenades, fireworks, and cartridges and, because of the special precautions required, such items may nowadays be only transported on cargo planes. Since air cargo is a market in expansion, where advanced logistics techniques and security rules converge, the major aviation operators are rarely interested in breaking the aviation rules or being involved in transfer not approved by governments or state agencies. However, sometimes the close relationships entertained by these carriers with government agencies may lead to their involvement in covert or blatantly irresponsible transfers, as shown in Chapter two above.

For example, in July 2004, the Sudanese government announced the import of 12 MiG-29 jet fighters to Sudan at the same time as the Sudanese government was being accused in the United Nations Security Council of supporting Sudanese militia in a campaign of ethnic cleansing in Darfur.<sup>153</sup> On August 21, 2004, in response to Amnesty International’s expression of concern, the Russian government dismissed any connection between the delivery of fighter planes to Sudan and the escalating conflict in Darfur. The Russian envoy to the UN said that the sending of Russian fighters to Sudan was to fulfil an agreement signed between the two countries in December 2001.<sup>154</sup>

Illegal, covert or questionable arms transfers are however more likely to be transported by smaller and sometimes shadowy cargo companies operating in the charter segment, an equivalent of the maritime “tramping.” These companies generally use old cargo aircraft (“freighters”) such as Boeing 707s, DC-8s, Hercules C-130, Antonov-12 and -24s, Ilyushin-18 and -76s, Yakovlev-40s. These aircraft are considered the workhorses of military transport to conflict zones for their ability to operate in difficult conditions. They are often used to transport small arms and light weapons and the corresponding ammunition, explosives and shells, as well as basic military transport and other equipment. Based in airports where economic or political factors have made the scrutiny of cargoes a rare event, such as in

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the name of each person, that has to deal with or hold a weapon, must be previously reported to the Authorities. In view of the fact that it is impossible to respect this provision of the law (considering the logistics flows), TNT cannot transport arms”.

<sup>152</sup> The main reference on this subject is: United Nations *Transport of Dangerous Goods, Model Regulations* (Orange Book). New York, United Nations, 12<sup>th</sup> edition, 2001; United Nations *Recommendations on the Transport of Dangerous Goods: Manual of Tests and Criteria*, New York, United Nations, 3<sup>rd</sup> Revised Edition, 2002. Connected to the U.N. Recommendations are the rules issued by International Civil Aviation Organization (ICAO, Technical Instruction); International Air Transport Association (IATA, Dangerous Goods Regulations). See also *Appendix CC-8* (Procedures For Transporting Government-Owned Small Arms, Ammunition, and Hazardous Materials aboard commercial aircraft in Scheduled and Charter Service) in U.S. Department of Defence *Defense Transportation Regulation, Part II Cargo Movement*. Washington DC, DoD 4500.9-R, December 2000.

<sup>153</sup> On human rights violations in Darfur see for instance Amnesty International, *Sudan: Darfur: Rape as a weapon of war: sexual violence and its consequences*, AI Index: AFR 54/076/2004, July 19, 2004.

<sup>154</sup> See Amnesty International, “Sudan: Arming the perpetrators of grave abuses in Darfur,” November 2004; and The Moscow Times “*Mig Under fire for Arming Sudan*” July 22, 2004 by Lyuba Pronina, and Jane’s Defence Weekly August 11, 2004 which reported that 10 MiG 29s had been delivered at a cost of \$120m. Konstantin Makiyenko, deputy head of the Centre for Analysis of Strategies and Technologies, an independent defence think tank, also stated that as many as twelve MiG-29s could be delivered to Sudan, as reported in the Sudanese Catholic Information Office, SCIO Monthly Report Dec 2001; “*Russia says no link between fighter planes and Darfur conflict*”, PANA, 21 August 2004.

Sharjah (UAE) and Ostend (Belgium),<sup>155</sup> the planes are frequently registered under the aviation equivalent of the maritime “flags of convenience,” moving like a flock of birds from one flag to another when the authorities change.<sup>156</sup>

In early 1990s, large fleets of ex-military transport planes of the former Warsaw Pact suddenly became available for commercial use. This led to the creation of dozens of cargo charter companies headquartered in, or controlled by, interests located in Eastern and Central European countries. These aircraft and cargo companies have been used to exploit for commercial use – sometimes with authorization and sometimes illegally - the huge military arsenals that the Soviet and Warsaw Pact armies decommissioned and sometimes abandoned. The planes have been also used in “expeditionary” logistics for recent major military operations in the Middle East and South Asia, as well as for numerous questionable arms transfers to war-torn and highly repressive countries – and even used for peacekeeping and relief operations in those same countries. This gave these companies the opportunity to “demonstrate” the market value of their fleet and gain growing portions of the air cargo markets.<sup>157</sup> Today, major Western oil and heavy construction companies, as well as NATO countries and the United Nations (from Sudan to D.R. Congo to West Africa), routinely use former Soviet Antonov-124s and Ilyushin-76s cargo planes operated by companies whose base is located in the former-USSR countries. Many of the companies now conduct their business from offices in the Middle East, Asia, Africa and other regions.

| MAIN MILITARY AND CIVILIAN CARGO PLANES – PAYLOAD LB/TON |                  |             |             |                        |            |
|--|------------------|-------------|-------------|------------------------|------------|
| Designation  | Manufacturer     | Payload     | Designation | Manufacturer           | Payload    |
| An-225   | <i>Antonov</i>   | 550,000/249 | Il-78M      | <i>Ilyushin</i>        | 105,820/48 |
| An-124 Mil.  | <i>Antonov</i>   | 330,000/150 | C-141B      | <i>Lockheed</i>        | 94,508/43  |
| An-124 Civ.  | <i>Antonov</i>   | 265,000/120 | B-757-200 F | <i>Boeing</i>          | 85,900/39  |
| C-5A/B/C   | <i>Lockheed</i>  | 265,000/120 | An-70T      | <i>Antonov</i>         | 77,150/35  |
| B-747-400 F  | <i>Boeing</i>    | 242,290/110 | KC-135A/E   | <i>Boeing</i>          | 50,000/23  |
| MD-11 F  | <i>Boeing MD</i> | 202,100/91  | An-12       | <i>Antonov</i>         | 44,000/20  |
| C-17A  | <i>Boeing</i>    | 172,200/78  | C-130H/J    | <i>Lockheed</i>        | 42,574/19  |
| KC-10A   | <i>Boeing/MD</i> | 169,409/77  | C-9B        | <i>Boeing</i>          | 32,444/15  |
| An-22  | <i>Antonov</i>   | 132,000/60  | C-130T      | <i>Lockheed</i>        | 30,860/14  |
| Il-76MF/TF   | <i>Ilyushin</i>  | 132,263/60  | Il-18 Cargo | <i>Ilyushin</i>        | 30,000/14  |
| A-300-600 F  | <i>Airbus</i>    | 121,000/55  | KC-130      | <i>Lockheed</i>        | 25,049/11  |
| B-767-300 F  | <i>Boeing</i>    | 119,000/54  | C-27J       | <i>Lockheed/Alenia</i> | 22,000/10  |
| Il-76MD/TD   | <i>Ilyushin</i>  | 110,219/50  | An-72/74    | <i>Antonov</i>         | 22,045/10  |

<sup>155</sup> See for an exhaustive analysis of the involvement of those companies in arms trafficking the website of the CleanOstend Association at [www.cleanostend.com](http://www.cleanostend.com)

<sup>156</sup> By law or de facto flags of convenience are or have been permitted in the DRC, Central Africa Republic, Gambia, Equatorial Guinea, Liberia, Mauritius, Sierra Leone, São Tomé & Príncipe, Somalia, Sudan, Swaziland; Kazakhstan, Kyrgyzstan, and Moldova; Bahamas, Bermuda, Cayman Islands, Aruba; but also, for example, Luxembourg and Devon (U.S., Maryland). Analysis of the real locations and ownership of airlines included in the database JP Airlines-fleets International 20001/2002 to 2005/2006; James E. Cooling “Offshore Registration – Bermuda, Bahamas, Cayman Islands, Aruba,” [www.coolinglaw.com](http://www.coolinglaw.com); Cambridge Businesscenter, [www.cambridge1.net/aircraftregistration](http://www.cambridge1.net/aircraftregistration).

<sup>157</sup> After the Katrina hurricane disaster, Russian Il-76TDs were for the first time accepted in US airports for relief operations. Three of these planes landed in Little Rock (Arkansas) in August and September 2005.

|                                     |   |            |       |                |          |
|-------------------------------------|---|------------|-------|----------------|----------|
| A-300B4                             | <i>Airbus</i>   | 110,000/50 | An-32 | <i>Antonov</i> | 14,700/7 |
| DC-8-70                             | <i>Boeing MD</i>  | 109,000/50 | An-26 | <i>Antonov</i> | 12,100/6 |
| Designation                         | Load  |            |       |                |          |
| AN-124                              | 36 pallets 463L (88"x100", h. 96"); or any kind of heavy weapon (tanks, helicopters, missiles, 67 t mobile bridges) |            |       |                |          |
| C-5A/B                              | 36 pallets 463L (88"x100", h. 96"); or any kind of heavy weapon (tanks, helicopters, missiles, 67 t mobile bridges) |            |       |                |          |
| B-747-400 F                         | 39 pallets (96"x125") + 15 m3 in bulk; or 30 pallets (96"x125") + 32 containers LD1                                 |            |       |                |          |
| C-17                                | 1 heavy tank; or a special truck with 60 t; or 2 rows of 5 t trucks; or 2 HMMWV rows; or 18 pallets 463L            |            |       |                |          |
| A-300-600 F                         | 25 pallets 88"x125"; or 21 pallets + 23 containers Id3  |            |       |                |          |
| B-767-300 F                         | 24 pallets 88"x125" in the main deck + 7 pallets, 2 containers and bulks in the lower deck                          |            |       |                |          |
| A-300B4                             | 25 pallets 88"x125"; or 21 pallets + 23 containers Id3  |            |       |                |          |
| C-141B                              | 1 missile Minuteman (41 t in modified versions)   |            |       |                |          |
| B-757-200 F                         | 15 pallets 88x125"  |            |       |                |          |
| C-130J/J30                          | 5/7 pallets 463L (88"x100", h. 96"); or ¾ HMMWV   |            |       |                |          |
| C-27J                               | AML90 + HMMWV; or Perentie 6x6; or M113 APC; or 3 pallets (88"x100", h. 88"); or 2 pallets (88"x125"x88")           |            |       |                |          |
| SOURCE: MANUFACTURER SPECIFICATIONS |   |            |       |                |          |

### *The arms logistics chain – Who's who?*

The arms logistic chain usually starts at the manufacturer's facility, a military warehouse or a dealer's deposit. There, the equipment is packaged, consolidated and "unitised". Trucks and railcars carry the equipment to the international embarkation points, where it is often temporarily stored in customs or military warehouses. Handled and embarked onto military or commercial ships and aircraft, the equipment is forwarded to the debarkation point, where it may be stored or directly shipped to a destination through a second leg by land that may include the use of inter-modal carriers. Where international rail networks are available, the equipment may be directly shipped from the origin to the destination facility.

In commercial sales of military equipment in particular, all these operations configure a logistics chain that may include all or part of the following actors: manufacturer; buying agent; banking institutions for the Letter of Credit; freight forwarders or consolidators; origin Customs officials and ports/airports authorities; Non-Vessel Operator Common Carrier (NVOCC); asset-based carriers; officials of destination Customs and other governmental regulatory agencies; customs brokers; rail lines/trucking or inter-modal companies (third parties entities); destination warehouse/distribution entities; and the importer's representatives. Each actor has core functions and roles in the logistics chain as follows:<sup>158</sup>

<sup>158</sup> See FIATA, Fédération Internationale des Associations de Transitaires et Assimilés (International Federation of Freight Forwarders Associations; Internationale Föderation der Spediteurorganisationen).

- *The manufacturer*: is mainly responsible for compliance with the importer's specifications, the Letter of Credit, and export license from its government.
- *The buying agent*: if present, interfaces directly with the importer or the foreign buying office or representative, negotiates the terms of sale and the Letter of Credit terms, prepares export licenses, and provides payments to the manufacturer and other actors in the country of origin.
- *The freight forwarder/consolidator*: is responsible for the preparation of the document packet to be forwarded to the authorities of the country of origin and customs in the foreign country, banks, and the importer; as well as for coordinating truck/rail, booking space on vessels and dispatching containers to the manufacturer, supplying and distributing all information and documents necessary for compliance with the Letter of Credit or sales agreement.<sup>159</sup>
- *Origin customs' authorities*: are responsible for issuance of quota, export license control, document control, coordination with manufacturer, and shipping companies.
- *Banking institutions*: are responsible for assisting the manufacturer and importer with all financial documents, the compliance to all Letter of Credit's terms and conditions, and timely payments after compliance with the Letter of Credit requirements.
- *Origin and destination ports' authorities*: are responsible for running ports efficiently and for complying with the normal conditions under which its services are priced.
- *Non-Vessel Operator Common Carriers (NVOCCs)*: usually non-asset based companies, these ship the cargo under their own rate structure and may substitute certain functions performed by the freight forwarders.
- *"Steamship operators"*: are asset-based companies and are mainly responsible for vessel availability, schedule integrity, space and equipment on the vessels, all landside operations, in addition to the costs of operating the vessels; they too may derive additional income from consolidation, rail/truck and other inter-modal and logistics operations.
- *Destination customs*: are responsible for enforcement, tariff compliance, collection of duties, and assistance to the importer on what can and cannot be imported and at what duty rates, under what quota requirements, etc.
- *Customhouse brokers*: are responsible for documentation and direct interface with customs and other governmental agencies.

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<sup>159</sup> The forwarders are, to the shipper, an indirect carrier because they receive freight from shippers under their own tariff usually consolidating it into larger units tendered to the carrier. To the carrier, the freight forwarder is a shipper. A freight forwarder is ordinarily classed as an indirect carrier. Many freight forwarders operate their own means of transport.

- *Destination warehouse/distribution entities* are responsible for coordination with rail/truck, direct interface with importer, proper storage, adequate inventory and record keeping for all goods received and dispatched/distributed, equipment control and return on a timely basis of rail/truck/ocean carrier equipment.

For the chain to function legally, a series of documents are required that precede and accompany the shipments. These are intended to address national and international general provisions, regulations, and voluntary agreements:

- *Documents related to the transaction:* commercial invoices; enquiry/request for quote/offer; invitation; offer/quotation; pro-forma invoice; despatch advice.<sup>160</sup>
- *Documents related to payments:* documentary credit application and documentary credit (ICC), such as the Letter of Credit.<sup>161</sup>
- *Documents related to forwarding and cargo-handling:*<sup>162</sup> Standard consignment instructions; FIATA forwarding instructions; Forwarder's certificate of receipt; FIATA warehouse receipt.
- *Documents directly related to transport:* Government Bill of Lading (GBL); Standard Bill of Lading (International Chamber of Shipping)<sup>163</sup>; International rail consignment note (CIM);<sup>164</sup> International road consignment note (CMR);<sup>165</sup> Universal Air Waybill (IATA);<sup>166</sup> Negotiable FIATA multimodal transport Bill of Lading; Non-negotiable FIATA multimodal transport Way Bill; FIATA Forwarders certificate of transport; FIATA Shippers intermodal weight certificate.

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<sup>160</sup> A dispatch advice is a message sent by the seller to advise the buyer of the dispatch of goods and the detailed contents of the shipment in order to enable the receiving location to control the incoming flow of material. The dispatch advice relates one buyer to one seller and will always be sent by the seller to the buyer before the goods are physically delivered. As a shipping term, dispatch is also used to mean that the "loading and/or unloading has been completed in less than the number of days specified in the charter-party (the document containing the contract of affreightment, i.e. the conditions of chartering the mean of transport), in which case the charterer is rewarded by the ship-owner for each day saved at a rate as specified in the charter-party."

<sup>161</sup> The ICC has developed a set of rules nearly universally accepted in the banking sector and known as Uniform Customs and Practices for Documentary Credits (1993), or UCP500. Other set of rules are the Uniform Rules for Collections (URC 522), the Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits (URR 525) and the Uniform Rules for Demand Guarantees (URDG 458). Whereas UCP500 essentially deals with paper documentation, the ICC has recently moved in the direction of studying, clarifying, and setting rules for trade transactions online and electronic documentation, the so-called e-UCP. A common definition of the Letter of Credit is as follows: "A document issued by the bank per instructions by a buyer of goods authorizing the seller to draw a specified sum of money under specified terms, usually the receipt by the bank of certain shipping documents, within a given time."

<sup>162</sup> UNCTAD Secretariat/Geneva, United Nations Conference on Trade and Development, 1992

<sup>163</sup> A document by which a carrier receives a receipt for goods and contracts to move them

<sup>164</sup> CIM is an acronym from the original French text - *contrat de transport international ferroviaire des marchandises* – of the May 9, 1980 Berne's Convention on international transport by rail, Appendix B (Convention relative aux transports internationaux ferroviaires, COTIF)

<sup>165</sup> CMR is an acronym from the original French text - *contrat de transport international des marchandises par route* – of the May 19, 1956 Geneva's Convention on international transport by road.

<sup>166</sup> The most common definition of an Air Waybill is: "Shipping document used by the airlines for air freight. It is a contract for carriage that includes carrier conditions of carriage that include such items as limits of liability and claim procedures. The air waybill also contains shipping instructions to airlines, a description of the commodity, and applicable transportation charges. Air waybills can be used by truckers as through documents for coordinated air/truck service. Air waybills are not negotiable. The airline industry has adopted a standard formatted air waybill that accommodates both domestic and international traffic."

- *Documents related to the official controls sector:* Dangerous goods declaration; Goods declaration for export (Kyoto Convention); Goods declaration for transit (Kyoto Convention); Single Administrative Document (SAD).<sup>167</sup>

Most of this documentation is actually hidden from public scrutiny. Amnesty International urges governments to make this documentation available to international agencies monitoring the arms trade.

## **4. The logistics revolution and its military consequences**

### *Military Logistics*

The word “*logistics*” usually means “*the practical arrangements that are needed in order to make a plan or activity successful,*”<sup>168</sup> but in the modern technical sense it means activity to plan, implement, control, and forward goods between the point of origin and the point of consumption, including related documentation and storage. This is the basic framework of activity that lies behind the functioning of the present world transport system and it supports the expansion of international trade.

As an applied science, logistics was born at the same time when modern armies were conceived, in the middle of the 19th century. It owes its modern beginning to the creation of national military academies and to the role of experts like A.H. de Jomini, a Swiss baron who was a general in Napoleon’s army and later one of the founders of the military academy in St. Petersburg. At that time, logistics became a separate part of the art of war, after strategy and tactics, focusing on the scientific planning of communications, troops’ movements, and the transport of supplies. In the same period, scientific methods were also applied to industrial production, leading in a few decades to the type of industrial organization that is known as Fordism. Hence, the military logistics underwent several important developments, mostly in connection with the application of new technologies, the creation of large technical systems (such as railways and telegraphs), and the introduction of motor vehicles and aircraft.

World War II saw an intense exchange of experience and skills between industrial sectors and military logistics. This cooperation allowed the military to solve problems of extreme difficulty and resulted in the ability to supply an average of seven tons of cargo for each

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<sup>167</sup> The SAD is a customs document that the European Union, the European Free Trade Area (Switzerland, Liechtenstein, Norway and Iceland) and the Visegrad group (Poland, Hungary, the Czech Republic and Slovakia) require the exporter, importer, or transporter of “goods in transit” to fill out. Exporters are required to provide information about themselves, the destination country, the goods being exported, the mode of transport being used and the export licenses being used. An export license from appropriate authorities is usually required for military arms, ammunition, bombs, tanks, imaging devices, military aircraft and warships; Nuclear-related goods including materials, reactors and processing plants; Dual-use goods, such as certain materials, machine tools, electronic, computing, telecommunication, cryptographic, navigation, avionic, marine, space and propulsion equipment; Goods used for the delivery of weapons of mass destruction and missiles; Goods subject to trade sanctions and embargoes; Chemicals, related equipment and technology, biological equipment and technology; Components, spare parts and technology for controlled goods.

<sup>168</sup> Longman Dictionary of Contemporary English

soldier deployed in the field, compared with only 2.7 tons during World War I. Post-1945 military logistics, or defence logistics, grew out of these developments, in particular techniques adopted by the U.S. army, such as (a) the building in a few hours of inter-modal platforms for unloading ships and loading airplanes and trucks; (b) the use of roll on-roll off techniques for troop landings (like in the D-Day in Normandy); (c) the building of artificial ports on Northwestern European coasts; (d) the conversion into oil pipelines of Palestine's waterworks; (e) the massive use of metal containers for supplies destined to the U.S. armed forces fighting in Europe; and (f) the application of systems for reducing the time ships waited for loading and unloading at ports.

During the Korean War (1952-54), container systems became standard in military transport operations,<sup>169</sup> and the U.S. military was able to quickly move and manage about 110,000 different pieces of cargo. This experience was applied on a larger scale during the Vietnam War (1965-75). The US Defense Department let transport companies such as Sea-Land Services, which had become a leader in containerised transport,<sup>170</sup> to manage several logistic aspects of the military intervention, with the help of logisticians trained in military academies. Afterwards, these logisticians found opportunities and careers at Sea-Land and other transport companies. Thus, defence logistics know-how passed from military to civil operators, while logistics turned into a giant commercial business.

By hiring personnel and applying techniques and skills coming from military experience, the logistic sector became a strategic resource for the industrial system during the economic growth of the 1960s and 1970s. It was even more important in supporting the fast-growing international trade of the 1970s and 1980s, when world trade grew two times faster than world production. In the middle of the 80s, what has been defined as the logistics revolution<sup>171</sup> took off, sustained by diminishing costs in all transport modalities, and in particular in maritime transport, where the introduction of containers had completely changed its way of operating. Since then, commercial logistics has been involved in defence logistics, arms production and transfers, and warfare even more than in the past.

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<sup>169</sup> In 1953, the U.S. Departments of Defense and Commerce asked the U.S. National Academy of Sciences to study and develop new methods of handling maritime cargo. For this purpose the Academy established the Marine Cargo Transportation Conference (MCTC) operating unit. See "Containerization before McLean" in Rosenstein, M. *The Rise of Maritime Containerization in the Port of Oakland, 1950 to 1970*. Morristown, NJ, 2000 (<http://www.apparent-wind.com>)

<sup>170</sup> Rosenstein, M., 2000, *quoted*.

<sup>171</sup> The logistics revolution has consisted of the strong integration of logistics techniques in the new production systems, especially the technique which became known as "just in time", firstly developed by Japan's car-makers. The new production system was based on the massive use of communication and information technologies, with a large use of statistical instruments for analyzing stocks, production and markets to make the stock turnover faster and the product life shorter. Logistic techniques applied to this system made possible the reduction of the financial costs of maintaining large stocks of merchandise and integrated transport into the production cycle, including the re-location of part of the production in countries with cheap labor costs. As the logistics revolution changed the industrial sector, its techniques were rapidly applied to the distribution of commodities, particularly for perishable and consumer goods. In a matter of years, most of the lines of production and distribution became an integrated *supply chain*, i.e. a chain in which supply of raw materials and semi-manufactured goods, production and assembling of parts, application of accessories, management of stocks, quality control of the goods, packaging, issuing of documents (insurance, bill of lading, invoices etc.) and the final distribution to consumer markets were all integrated into a single controlling system. With increasingly efficient logistic techniques, *outsourcing* worldwide non-core services and part of production itself became a normal practice for manufacturers, in particular multi-national corporations. For the pioneering studies on this matter, see Dornier, Ph., M. Fender *La logistique Globale*. Paris, Éditions d'Organisation, 2001. In particular for see the works of Heskett, J. *Sweeping changes in distribution* in the Harvard Business Review, March-April 1973; and *La logistique élément clef de la stratégie* in the Harvard-L'Expansion, Spring 1978.

### CONTAINERISATION AND DEFENCE LOGISTICS

- At the core of containerisation of cargo lays the combination of two technologies, "unitization" and "intermodal transport". "Unitization" is the process of consolidating smaller packages in a larger unit, a wood or metal container for example, and "intermodal transport" is the use of different modalities for shipping the same cargo. Once trucks, railcars, ships and aircraft are prepared to handle and carry standard containers, there is no need to unpacking and repacking the cargo in each change of modality, with an evident cut of labor costs and transfer times.
- Prior to World War II, the US shipping company Matson Navigation had tested unitization techniques and developed its own containers for cargoes shipped from Hawaii.
- The industrial application of containerisation to maritime transport is however credited to a US trucking company owner, Malcolm Purcell McLean, who in early 50s had attracted the interest of the military community with his plans to build ships suited for carrying truck trailers using roll-on/roll off techniques.
- In 1955, McLean purchased the Waterman Steamship Corp. and its subsidiary Pan-Atlantic Steamship Corp. and a year later inaugurated a service that utilized former tanker ships modified to carry truck trailers without wheels on their decks. Pan-Atlantic Steamship Corp. was renamed Sea-Land Services Inc. in 1959. In June 1967, under a multi-year contract granted by the US Military Sea Transportation Service, Sea-Land started a containerized cargo services to transport military equipment from the port of Oakland, California, to the port of Da Nang, Viet Nam.<sup>172</sup>

While modern military organizations had historically regarded logistics as one of their specialties, the fast evolution and progress of commercial logistics during the 70s and 80s convinced the military authorities of countries with sizeable armies and regional or global engagements to partner with private companies to try to reduce freight and logistics costs and adapt their logistic unities to the best practices of logistics services providers.<sup>173</sup> Methods adopted by commercial logistics led the way in transforming the whole chain of military supplies and the on-field logistic support to troops. Defence logistics became an increasingly complex web of functions and operations such as:

- Research, design, development, manufacture and acceptance of materiel;
- Storage and stock control, transport, distribution, maintenance, and disposition of materiel;<sup>174</sup>
- Transport of personnel;

<sup>172</sup> See Rosenstein, M., 2000, *quoted*, and Rath E. *Container Systems*, New York, John Wiley & Sons, 1973. Early attempts to containerization and intermodality may be found in various countries in the XIX century and in particular for freight traffic between inland canals and railroads. Rosestein reports that in the last decades of the XIX century, the US Long Island Railroad used containerization to carry farm products from producers to markets: farmers' wagons arriving at a railroad stop were directly loaded in flat railcars, unloaded at destination and pulled to the markets by horses.

<sup>173</sup> Smith, L. Commercial Logistics Best Practices for Revolution in Military Logistics. In *Army Logistician*, January/February, 1999

<sup>174</sup> For an example of the operations and procedures involved in the management of a large military depot (US Defense Distribution Depot Susquehanna Pennsylvania), see Saccomano A. "*Military Logistics rapid-reaction force.*" In *Traffic World*, September 11, 1995, p.43-44.

- Acquisition or furnishing of services (medical services included) and acquisition, maintenance, operation and disposition of facilities.

In other words, the application of defence logistics was gradually extended from research aimed to adapt the design of armaments to the storage and transport constraints of arms, and also to the methods for monitoring and managing all the military assets along the supply “pipeline”.<sup>175</sup>

Since the logistics revolution had proved to be a fast way to rationalize and improve the whole production and distribution system, arms manufacturers of major weapons systems (such as tanks, combat aircraft, battle ships, and missiles) also rapidly aligned their production and logistics methods to those adopted by similar industrial sectors, in particular electronics and vehicles. Manufacturers of other type of armaments, ammunition, and small arms followed the same trend. For example, the Italy-based company Beretta, a market leader of military and non-military small arms, started to use an intensive “inbound” system of logistics for outsourcing the production of non-core parts and for coordinating several hundred small subcontractors. Beretta also used the so-called “outbound” logistics for controlling assembly lines, quality checks, arms tests, and the final shipment to customers worldwide.

### *Outsourcing defence logistics*

As a result of these trends, the armed forces of many countries have become increasingly dependent on commercial logistics companies for their arms procurement, military operations, and forces deployment.<sup>176</sup> Logistic functions performed by military units have been increasingly flanked by so-called “*contract logistics support*” companies i.e. - as mentioned above - private companies that provide support under government military contracts in areas such as supply and distribution, maintenance, training, software support, and even services in the theatre of military operations.<sup>177</sup> In addition, certain activities related with military deployments and post-war operations are now routinely outsourced to other types of companies such as:

- *Private military companies*, which may or may not deploy personnel to engage in combat and often provide intelligence, training, procurement and other services in zones of armed conflict

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<sup>175</sup> See, for example, Taylor, L.W. (Major USMC) “*Joint Total Asset Visibility*” in the U.S. Armed Forces Journal international, October, 2000; “*Joint Total Asset Visibility: Foundation of Focused Logistics.*” In *Army Logistician*, May/June, 2000; Butler, C., S. Latsko “*Army total asset visibility (ATAV)*”. In *Army Logistician*, January/February, 1999

<sup>176</sup> For example, the U.S. Sealift Command recognizes that about two thirds of the total sealift capacity has to be found today in the commercial fleet (see National Defense Transportation Association, Military Sealift Committee, *Maritime Security Program and Commercial Shipping are Critical to Military Transport*, February 2003. NDTA website: [www.ndtahq.com](http://www.ndtahq.com)). Similar programs of outsourcing the logistic support have been since many years adopted by the United Kingdom Navy (in 1997, British minister of Defense, John Reid, stated that 27 merchant vessels had been chartered for military support and re-supply operations since January of the same year. See:

[www.parliament.the-stationery-office.co.uk/pa/cm199798/cmhansrd/vo971112/text/71112w09.htm](http://www.parliament.the-stationery-office.co.uk/pa/cm199798/cmhansrd/vo971112/text/71112w09.htm)

<sup>177</sup> USAR Major Brown, S.H. *Using Third-Party Logistics Companies*. In *Army Logistician*, November-December 1999.

- *Private security companies*, which guard installations, provide policing, security training, and personnel security, sometimes in zones of armed conflict<sup>178</sup>
- *Private companies* with experience in re-building and restoring operations.

This tendency to outsource sensitive military and security support operations previously under the direct control of governments and military command systems is increasing in the USA and some other powerful states.<sup>179</sup> As the chain of sub-contractors is extended internationally, the role of arms brokering, transport and logistics can become ever more remote from democratic oversight and accountability.

Modern transport markets are nowadays organized on the basis of specialization (either for routes or means of transport), so the outsourcing by governments of defence logistics services for international transport is becoming limited to two main options: (i) chartering cargo aircraft and sea vessels (usually with their crews) over a period of time or (ii) maintaining a system for which a defence ministry has a guaranteed space on vessels run by commercial carriers with a global networks of routes. In general, the first approach is the most common, but the world leader in outsourcing defence logistics services, the U.S. military, has increasingly chosen to use the second approach<sup>180</sup> and its cargo can be loaded virtually anytime for all the destinations covered by the system, including war zones.<sup>181</sup>

The U.S. Department of Defense (DoD) is currently the most important purchaser of logistics services in the world.<sup>182</sup> As of May 2004, all combined, the estimated value of the DoD Logistics Support Contracts reached about \$12 billion, of which \$5.6 billion to support

<sup>178</sup> In September 2005 Stockholm International Peace Research Institute' researcher Caroline Holmqvist put the revenues of private security industry at \$100 billion in 2005 (Agence France-Presse, Defence News, September 13, 2005). During the 1991 Gulf War soldiers outnumbered security personnel by 50 to 1, but in the last war against Iraq this share had dropped to 10 to 1 (2004).

<sup>179</sup> Only few countries have the resources and the volume of business capable to support long-term relationships with a sizeable number of logistics companies. For example, the U.S. Surface Deployment and Distribution Command (formerly Military Traffic Management Command) maintains a list of approved logistics services providers that in 2004 included 849 companies: pipelines managing companies apart, the list included 626 motor carriers; 101 air carriers, 41 barge operators; 29 ocean carriers; 28 rail carriers (<https://cfm.eta.sddc.army.mil/ccp/jsp/ApprovedCarrierList.jsp>)

<sup>180</sup> A further transformation of the U.S. Defense Logistics Agency's approach to logistics is ongoing and described in the report "Transformation Roadmap," issued by the DLA for Fiscal Year 2006, in October 2005.

<sup>181</sup> In addition, the U.S. military has managed to organize a sort of floating warehouse, the so-called "pre-positioned fleet", composed by about fifty ships (tankers, cargo, ro/ro, and containerships), owned by the military and organized in three oceanic squadrons, representing the principal logistics frame of the American armed forces. Even the re-supply of pre-positioned ships in open-sea is today made with CH-46 helicopters by commercial operators and, according to a plan approved in 2000 by the U.S. Military Sealift Command, the use of commercial helicopters would have allowed to save \$254.5 million in the first eight years. The first implementation of the plan concerned pre-positioned ships in the Mediterranean Sea. See the bulletin *USTRANSCOM News Service*, July 18, 2000.

<sup>182</sup> According to data by the U.S. General Accounting Office, in 2000 the Department of Defense met logistics expenses for \$83.8 billion for fuel and ammunition supplying, provisioning, maintenance, troop transporting, moving of weapons systems, etc. See: U.S. GAO Testimony, *Defense Logistics. Integrated Plans and Improved Implementation Needed to Enhance Engineering Efforts*, June 27, 2000, in: <http://www.gao.gov/>. If we consider only the entry "depot maintenance", the US DoD spent \$12.7 billion in 1987 and \$15.8 billion in 2000, but contracts with the private sector passed from 31.5 to 48.1% (from \$4 to \$7.6 billion), while DoD's direct labor hours decreased from 201.6 to 73.4 million and civilian employees from 156,000 to 54,500 (U.S. GAO Testimony, *Defense Maintenance. Sustaining Readiness Support Capabilities Requires a Comprehensive Plan*, March 23, 2001, in: <http://www.gao.gov/>)

military operations in Iraq.<sup>183</sup> One of the most strategic and lucrative segment of US contract defense logistics is maritime transport, characterized by the so-called “cargo preference” that benefits U.S. flagged ships.<sup>184</sup> Nearly all the former main U.S. shipping lines (such as Sea-Land, APL, Lykes Line, Farrell Line) are today controlled by foreign capital, but DoD contracts are so attractive that the new owners have preserved their US subsidiaries under the US flag. Other profitable segments of US outsourced logistics services are the private military and security markets and the re-construction market, recently boosted by contracts for operations in Afghanistan and Iraq but also present in many other countries including Burundi, Colombia, Liberia, and Sudan.

In contrast, military organizations with a more limited foreign engagement and contractual leverage have tended to choose the chartering method, sometimes with questionable results. For example, during the Bosnian operations in the late 1990s the United Kingdom government was committed to supplying the British Army’s mechanized forces for the peacekeeping mission but lacked sufficient cargo capacity of its own. Thus, the UK Ministry of Defence was compelled to call upon roll-on/roll-off vessels of the U.S. reserve fleet to transport UK troops and equipment to the Balkans. As a result of the difficulties experienced in shipping cargoes to Bosnia, the United Kingdom later chartered at least six roll-on/roll-off ships for transporting mechanized forces in peacekeeping missions. Similar difficulties were encountered during the four-month troop rotation of the Italian contingent in Iraq comprising 3,000 soldiers. This was laboriously overcome with a mix of chartered vessels (passenger aircraft, Antonov 124 freighters, and containerships) and Italian military transport: the military personnel flew on commercial passenger airliners to Abu Dhabi, from where military C-130Js “Hercules” with protection systems ferried them to Basra; then the troops continued their journey to Nassiriyah by armoured vehicles. Urgently requested military supplies were sent by long-range freighter planes landing at Basra and by low/middle payload military aircraft (C-27Js “Spartan”, C-130Js) that land at the Tallil airport. Containers and heavy equipment arrived by sea in Kuwait and proceeded to Nassiriyah by truck.<sup>185</sup>

A third type of logistics support is one that mixes the chartering method with the “guaranteed space” method. This method is used increasingly by the NATO Maintenance and Supply Organization, NAMSOS, set up by NATO member states to provide logistics support for their collective requirements as coordinated by NATO Military Headquarters. NAMSOS covers a

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<sup>183</sup> Logistics Support Services contracted under LOGCAP (Logistics Civil Augmentation Program), AFCAP (Air Force), CONCAP (navy Construction Capability Contract), BSC (Balkan support Contract). GAO “*Military Operations. DoD’s Extensive Use of Logistics Support Contracts Requires Strengthened Oversight*,” July 2004.

<sup>184</sup> According to the Cargo Preference Act, approved in 1904 and revised in 1954, US government agencies must use vessels registered in the U.S. with U.S. citizen crews when shipping US government cargoes. This US cargo preference system has until now successfully resisted the liberalization attempts promoted by the European Union and the World Trade Organization. The U.S. authorities justify this evident limit to the freedom of trade and transport liberalization by referring to similar laws in force in several countries and to national security reasons: «*The ships that carry these cargoes provide important jobs for American seafarers who are available in time of national emergency to crew the sizeable fleet of reserve Government vessels. [...] They also help protect our ocean commerce from foreign domination, and enhance our balance of payment position*»<sup>184</sup> (Quoted from U.S. Department of Transportation, Maritime Administration “*The Maritime Administration and Cargo Preference*”, April 2000, p. 3

<sup>185</sup> See Tom Kington, Strengthen the Logistics Chain. Italy Stretches To Meet Global Commitments, in: DefenseNews.com, September 20, 2004.

large variety of logistics services<sup>186</sup> - including services provided at ports<sup>187</sup> and support for operations such as those deployed in the Balkans, Afghanistan, Kuwait, and Iraq. These services are directly performed by NAMSOS or by companies subcontracted by NAMSOS. For example, in 2004 NAMSOS contracted airlift services for 100 missions in support of NATO “in-theatre” operations costing €18 million. One contract signed in August 2004 for the chartering of cargo aircraft in support of troops deployment in Afghanistan cost €7.5 million. During the same year, NAMSOS signed two contracts for sealift capabilities and another contract (valued at about €1.1 million) for freight forwarding services in the United States. Between 2000 and 2004, NAMSOS provided logistics services to NATO member states for a total of €2.5 billion (US\$3.1 billion), of which €61.3 million was for “transportation and warehouse” services and €55.8 million was for “operations support”. In the year 2004 alone, the value of multi-year contracts signed with NAMSOS by member countries reached €567 million, with Germany, the United States, and Italy as the major purchasers.<sup>188</sup>

The chartering method of arranging military supplies is more attractive for governments and private military companies that want or need to pay the low prices offered by many cargo transport firms, in particular from East European and former USSR countries, firms that now also operate commercially from many other parts of the world. However, the use of chartering can stimulate “grey” markets in military items because the use of complex sub-contracting arrangements by private agents and operators across different countries. Unscrupulous operators and agents, in association with weak or corrupt military and law enforcement agencies, can then circumvent national laws and regulations so that military cargoes are irresponsibly handled, “plausibly” diverted and seriously abused by end users.

### *The creation of “grey” defence logistics markets*

Unlike freight transport markets for the international trade of civilian goods, defense logistics markets have usually resembled captive markets, i.e. markets in which buyers have very few choices about which seller to buy from. Competitiveness in such markets has been limited by security concerns, established military alliances, arms control laws, and rules of confidentiality, factors that play a less important role, or no role at all, in other type of transport markets.<sup>189</sup> Defence ministries and logistics agencies have traditionally awarded

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<sup>186</sup> Such as “facility management of camps and headquarters, infrastructure work on roads, bridges and railways, and the provision of supply management, transportation, warehousing and contracting service.” See NAMSOS website [www.namsa.nato.int](http://www.namsa.nato.int)

<sup>187</sup> In the North Sea, Atlantic and Mediterranean, Baltic Sea, and Black Sea. Future services have been planned for North America, Malta, and North Africa.

<sup>188</sup> NAMSOS Business Report 2005 “*Logistics in Transformation*.” NAMSOS, Capellen, Luxembourg, 2005.

<sup>189</sup> See, for example, at this regard European Commission’s statements in the *Green Paper on Defense Procurement* (IP/04/1133 and [http://europa.eu.int/comm/internal\\_market/publicprocurement/dpp\\_en.htm](http://europa.eu.int/comm/internal_market/publicprocurement/dpp_en.htm)), presented by the Internal Market Commissioner Frits Bolkestein on the 23<sup>rd</sup> September 2004.

contracts to their respective national companies and, for budgetary and security reasons, they have restricted the number of companies which may access defence contracts. Nevertheless, in the last fifteen years, the tendency to outsource defence logistics services and the growth in the demand for logistic support of military operations abroad have gradually opened defence logistics markets to international competition.

In situations requiring a military deployment in a relatively short time, defence logistics agencies charged with the task of procuring transport services are often faced with a limited offer of vessels and aircraft, because significant portions of the best maritime fleets are usually chartered on long-term civilian contracts and cargo planes fitted for military operations are also the most requested by air operators servicing many civilian cargo markets. Types of vessels that are crucially important for fast deployments of military equipment and troops - such as roll-on/roll-off ships, containerships, and tankers of sizeable tonnage as well as planes able to carry from 20 to 120 tons or hundred of paratroopers - are scarce and expensive.<sup>190</sup> Sourcing foreign markets for these types of vessels is now often the only choice left for governments, despite the risks this outsourcing may entail.

For example, in the 1990-1991 Desert Shield/Desert Storm's sealift and airlift operations - the largest and fastest ever to a single war theatre in the history of warfare - the U.S. military alone moved more than 500,000 troops and nearly 3 million tons of cargo, i.e. four times the cargo carried across the English Channel to Normandy during the D-Day and six and half times the peak reached by the Vietnam War.<sup>191</sup> This large deployment of equipment and troops was made possible only by resorting to commercial logistics markets and operators but at a price: the U.S. military authorities chartered many vessels registered on the U.S. Coast Guard's "blacklist" for vessel safety (making up 40% of the 172 foreign-flag vessels employed) and they were able to carry far less cargo than a significantly lower number of US flagged ships employed in the same war theatre.<sup>192</sup>

Confronted with the surge in demand that major wars can provoke, global logistics markets have often responded by raising the price of the most requested services. State-of-the-art wide-body air cargo planes that could have been chartered for about \$200-300,000 in early 2000s were running in late 2005 at \$375-500,000 and sometimes more for the giant Antonov-124 that has been employed for US operations in Iraq.<sup>193</sup> This trend has created the economic space for smaller companies, mostly using ex-USSR freighter aircraft, offering far less dependable, but similarly capable, planes for sometimes half those prices.

In regions such as Central Africa, for example, where cargo planes are often the only means of moving troops and military equipment, governments with severe budget restraints and lack of military transport capacities have increasingly hired companies whose fleet could not be offered in other markets where stricter safety controls and strict noise regulations have barred certain companies and planes from airport traffic. A number of these operators have been accused of violating United Nations arms embargoes on armed groups based in Angola, the

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<sup>190</sup> "Maritime Security Program and Commercial Shipping are Critical to Military Transport", 2003, quoted.

<sup>191</sup> GAO, "Operations Desert Shield and Desert Storm Reports and Testimonies 1991-1993." US General Accounting Office, 1994

<sup>192</sup> "Maritime Security Program and Commercial Shipping are Critical to Military Transport," 2003, quoted.

<sup>193</sup> See Putzer, I. "Heavy planes, heavy price." In *Breabulk* supplement to the *Journal of Commerce*, September 5, 2005

DRC and Rwanda that have committed large-scale human rights abuses and of delivering arms to governments in that region responsible for human rights violations as well as war crimes and crimes against humanity.

The tendency to use commercial chartering for the supply of military items has also affected other low income countries - as seen for example in transport services for the support of military and peacekeeper operations and humanitarian relief operations in Afghanistan. Planes that are often poorly maintained and inspected have been increasingly involved in accidents with fatal consequences.<sup>194</sup> For example, one company described below, Ukrainian Cargo Airways, was in 2003 involved in a fatal accident in the DRC while transporting Congolese troops and the same company has over time participated in NATO military exercises (2000), arms trafficking (2001), United Nations relief programs (2003), operations for the UK Ministry of Defence (2003) and the U.S. Department of Defence (2004).

Companies such as the Moldova-based Aerocom, for example, have transported cargo for defence logistics operations of the U.K. ministry of Defense,<sup>195</sup> for relief assistance,<sup>196</sup> as well as for sanction-busting schemes in connection with many other air cargo companies.<sup>197</sup> Another company, Volare Airlines of Ukraine, was hired for flights for the U.K. Ministry of Defence in 2005<sup>198</sup> despite being reported in 1999<sup>199</sup> and 2001<sup>200</sup> for transporting arms allegedly from Czech, Georgian, Israeli, Moldovan, and Romanian firms to destinations such as Eritrea and Nigeria at a time when they were under U.N. embargo.

<sup>194</sup> For example, out of forty accidents occurred in the DRC between 2000 and October 2005, seventeen involved Antonov planes of various kinds and one an Ilyushin 76, for a total of casualties estimated at 260. The latest accident (with two fatalities and several injured) occurred October 4, 2005, when a Wimbi Dira's Antonov 12V (r/n 9Q-CWC) carrying 100 Congolese troops from Kisangani to Bunia, in the war-torn Eastern Congo, landed heavy in a dirt airstrip at Aru, the "sister town" on the Congo side of Arua, a Ugandan northwestern city and crossroad for arms smuggling and rebel operations.

<sup>195</sup> U.K. Civil Aviation Authority, "Exemptions issued under regulation 25(3)a of the aeroplane noise regulations 1999 from January 1, 2003." [www.caaa.co.uk/](http://www.caaa.co.uk/).

<sup>196</sup> U.K. Civil Aviation Authority, quoted.

<sup>197</sup> See U.N. Report of the Panel of Experts appointed pursuant to paragraph 4 of Security Council resolution 1458 (2003) concerning Liberia, UN Doc. S/2003/498, April 24, 2003 (Annex). According to the report, in addition to Aerocom (whose flight certificate was terminated by the Moldovan authorities in August 2004 [Republic of Moldova, *Status of Air Operating Certificate 031*, Aerocom, August 8, 2004], and whose planes passed to various air cargo companies such as the Greece-registered and Ukraine-based Asterias Commercial, the Moldova and Sharjah-based Jet Line International, and the Moldova-based Airline Transport), the Belgrade-based company Temex and the freight forwarder Interyug AS also used planes of the Ostend-based and Equatorial Guinea-flagged Ducor World Airlines (formerly World Liberia Airlines), owned by Duane Egli, for the Liberia sanction-busting operations. Between 2003 and 2005, Ducor World Airlines also leased two of its L-1011-100 Tristar cargo planes to its sister company International Air Services, registered in Liberia and based in the Free Trade Zone of Ras-al-Khaimah (UAE), allegedly for arms shipments from Eastern European countries to Rwanda (International Air Services ceased operations March 3, 2005, Aerotransport Databank, [www.aerotransport.org](http://www.aerotransport.org)) and its two remaining planes (L-1011-100 Tristar Liberia-registered A8-AAA and A8-AAB) have been stored at Ras-al-Khaimah. Duane Egli was placed in the U.N. travel ban for the shipments to Liberia ([http://www.un.org/Docs/sc/committees/Liberia3/1521\\_list.htm](http://www.un.org/Docs/sc/committees/Liberia3/1521_list.htm)). See also U.N. Reports on Liberia, S/2004/396, 1 June 2004; S/2003/937 October 2, 2003; S/2003/498, April 22, 2003; Amnesty International "*Democratic Republic of Congo: arming the east*" July, 5 2005;.

<sup>198</sup> U.K. Civil Aviation Authority, quoted

<sup>199</sup> See Prague News Agency CTK, June 6, 2001 [translated and reported same day by FBIS]: "Volare was already in 1999 entangled in arms smuggling. According to CTK's information, Romanian, Moldovan and Israeli businessmen used the Volare plane to take weapons to Nigeria against which the international community applied an arms embargo at that time."

<sup>200</sup> See: "Bulgaria asks Georgia for end-user certificate for arms held at airport," BBC, May 2, 2001. See also "Bulgaria stops Ukrainian plane loaded with arms," RFL/RL, April 30, 2001; "Caso de avion con armas checas sigue sin responsables," by Ivana Vonderkova, Radio Praha, May 3, 2001, in Spanish; and "Confusion over arms exports," May 3, 2001, Radio Praha News.

On May 2, 2001 for example, a Volare Il-76 had been reportedly “detained at Burgas Airport on April 24 where it stopped over for re-fuelling en route from Ostrava, the Czech Republic, to Tbilisi, Georgia. It was suspected that the arms consignment it carried was destined for Eritrea, which was under a UN arms embargo.”<sup>201</sup> The plane reportedly carried 30 tons of weapons, including six guns, AK-47s, and ammunition, but had a certificate only for the six howitzers and their spare parts (shipped by the Czech company Thomas CZ and destined for Georgia). According to a Thomas CZ representative, in Ostrava the plane was loaded only with the howitzers and spare parts. Burgas airport authorities, reportedly alerted by the FBI, detained the plane and saw that the pilots - who had requested a non-planned landing in Burgas for refueling - had hand-corrected the destination on their flight plan from Aspara (a city on the Black Sea) to Asmara. On June 6, after many contradictory statements by Czech, Bulgarian, and Georgian authorities, the plane was allowed to take off and “the departure of the plane was authorized after a local state attorney’s office ‘found no evidence of a crime’ having been committed.”<sup>202</sup>

### *The case of Ukrainian Cargo Airways*

The following case illustrates how one air cargo company can be used by the United Nations and NATO while also being accused of flying illegal military cargoes in Central Africa. On May 8, 2003, a large Ilyushin-76MD cargo plane operated by Ukrainian Cargo Airways<sup>203</sup> was flying from the DRC capital Kinshasa to Lubumbashi, in the country’s southeast, with Congolese military personnel, their families, and military vehicles on board. About 45 minutes after take-off the rear-door, improperly fastened or defective, opened. The plane depressurized, and passengers were sucked out. The pilot managed to return the plane to Kinshasa airport. Military helicopters were sent to search the area for bodies. The 18-year old plane had been hired since 2002, according to the pilot, by the Congolese military authorities through a Russian air chartering company, Hermes.

According to media reports,<sup>204</sup> survivors estimated that between 300 and 350 passengers were on the plane and between 100 and 130 died. One of the survivors, Police Lt. Ilunga Mambaza, declared that several of his colleagues “*were sucked out by the wind. I don’t know how many, because I fainted*” and another policeman, Sgt. Kabmba Kashala, said that he “*was just next to the door and I had the chance to grab onto a ladder just before the...door let loose.*”

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<sup>201</sup> See: “Bulgaria asks Georgia for end-user certificate for arms held at airport,” BBC, May 2, 2001.

<sup>202</sup> See “Czech plane detained in Bulgaria takes off for unknown destination,” Prague News Agency CTK, June 6, 2001 [translated and reported same day by FBIS]; “Georgians still waiting for delivery of Czech weapons seized in Bulgaria,” in *Mlada Fronta Dnes*, May 16, 2001 [translated and reported same day by FBIS]; “Questions mark still hanging over Czech weapons in Burgas,” in CTK News Agency, June 12, 2001 [translated and reported same day by FBIS]. On Volare’s other suspected arms flights in 2001 from Ostend see “Armes, Quatre personnes relachees, trois autres en prison,” by Eddy Surmont, *Le Soir*, February 12, 2002.

<sup>203</sup> Aircraft registration number UR-UCB with manufacturers number 0063 467003, the plane was operated by the Zaporozhye-based Ukrainian Cargo Airways, and belonging to the Ukrainian Ministry of Defence.

<sup>204</sup> “Over 120 killed in freak Congo cargo plane accident,” Reuters May 9, 2003; “Ukraine denies deaths in Congo Air mishap,” by Eddi Isango, Associated Press, May 10, 2003; “At 10,000 feet the door flipped open...,” *Mail&Guardian* May 10, 2003.

Two days after the incident, the Ukrainian Ministry of Defence denied that there were any casualties involved, quoting officials of the airlines, despite evidence of the opposite. “Neither the people, nor the cargo, nor the plane itself were hurt or damaged,” a representative of the Ministry told the Associated Press in Kiev. According to a South African newspaper, four Russian crewmembers were closeted in Kinshasa’s Grand Hotel and ordered not to discuss the incident.<sup>205</sup> To date, the exact number of casualties is still unknown.

The same aircraft had participated in NATO exercises in Italy on November 15, 2000.<sup>206</sup> According to media and NGO reports,<sup>207</sup> another Ukrainian Cargo Airways plane<sup>208</sup> was stopped en route from Bratislava in the Slovak Republic to Luanda in Angola. It had flown via the Israeli airport of Ovda,<sup>209</sup> and then from Aswan in Egypt to Mwanza in Tanzania. Security officers at Mwanza airport then detained the plane and crew when they reportedly discovered undeclared weapons on board. The plane was released the next day “under instructions of top-level security organs.”<sup>210</sup> In fact, the flight was part of a complex “multinational” operation that involved the delivery of ammunition as well as military aircraft spare parts, and other cargo to the Angolan government.

Despite this, in 2003 Ukrainian Cargo Airways was also flying for the United Nations and one of the planes hired by the UN<sup>211</sup> was photographed in Kindu, DRC, on August 11. In 2003, the UK government exempted a Ukrainian Cargo Airways Ilyushin<sup>212</sup> from compliance with European Union noise regulations ban in order to use the plane at Brize Norton Airport and RAF Base in the UK for the UK Ministry of Defence.<sup>213</sup> Since January 2004, Ukrainian Cargo Airways has been authorized by the U.S. Defense Energy Support Center to buy fuel at its depots worldwide, for operations in support of the U.S. Department of Defense.<sup>214</sup> Ukrainian

<sup>205</sup> Mail&Guardian, May 10, 2003, quoted

<sup>206</sup> NATO Update, November 8-14, 2000. NATO website

<sup>207</sup> Human Rights Watch, “Ripe for Reform: Stemming Slovakia’s Arms Trade with Human rights Abusers,” February 2004, “Case-study 2: Legal or Illegal? The mysterious Iranian Shipment”, “Dar Officials Accused of Abetting Arms Racket,” East African, 24 June 2002; and “Tanzania Releases Arms-Carrying Ukraine Plane,” Xinhua News Agency. According to flight records seen by HRW, the plane arrived in Bratislava from Gostomel airport near Kiev. The complex route entailed a total of 8,447 km. The East African reported that “commenting on the allegation, the Mwanza Regional Commissioner, Stephen Mashishanga confirmed to The East African last week in Mwanza that in October 2001 ‘we received the information from our security officers at Mwanza airport about cargo planes being used to bring in arms in the country and we informed top-level security organs for action.’ He said that during the same period, his officers detained a cargo plane from Ukraine which was loaded with arms, but a day later ‘we received instructions from top-level security organs instructing us to release the plane.’” “Ukrainian Plane Suspected of Smuggling Weapons to Angola Grounded in Tanzania,” Infobank (Lvov), October 3, 2001; “Ukrainian airline says no arms on board plane reportedly detained in Tanzania,” BBC Monitoring, October 3, 2001. For additional information on other flights of the UR-UCK, see CleanOstend website at [www.cleanostend.com](http://www.cleanostend.com)

<sup>208</sup> An Antonov 12BK, with registration number UR-UCK

<sup>209</sup> Ovda civil/military airport is located near the Jordanian border and the port/airport of Aqaba. The military airport was originally built by the United States for the Israeli Air force. Mainly a charter airport, it is has been recently visited from Chateauroux (November 11, 2005, ([www.iaa.gov.il/](http://www.iaa.gov.il/).) by Vega Airlines, one of the Bulgarian air companies with clearance to transport military equipment. Chateauroux (France, from 1951 to 1967 a US Air Force airport and presently a mainly cargo airport) has been increasingly used by East European and African airlines ([www.chateauroux-airport.com](http://www.chateauroux-airport.com)) previously operating from Ostend.

<sup>210</sup> “Dar Officials Accused of Abetting Arms Racket,” East African, June 24, 2002.

<sup>211</sup> An Ilyushin 76TD, registration number UR-UCH

<sup>212</sup> Ilyushin 76MD, registration number UR-UCU

<sup>213</sup> U.K. Civil Aviation Authority, “Exemptions issued under regulation 25(3)a of the aeroplane noise regulations 1999 from 1 January 2003.” [www.caaa.co.uk/](http://www.caaa.co.uk/)

<sup>214</sup> Contract n. TBUP01, DESC “Commercial Purchase Agreements Customers”, May 13, 2005.

Cargo Airways is also one of the four air companies authorized by the Ukrainian ministry of Defence to transport military equipment.<sup>215</sup>

PICTURE E AND CAPTION (UN-UKRAAIRCARGO)

### ***US quest to control international transport after September 11, 2001***

Governments have claimed that the specific regulation of the arms transportation is too difficult and complex because there are too many operators and cargoes, as stated in a UN Group of Experts report on small arms and light weapons manufacturers and dealers in 2001.<sup>216</sup> But in fact the post 9/11 security initiatives for international transport operators have shown that strict regulation 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.

After the September 11 atrocities, the US government reversed its past trend toward liberalization and self-regulation of the transport market. Driven by its perception of US security needs, the US government pressured both the allied governments and the transport industry to introduce several “security” elements in the logistics chain, some of which may amount to violations of the right to freedom of movement<sup>217</sup> so as to facilitate the direct US control over international commercial trade and transport towards the United States.

Making logistics, transportation and international trade safer became the object of a growing US-led activity involving policymakers, public officers, managers and consultants, manufacturers of security systems, security and personnel protection companies. Transport security programs rapidly expanded and spread along the global logistics supply chain and passenger travel networks, involving at the end several hundreds airports and seaports, and millions of passengers. Governments, intelligence and military agencies progressively regained control over a crucial area of the international business activity by introducing stricter controls in all of the sensitive crossroads of the international transport system and by recording personal, confidential data about transport workers, logistics operators and their clients.

On November 19, 2001 President Bush signed the Aviation and Transportation Security Act (ATSA, Public Law 107-71). Within a few days the U.S. government created a new federal administration, the Transport Security Administration (TSA), and John W. Magaw was appointed as its director<sup>218</sup>. For the first time in history, a federal agency would have

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<sup>215</sup> Ukrinform, October 1, 2003.

<sup>216</sup> Report of the Group of Governmental Experts established pursuant to General Assembly resolution 54/54 V of December 15, 1999, entitled “Small arms”. UN Doc. A/CONF.192/PC/33, 12 March 2001, paragraph 72-77

<sup>217</sup> In April 2004, the American Civil Liberties Union (ACLU) filed a nationwide class-action challenge to the U.S. government “no-fly” list. See below for no-fly list issue.

<sup>218</sup> John W. Magaw had a 26-year career in the secret service then became director of the Bureau of Alcohol, Tobacco and Firearms and the Federal Emergency Agency (FEMA). Before being appointed as Undersecretary of Transportation for Security and becoming the first TSA Director, he was in charge of all protective operations for the President’s family.

responsibility over the security of all national seaports and airports, supervising the entire transport system. TSA's agents were given the power make arrests without a warrant. Within a year, the U.S. administration committed itself to establishing a complete transport security plan, starting from control of airports and passenger movements to the control of U.S.-bound cargo in foreign ports and airports. U.S. air operators and their organizations strongly disapproved of some of the TSA's proposed measures, particularly the attempt to physically control all air cargo movements entering the United States, with the same X-ray techniques used for checking baggage in airports.<sup>219</sup> TSA and air cargo operators agreed on spot checks and stricter controls over airport personnel.

After the approval of the Homeland Security Act in November 2002, a new structure, the Department of Homeland Security (DHS), was created in January 2003 to consolidate 22 previous agencies, including TSA, into a single federal department, with a \$35 billion budget and 170,000 employees. DHS employees were by law deprived of labour rights and of the right to publicly denounce abuses by their superiors. Given that almost half (by value) of the U.S.-bound cargo arrived in the United States by maritime containers, the DHS implemented a number of policies related to the security of the maritime containerized cargo through specific regulations and voluntary partnership programs for foreign partners. These measures shifted part of the burden of the U.S. security onto its trading partners. With the aim of preventing any attacks on US ports by so-called "floating bombs" (ships rigged to explode), the Coast Guard - one of the state agencies now part of the DHS - planned to "trust but verify" security projects and certificates issued by other flag states under the International Ship and Port Security Code for some 8,000 foreign-flag vessels that call at U.S. ports.

The DHS also imposed its own security plan on foreign port authorities and shipping operators, mainly through the voluntary programs named Container Security Initiative (CSI) and Customs Trade Partnership Against Terrorism (C-TPAT). Both these US programs shared the same premise as the mandatory 24-Hour Advance Manifest Rule: ensuring the safety and integrity of containerised cargo as far upstream in the logistics chain as possible. Therefore, CSI moved the containers' inspection activity to ports of origin while the C-TPAT moved the burden of ensuring container integrity to the original shipper.

### ***Container Security and the US "War on Terror"***

The Container Security Initiative was designed to develop bilateral agreements between the United States and foreign countries that could allow for pre-screening of high-risk containers in ports of loading. All identified high-risk containers were to be inspected, either before loading at a CSI port or, if arriving from another port, upon arrival in the United States. In CSI-abiding ports, local Customs officials and a team from the U.S. Bureau of Customs and

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<sup>219</sup> A passenger baggage scanner costs around US\$70,000. The complete automatic system installed in Schiphol Airport, Amsterdam, in 2000 cost US\$20 million. The time required for checking a pallet with an X-ray scanner is three minutes, and it takes two hours for a Boeing 747's cargo. Experts estimated that it would take 260 days to check one month's traffic at Memphis airport, FedEx's main hub.

Border Protection (CPB)<sup>220</sup> were charged with the task of deciding which containers to inspect before loading.

The initiative was built upon four main points: (1) establishing security criteria to identify high-risk containers; (2) pre-screening of these containers prior to arrival in the United States, which involved the deployment of CBP officials to foreign ports; (3) using scanners and other techniques for pre-screening activities; and (4) developing and using smarter, tamper-evident containers.<sup>221</sup>

The deployment of U.S. Customs officers in foreign ports was a very strong measure that implied a certain level of intrusion in the political and economic autonomy of the CSI partner countries. In order to facilitate the introduction of the CSI in ports with a substantial trade with the United States and in the so-called mega-ports,<sup>222</sup> the U.S. authorities started to invite the Canadian ports - Halifax, Montreal and Vancouver, which mostly depend on U.S. import-export movements - into the CSI initiative and granted a reciprocity clause to the Canadian Customs in the U.S. ports of Seattle, Tacoma and Newark. Then the attention focused on Singapore and Rotterdam,<sup>223</sup> the world's two principal container hubs, both of them suffering from very strong international competition and a traffic growth that was too low. As they could not run the risk of a U.S traffic breakdown, they were persuaded to accept CSI without the reciprocity clause.

In this way the U.S. security initiatives became a factor of competition among several ports - in particular European ports - with important relations with the United States, the world's largest importer. Ports that quickly decided to join the U.S. initiatives enjoyed a competitive advantage on other ports because of the diversion through them of the export traffic destined to the United States. In Europe, le Havre, Felixstowe and Antwerp followed Rotterdam, soon joined by Göteborg (the first European port outside the top 20 mega ports to join CSI), Hamburg, Bremerhaven, Genoa, La Spezia. At the same time, Hong Kong and Yokohama ports decided to join, in order to avoid a Singapore port monopoly on U.S.-Far East container traffic. On April 22, 2004, the European Union and the U.S. Department of Homeland Security signed an agreement that calls for the prompt expansion of the CSI program throughout the European Community.

In June 2002, the World Customs Organization unanimously passed a resolution that will enable ports in all 161 of the member states to begin to develop programs along the CSI model. By June 2003, 23 ports around the world representing at least 60% of container imports to the USA had signed CSI agreements and the CSI was operational in 15 of these. After a year, 38 ports in 18 countries were in various stages of CSI implementation. In addition, China, Sri Lanka and Thailand each signed a CSI "declaration of principle" with the

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<sup>220</sup> The Bureau of Customs and Border Protection (CBP) is the new name of the former U.S. Customs after its consolidation in the Department of Homeland Security. Prior to March 1, 2003, U.S. Customs was part of the Department of the Treasury.

<sup>221</sup> OECD, Directorate for Science, Technology and Industry, Maritime Transport Committee, *Security in Maritime Transport: Risk Factors and Economic Impact*, July 2003, pp. 52 and fol.; U.S. Customs and Border Protection (CBP), Office of International Affairs, *Container Security Initiative (CSI) Fact Sheet*, August 2004.

<sup>222</sup> The top 20 mega ports are points of passage for approximately 68% of cargo containers shipped to the United States. They include (by container cargo volume): Hong Kong, Shanghai, Singapore, Kaohsiung, Rotterdam, Pusan, Bremerhaven, Tokyo, Genoa, Yantian, Antwerp, Nagoya, Le Havre, Hamburg, Spezia, Felixstowe, Algeciras, Kobe, Yokohama and Laem Chabang.

<sup>223</sup> See *Rotterdam Woes Good News for Shipping*, in "Journal of Commerce", May 30, 2002.

U.S.'s CBP. In July 2005, the CSI was operational in 37 ports in 19 countries, to reach 44 ports in 25 countries in early May 2006.

| <b>THE 44 PORTS CURRENTLY OPERATIONAL IN THE CONTAINER SECURITY INITIATIVE</b> |              |          |                 |           |          |
|--|--------------|----------|-----------------|-----------|----------|
| Port   | Country      | From     | Port            | Country   | From     |
| Halifax  | Canada       | 03/15/02 | Kobe            | Japan     | 08/06/04 |
| Montreal   | Canada       | 03/15/02 | Laem Chabang    | Thailand  | 08/13/04 |
| Vancouver  | Canada       | 03/15/02 | Tanjung Pelepas | Malaysia  | 08/16/04 |
| Rotterdam  | Netherlands  | 09/02/02 | Naples          | Italy     | 09/30/04 |
| Le Havre   | France       | 12/02/02 | Zeebrugge       | Belgium   | 10/29/04 |
| Bremerhaven  | Germany      | 02/02/03 | Gioia Tauro     | Italy     | 10/31/04 |
| Hamburg  | Germany      | 02/09/03 | Liverpool       | U.K.      | 11/01/04 |
| Antwerp  | Belgium      | 02/23/03 | Thamesport      | U.K.      | 11/01/04 |
| Singapore  | Singapore    | 03/10/03 | Tilbury         | U.K.      | 11/01/04 |
| Yokohama   | Japan        | 03/24/03 | Southampton     | U.K.      | 11/01/04 |
| Hong Kong  | China S.R.   | 05/05/03 | Livorno         | Italy     | 12/30/04 |
| Göteborg   | Sweden       | 05/23/03 | Marseille       | France    | 01/07/05 |
| Felixstowe   | U.K.         | 05/24/03 | Dubai           | U.A.E.    | 03/26/05 |
| Genoa  | Italy        | 06/16/03 | Shanghai        | China     | 04/28/05 |
| La Spezia  | Italy        | 06/23/03 | Shenzhen        | China     | 06/24/05 |
| Pusan  | South Korea  | 08/04/03 | Kaohsiung       | Taiwan    | 07/25/05 |
| Durban   | South Africa | 12/01/03 | Santos          | Brazil    | 09/22/05 |
| Port Klang   | Malaysia     | 03/08/04 | Colombo         | Sri Lanka | 09/29/05 |
| Tokyo  | Japan        | 05/21/04 | Buenos Aires    | Argentina | 11/17/05 |
| Piraeus  | Greece       | 07/27/04 | Lisboa          | Portugal  | 12/14/05 |
| Algeciras  | Spain        | 07/30/04 | Port Salahal    | Oman      | 03/08/06 |
| Nagoya   | Japan        | 08/06/04 | Puerto Cortes   | Honduras  | 03/25/06 |

SOURCE: CONTAINER SECURITY INITIATIVE (CSI) – MAY 2006

In March 2003 the Secure Trade in the APEC Region Initiative (STAR) was announced and had to involve the containers moving between APEC ports,<sup>224</sup> electronic data exchange between customs, and the private sector adopting supply chain security.

The Customs Trade Partnership Against Terrorism (C-TPAT) agreement was the second major voluntary security initiative for the supply chain. Under it, states and companies undertook to implement policies, plans and procedures to ensure the integrity of all the components of the supply chain. States and companies that wanted to join the initiative had to sign an agreement that engaged them to: (1) to conduct a comprehensive self-assessment of supply chain security using the C-TPAT security guidelines;<sup>225</sup> (2) to submit a supply chain security profile questionnaire to U.S. Customs; (3) to develop and implement a program to enhance security throughout the supply chain in accordance with C-TPAT guidelines; (4) to communicate C-TPAT guidelines to other companies in the supply chain and to work to implement the guidelines in relationships with these companies. In return, once the U.S.

<sup>224</sup> The Asia-Pacific Economic Cooperation agreement involves 21 countries bordering the Pacific Ocean, including Russia, China, Taiwan and Vietnam.

<sup>225</sup> U.S. Customs Service "Customs-Trade Partnership Against Terrorism, C-TPAT Guide" June 20, 2003. [www.cbp.gov](http://www.cbp.gov)

Customs have validated the participant's plans, C-TPAT participants could be entitled to benefit from expedited customs procedures. Participants had to shoulder the burden of investments in securing the physical integrity of their own premises and ensure that their trading partners did the same.

The "24-Hour Advance Manifest Rule" (or the "24-Hour Rule") required that detailed information on cargo manifests for US-bound cargo be provided to US Customs 24 hours before loading at the foreign port. Prior to December 2, 2002 the relevant customs regulations simply required the master of every vessel arriving in the United States to have the manifest on board the vessel. The manifest had to include a cargo declaration listing all the inward foreign cargo on board the vessel, regardless of the intended US. port of cargo discharge. No merchandise would be unloaded until Customs officers had issued a permit for its discharge. In cases the master of a vessel had committed any violation of customs laws – for example, presenting or transmitting a forged, altered or false manifest – he was liable to pay a civil penalty.

Transit containers bound for outside the USA were equally affected by the rule. In addition, any container trans-shipped before reaching its final US destination, had to fulfil the 24-Hour requirements at the last trans-shipment port. For each container, the manifest had to provide a large amount of data, including, inter alias:

- a precise, detailed description of the cargo;
- numbers and quantities of the lowest external packaging unit as per B/L;
- container number and (if applicable) seal number;
- the exact weight of the cargo;
- the foreign port where the cargo is loaded, the last foreign port before the vessel departs for the U.S.A. and the first foreign port where the carrier takes possession of the cargo;
- the full names and the complete, accurate and valid addresses of the consignee and the shipper of the cargo.

Generic descriptions<sup>226</sup> and descriptive clauses, which were commonly used and accepted until then, were no longer acceptable and had to be replaced by more specific clauses. Indirectly, the new requirements also affected the bills of lading and other transport documents used in international trade, as carriers needed to relate a number of data from the relevant shipping documents, including the identity of the "shipper" and "consignee".

The information had to be provided to U.S. customs by the carrier, not the shipper of cargo. In practice, however, this meant that shippers had to provide the necessary information several days ahead of sailing, whereas in the past manifests it was invariably submitted long after the vessel had departed.

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<sup>226</sup> Such as "FAK" (freight of all kinds), "general cargo" and "STC" (said to contain)

The US government justified these requirements as measures to protect US citizens from terrorism, but foreign companies feared that the information could easily be used to give competitive advantages to U.S. business operators. US Homeland Security authorities did not provide the international business community any formal guarantee about the use of information collected under voluntary CSI/C-PTAT agreements and the 24-Hour Rule.

The International Maritime Organization has also been involved in global efforts against terrorism initiated by the US government. IMO adopted a number of amendments to the Safety of Life at Sea Convention of 1974 (SOLAS 74). The main part of these regulations was intended for new vessels, while the existing merchant fleet was only partially affected. Among the prescriptions mandated by IMO there were<sup>227</sup>:

- the use of an Automatic Information System (a ship transponder) for ships of 300 gross tonnage and upwards;
- a ship's identification number that should permanently and visibly appear either on the ship's hull or superstructure (passenger ships should bear this number on a horizontal surface visible from the air);
- a Continuous Synopsis Record (CSR), which is intended to provide an on-board record of the history of the ship, like an aircraft "black box," and should contain identity-related information, such as the name of the ship, its flag, its registration date, the ship's identification number, the registration port, the name of the owner(s) and their address (any changes were to be recorded in the CSR in order to provide updated, current information together with the history of the changes);
- all ships were to be equipped with a ship security alert system which, when activated, can transmit a ship-to-shore security alert to a competent authority, identifying the ship, its location and indicating that the security of the ship is being threatened or has been compromised.

The most far-reaching of the many SOLAS Convention amendments was the new International Ship and Port Security Code (ISPS-Code). In essence, it stated that ensuring the security of ships and port facilities was basically a risk management activity and that, in order to determine what security measures are appropriate, an assessment of the risks must be made in each particular case. Each shipping company, each ship, each port facility should have its own "security officer" and a detailed security plan to allow for prompt responses at different security levels, approved by a governmental authority. However, a recent IMO report warned that far less than 10% of worldwide ports were supposed to be ISPS-compliant by the July 1, 2004 deadline. One month before this deadline, only 301 of about 5,500 port facilities complied with the security code, and only 1,933 security plans out of 12,283 submitted by commercial vessels were accepted by the security agencies.<sup>228</sup>

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<sup>227</sup> See: *IMO 2004: Focus On Maritime Security*, Background paper prepared by the Secretary-General of IMO for World Maritime Day 2004. Website address: [http://www.imo.org/includes/blastDataOnly.asp/data\\_id%3D9885/Englishmessage.pdf](http://www.imo.org/includes/blastDataOnly.asp/data_id%3D9885/Englishmessage.pdf)

<sup>228</sup> R.G. Edmonson, *U.S. Ready for Port Security Deadline, Says Coast Guard*, Journal of Commerce Online, May 27, 2004; *U.N.: Maritime Security Not Seaworthy*, The Journal Of Commerce Online, 25 May 2004.

## 5. Arms brokerage and the risk of diversion

In general, international arms brokering can be defined as activity carried out by individuals or companies to mediate, arrange or facilitate an international arms transaction between a buyer and seller in return for a fee or material reward or benefit. Brokering activity does not necessarily involve the actual purchase, possession or delivery of the arms directly by the brokering agent, although this is often linked in practice. Rather, the brokering activities focus on mediation and may include the provision of vital technical, logistical and financial information to customers about arms supplies and prospective clients and sub-contractors in different countries, the facilitation of documentation and/or payment between buyer and seller, and/or the arrangement of transportation, finance or insurance services for the delivery of the arms cargo in question.

Evidence shows that arms brokering activities have been performed by (i) private firms and individuals specializing in the mediation of arms deals; (ii) organizations that represent sectors of the arms industry and promote their increasingly wide range of military and security products on the differentiated global markets; and also (iii) government agencies that have the task to facilitate the procurement of domestic arms production by foreign entities. Obtaining evidence of arms brokering is often difficult. However, most studies of arms brokering focus only or mainly on private firms and individuals.

Governments say that arms brokering has a legitimate and sometimes necessary role in the increasingly complex “legal” arms trade, and that “middle men” have a part to play in meeting states’ legitimate security needs if properly regulated. However, the worldwide absence of strict laws and regulations to govern arms brokering in most countries has created a significant ‘grey’ area in the international arms trade. While this may sometimes be convenient for those in power, it also encourages the proliferation and misuse of arms, often undermining respect for human rights.

Many studies have shown over the past ten years that the strict state control of arms brokering, including of small arms, light weapons and related *materiel*, is an essential prerequisite to removing and reducing the risk of arms transfers and illicit arms trafficking that contribute to human rights violations, especially in conflict-prone regions of the world where such violations are widespread and frequent.<sup>229</sup> Successive United Nations reports on the violation of Security Council arms embargoes on different countries in particular show that a lack of effective accountability of arms brokers poses a trans-national threat to security.<sup>230</sup>

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<sup>229</sup> The first major study of international arms brokering was Brian Wood and Johan Peleman, “*The Arms Fixers: controlling the brokers and shipping agents*,” Peace Research Institute of Oslo, NISAT and BASIC, November 1999, available on [www.nisat.org](http://www.nisat.org)

<sup>230</sup> See in particular the many UN investigative reports on Angola, the Democratic Republic of the Congo, Liberia, Rwanda, Sierra Leone and Somalia.

Questionable or illegal brokering activities are often the result of individual arms brokers operating with a network of shell companies, agents and subcontractors who are able to exploit legal loopholes. Such networks are usually fluid, opaque and complex. Individual arms brokers tend to be businessmen with military and security backgrounds and close contacts in the arms supply and security industry. From an arms distribution point of view, they are usually a conduit for “strategic” political considerations of selling and/or buying states and powerful companies, even though from an individual point of view, they are motivated primarily by economic gain. They take advantage of the global banking, tax avoidance mechanisms and transport industries. Above all, those brokers dealing with dubious customers are skilled at hiding their tracks, often using fake documentation, bribery of officials at all levels, and sometimes linking up with organized criminal networks.

Most government action to better regulate arms brokering activities has been the result of an intense effort by several campaigning NGOs and researchers carried out since the mid 1990s to compel international bodies and governments to act on a growing and dramatic problem.<sup>231</sup> International outrage was expressed particularly about the brokering of arms to and within Africa after the revelations in 1995 that such brokers had played a crucial role in arming the perpetrators of the 1994 genocide in Rwanda.<sup>232</sup> Further concern was expressed after revelations emerged about the role of brokers in helping to arm the Angolan rebel movement, National Union for the Total Independence of Angola (UNITA), as well as the Revolutionary

<sup>231</sup> The range of literature includes substantive research on arms brokering activities as well as short policy arguments recommendations. See for example: Wood, B., E. Clegg “Controlling the gun-runners: Proposals for EU action to regulate arms brokering and shipping agents.” BASIC, NISAT, Saferworld, February 1999; Wood, B., J. Peleman “The Arms Fixers: controlling arms brokers and shippers”, NISAT and BASIC, November 1999 and “Making the Deal and Moving the Goods: The Role of Brokers and Shippers”, in Running Guns: The Global Market in Small Arms, Lora Lumpe ed., Zed Books Ltd., London 2000; Clegg, E., M. Crowley “Controlling arms brokering and transport agents. Time for International Action.” Briefing 8, BASIC - International Alert - Saferworld, 2001; Amnesty International, BASIC, International Alert, Oxfam, Saferworld “How Guns Get to War Zones - Techniques of Clandestine Arms Delivery.” United Nations 2001 Conference on The Illicit Trade in Small Arms and Light Weapons in All Its Aspects - Third Preparatory Conference, New York, March 2001; Loretta, Bondi, “Expanding the Net: A Model Convention on Arms Brokering”, Fund for Peace, June 2001; Amnesty International, BASIC, Christian Aid, International Alert, Oxfam, Saferworld “Loophole in new law could allow British dealers to arm terrorist groups - Government breaks manifesto commitment.” UK Working Group on Arms, 16 October 2001; The Fund for Peace “Model Convention on the Registration of Arms Brokers and the Suppression of Unlicensed Arms Brokering.” Washington, 2001; Godnick, W. “The Organization of American States and the 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects. Tackling the Illicit Trade in Small Arms and Light Weapons.” BASIC, International Alert, Saferworld, Project Ploughshares, Arias Foundation for Peace and Human Progress, January 2002; Gail Wannenburg, “Catching the Middlemen Fuelling African Conflicts”, SA Yearbook of International Affairs, 2002/03; Ken Epps, “International Arms Embargoes” Project Ploughshares, September 2002; Davis, I., R. Isbister “EU and US co-operation on arms export controls in a post 9/11 world.” Report of a roundtable hosted by BASIC and Saferworld, Washington, January 23, 2003; Oxfam “Regulating weapons deals. The case for European controls on arms brokers.” Oxfam Briefing Paper, February 2003; Dutch-Norwegian Initiative on Further Steps to Enhance International Co-operation in Preventing, Combating and Eradicating Illicit Brokering in Small Arms and Light Weapons “Chairs’ Report” and “Conference Report.” Oslo April 23-24, 2003; The Fund for Peace “Statement on the Occasion of the UK Enquiry into Secondary Legislation on the Arms Export Control Bill: the U.S. Law on Arms Brokering.” Washington, April 30, 2003; Holger, A. “Controlling Arms Brokering: Next Steps for EU Member States”, GRIP, January 2004; Graduate Institute of International Studies, “Fuelling the Flames”, in Small Arms Survey 2001, chapter 3, based largely on the work of Wood and Peleman, and “Targeting the Middlemen: Controlling Brokering Activities,” in Small Arms Survey 2004: Rights at Risk, Geneva, 2004; Stott, N., S. Meek, E. Schroder (eds.) “Understanding and Regulating Arms Brokering in Southern Africa.” Institute for Security Studies, Pretoria, Workshop Report, March 15 – 17, 2004 in Johannesburg, May 2004; Bauer, S., M. Bromley “The European Union Code of Conduct on Arms Exports. Improving the Annual Report.” Stockholm, SIPRI Policy Paper No. 8, November 2004; Isbister, R., E. Kirkham, “An independent audit of the UK Government Reports on Strategic Export Controls for 2003 and the first half of 2004.” Saferworld, January 2005.

<sup>232</sup> See Human Rights Watch “Rwanda/Zaire: Rearming with Impunity”, May 1995, and Amnesty International, “Rwanda: arming the perpetrators of the genocide”, June 1995, and the subsequent reports of the UN International Commission of Inquiry.

United Front (RUF) rebels in Sierra Leone, despite arms embargoes imposed on these rebel groups by the United Nations Security Council.<sup>233</sup>

Although much of the supply and acquisition of arms in areas of armed conflict was conducted by government agents or licensed entities, it became increasingly apparent in the late 1990s that lack of effective control of international arms brokering was an important additional factor fuelling conflicts in Africa and elsewhere, in particular in the destabilizing accumulation, trafficking, and possession of small arms and light weapons. It was also recognized that the phenomenon has been closely linked to the illegal exploitation of natural resources, as well as to money laundering, corruption and other malpractices that together undermined socio-economic development and human rights in Africa and elsewhere. The recent focus of international concern on the arming of warring parties in the Democratic Republic of the Congo (DRC) where a staggering three million civilian people are estimated to have died directly and indirectly from the war since 1998 has confirmed this general view.<sup>234</sup>

The term ‘illicit’ arms brokering usually refers to those acts of mediation to facilitate arms shipments where the recipients of these arms are those groups or individuals or states that are prohibited by law from possessing or acquiring weapons — embargoed states, armed groups, including those believed to engage in terrorism, and, criminal gangs. However, whether such brokering activities are illegal in the country where the broker carries out the activity or where the broker resides or holds nationality depends on whether there is a relevant law – sadly, this is often not the case because so few states have laws that specifically cover arms brokering. Some such activities may nevertheless be criminal under more general laws – such as statutes that outlaw bribery, which is illegal in most if not all states.

### *The case of Leonid Minin and its outcome*

On August 5, 2000, Leonid Minin, an Israeli national<sup>235</sup> born in Ukraine and already known to the Italian and Belgian police for his trafficking activities, was arrested in his hotel near Milan. In his room, the police found non-declared diamonds,<sup>236</sup> large amounts of money, and about

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<sup>233</sup> These revelations stemmed largely from the reports of UN arms embargo inquiries as well as from a few NGOs and investigative journalists such as Brian Johnson Thomas. The UN investigative reports into the arming of UNITA, under the chair of Ambassador Fowler, were the first to highlight the role of international arms brokering in the violation of UN arms embargoes.

<sup>234</sup> See Amnesty International, “Democratic Republic of Congo. Arming the East,” July 2005.

<sup>235</sup> Minin had Israeli, Bolivian, Greek, and Russian passports and two forged German passports. See: U.N. “List of individuals subject to the measures imposed by paragraph 4 of Security Council Resolution 1521 (2003) concerning Liberia” (Travel Ban List), [http://www.un.org/Docs/sc/committees/Liberia3/1521\\_list.htm](http://www.un.org/Docs/sc/committees/Liberia3/1521_list.htm). (Updated November 30, 2005).

<sup>236</sup> Documents seized from Minin showed plans to sell diamonds to Russia and China through a polishing company based in Mauritius. According to the U.N. Panel of Experts Report on Liberia (October 2001 (S/2001/1015), Minin had diamond weighing equipment in his office in Liberia.

1,500 documents in various languages (English, Russian, Dutch, French) on oil, timber, and arms transactions, mostly with Liberia, a country subject to a UN arms embargo since 1992 and a diamonds embargo since early 2001<sup>237</sup>. He was briefly detained and then put under house arrest, but on June 21, 2001 was re-arrested, charged with arms trafficking and illegal possession of diamonds valued at 500,000 euros and remanded in custody. The Monza (Milan) Court's public prosecutor charged Minin with organizing, in association with others, two arms shipments apparently destined for Burkina Faso's National Defense Department and the Ministry of Defence of Cote d'Ivoire, respectively, but in fact directed to UN-embargoed Liberia and to the Liberia-backed RUF in Sierra Leone, also subject to a UN arms embargo.

According to the documents, the first delivery arranged by Minin in March 1999 was a cargo of 68 tons of military equipment, including 3,000 AKM assault rifles, 1 million rounds of ammunition, 25 RPG-7s and related ordnance, Strela-3 and Metis systems and 80 related missiles. The arms were bought from the Ukrainian arms marketing company, *Ukrspetsexport*, through a Gibraltar-based firm, Engineering & Technical Company Ltd., allegedly one of Minin's shell companies, by using an end-user certificate from Burkina Faso signed on February 10, 1999 (n. 990067) by Lieutenant-Colonel Gilbert Diendere. The arms were transported from Gostomel, Ukraine, to Ouagadougou, Burkina Faso, on a giant Antonov 124.<sup>238</sup> The aircraft was operated by a U.K. company, Air Foyle, which was the sales agent for Ukraine's Antonov Design Bureau. After it arrived in Burkina Faso, the cargo was transhipped to Monrovia, Liberia, in various flights made by Minin's own business jet.<sup>239</sup>

#### PICTURE F AND CAPTION (BAC-111 PLANE)

Payments for the shipment show the global nature of the arms deal arranged by Minin. Italian prosecution authorities were directed – reportedly by Minin himself – to a Hungarian bank account<sup>240</sup> owned by a company allegedly related to Minin, the British Virgin Island-registered firm Engineering & Technical Company Ltd. To this account, John Enrique Smithe,<sup>241</sup> Commissioner of the Liberia's National Bureau of Immigration for Naturalization (sic) credited payments for a total US\$463,470 on March 8 and 10, 1999. Payments credited to the same account were entered for two other companies - Tholos Anstalt, for \$965,750 on April 22, 1999, and Zimbabwe Defence Industries (ZDI), for \$1,383,150 and \$2,103,150 on

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<sup>237</sup> U.N. Security Council Resolution 788 (November 1992) established an arms embargo on Liberia (implemented from 1995 under Resolution 985). The type of embargo adopted by this resolution was terminated by U.N. Security Council Resolution 1343 (2001) in March 2001 and it imposed a new arms embargo on Liberia. In that resolution the Council decided that: "*all States shall take the necessary measures to prevent the direct or indirect import of all rough diamonds from Liberia, whether or not such diamonds originated in Liberia.*" See also U.N. Security Council Committee List (SC/7068), June 4 2001 (Travel Ban List) that included Minin. On 5 July 2000 the Security Council had also adopted resolution 1306 that imposed a ban on the direct or indirect import of rough diamonds from Sierra Leone.

<sup>238</sup> The Antonov 124 used the call sign UR-82008 to transport the cargo with airway bill number ADB-000289991 on March 11, 1999.

<sup>239</sup> BAC-1-11 with call sign VP-CLM

<sup>240</sup> Account number 070227 of CIB KOZEP bank.

<sup>241</sup> Named in the U.N. Panel of Experts on Liberia report, April 11, 2002, for not providing requested information on suspicious flights to Liberia in February 2002

March 22 and on May 31, 1999. Payments amounting to \$295,815 from the account were made on June 1, 16, and 22, 1999, to a T.J. Dube, who appears to share the same name with Colonel T.J. Dube, head of the ZDI. Further payments from the same account were made to various companies, including *Ukrspetsexport*,<sup>242</sup> Air Foyle,<sup>243</sup> Trans Balkan Cargo Service (BV and Ltd),<sup>244</sup> Phoenix FZE,<sup>245</sup> Arsenal Corp. General-Technical (Bulgaria),<sup>246</sup> and a mysterious company, NAIRFO Trading SA.<sup>247</sup>

The second arms delivery arranged by Minin was routed via Cote d'Ivoire rather than Burkina Faso. The arms deal consisted of 113 tons of arms brokered through the Ukrainian State-owned company, "*Spetstehnoexport*" [Special Technical Export], and included 10,500 AK-47 assault rifles, 120 sniper guns, 100 grenade-launchers, night-vision equipment, and 8 million rounds of ammunition. A portion of these arms was delivered in July 2000, apparently destined for Cote d'Ivoire using an end-user certificate signed on May 26, 2000 by a senior official of the Ministry of Defence and authorizing a Moscow-based company, Aviatrend, to carry out the shipment.<sup>248</sup> The arms were transported from Gostomel to Abidjan, Ivory Coast, July 15 with the same Antonov 124<sup>249</sup> that ferried the arms to Burkina Faso in 1999, this time chartered by Aviatrend. Once there, they were trans-shipped to Monrovia in several flights performed by a relatively smaller aircraft, an Ilyushin 18, with a fake Liberian registration EL-ALY.<sup>250</sup> The aircraft was operated by "West Africa Air Services," a phantom airline purposely set up by the Liberian government and Sanjivan Ruprah,<sup>251</sup> an arms and diamonds dealer and business partner of the well known arms trafficker Victor Bout. Aviatrend Ltd. was found by Italian prosecutors to be controlled by Gibraltar-registered Aviatrend, owner of a bank account in Cyprus to which Minin sent about \$1 million for the arms shipment through a complex route involving another account at the New York Chase Manhattan Bank.

On September 17, 2002, the Court of Appeal (*Corte di Cassazione*) in Rome upheld an appeal by the defendant against the continuation of his detention and ordered his release, unless he

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<sup>242</sup> For a total of \$611,780 on May 12, 13 and 17 and 1, 7, and June 22, 1999.

<sup>243</sup> For a total of \$223,000 on March 9 and 26, 1999.

<sup>244</sup> For a total of \$159,400 on December 4, 1998; as well as May 5 and 11 and June 1, 1999.

<sup>245</sup> A Kyrgyzstan-registered company based in the Sharjah free zone for a total of \$114,500 on June 1, 1999.

<sup>246</sup> For a total of \$434,620 on December 2, 1998; January 7, 14, 19; March 25; 29; May 14; and June 1, 1999.

<sup>247</sup> For a total \$2,845,000 on February 3; April 27; May 3 and 11; and June 9 and 23, 1999.

<sup>248</sup> The certificate is part of the documentation attached to the Minin trial in Monza. See, for a detailed description of this case the U.N. Report of the Panel of Experts on Liberia October 2001 (S/2001/1015).

<sup>249</sup> Call sign UR-82008.

<sup>250</sup> The Ilyushin 18 real registration at that time was ER-ICJ. It was owned by a Moldovan company, Renan, involved in other illegal arms transfers, that leased it to West Africa Air Services. The latter company was "domiciled" in Liberia, and its office was a P.O. box address (5620) in Monrovia (1926). LeRoy Urey, Liberia's Minister for Administration and Public Safety, represented the company in Liberia. See U.N. Panel of Experts on Liberia October 2001 (S/2001/1015).

<sup>251</sup> According to the UN Panel of Experts Report (quoted, October 2001) Ruprah was at that time Liberia's "Deputy commissioner of Maritime Affairs" and one of Liberia's Global Civil Aviation agents appointed by the Ministry of Transport. It was at that time that Liberia's Civil Aviation register was found to include several phantom planes with multiple fake registrations. Ruprah associated to Victor Bout through the Sharjah-based company San Air. San Air brokered several arms deals and received related payments in its various accounts. Ruprah was arrested in Belgium February 2002 and released on bail. He escaped to Italy but was again arrested in Crema in early August 2002 for carrying a forged Belgian passport (n. EC 521270). Despite the documents seized to him showed his involvement in these and other trafficking activities and despite being a fugitive from the bail in Belgium, he was released from jail with the obligation to show himself daily at the police. Soon after he managed to escape from Italy

was charged and remanded for other crimes.<sup>252</sup> The judges ruled that the prosecution lacked jurisdiction on Minin's trafficking activities because the arms transfers in question did not pass through Italian territory. On December 18, 2002 at the trial of Minin in Monza, the judges declared Minin non-prosecutable for the charges relating to international arms trafficking because the court lacked jurisdiction but they upheld the charge for his illegal possession of diamonds, for which he was later convicted and fined 40,000 Euros.<sup>253</sup> Thus, Minin walked free and left Italy. However, the Monza public prosecutor appealed against the sentence in February 2003 and later submitted evidence to the *Corte di Cassazione*, including from the authorities in Ukraine, to support the right of jurisdiction to prosecute Minin for his trafficking of arms even though the arms never entered Italy.<sup>254</sup> Nevertheless, on January 9, 2004, the *Corte di Cassazione* declared its non-competence to examine the documentation, rejected the appeal, and confirmed the acquittal of Minin. Subsequently, Minin tried to return to Italy from Israel but was rejected by Italian authorities because of his inclusion in a U.N. Travel Ban List established in June 2001 and reiterated in March 2004 to enforce the UN embargo on Liberia.<sup>255</sup>

Despite the implications of the Minin case, the Italian government had by mid-2005 still not closed the loophole in its laws to enable the prosecution of violations of UN arms embargoes and unauthorised arms brokering by persons living in Italy in instances where the arms do not pass through Italian territory. The governments of Spain and Slovakia continued to authorise the export of significant quantities of arms and ammunition to Burkina Faso in 2004, despite the Minin case and the further allegations in 2003 that Burkina Faso was a conduit for arms to Ivorian rebels.<sup>256</sup>

### *National laws on arms brokerage activities*

Only a few states have relevant laws and these often exclude related financial and transport services and provisions to cover extra-territorial brokering.<sup>257</sup> In mid-2005, it was variously estimated that between 30 and 40 states out of 191 UN Member States had enacted specific regulations covering brokering within their systems of arms export control, 25 of which were in Europe.<sup>258</sup> In the European region, countries with brokering regulations in place in 2005

<sup>252</sup> This account of the court case is based upon Court documents and interviews with legal authorities Monza, 2002-2004.

<sup>253</sup> The verdict on June 11, 2003 referred only to a portion of the diamonds seized in Minin's possession. For the other portion of diamonds, the Court declared a defect of jurisdiction and referred the case to the Belgian authorities in Antwerp.

<sup>254</sup> For the prosecution of such a crime committed outside the Italian territory, the law requires that crime to be also punishable in the country where it initiated, in this case Ukraine, and also requires the existence of a request by the judicial authorities of the same country for the prosecution of the crime. It was argued that the Ukrainian criminal code (before and after 2001, the year in which the old code was reformed) did provide for the prosecution of crimes related to this case, and that the Ukrainian authorities had officially requested international assistance to Italy in August 2003 for prosecuting Minin for arms trafficking.

<sup>255</sup> See "List of individuals subject to the measures imposed by paragraph 4 of Security Council Resolution 1521 (2003) concerning Liberia," quoted.

<sup>256</sup> Arms export data from Eurostat COMTEXT database, cited in a policy paper by PRIO for UNIDIR on EU arms exports, December 2005, and International Crisis Group report on Cote d'Ivoire, November 2003

<sup>257</sup> See: Holger Anders and Silvia Cattaneo, "Controlling Arms Brokering: Next Steps for EU Member States", GRIP, January 2004.

<sup>258</sup> Austria; Belgium; Bulgaria; Czech Republic; Estonia; Finland; France; Germany; Hungary; Israel; Italy; Japan; Latvia; Lithuania; Norway; Poland; Romania; Slovakia; Slovenia; South Africa; Sweden; Switzerland; The Netherlands; Ukraine; United

included: Austria, Belgium, Bulgaria, the Czech Republic, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Malta, the Netherlands, Norway, Poland, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, and the UK.<sup>259</sup>

Caution should be exercised when interpreting such data on legislation and regulations because of the large variations in the quality and effectiveness of such national controls – in Israel, for example, brokering agents deemed to be trusted are simply registered without being subject to strict licensing control or meaningful oversight. In other countries, local companies that are fronts for other international trafficking networks have been allowed to act as arms brokers. In global terms, progress has been slow, and even in those states which have laws applicable to arms brokering activities, too often the ethical standards and enforcement procedures are weak. Loopholes are left open by legislators for arms brokering networks to exploit.

A recent series of international agreements and other instruments could help form the basis of a sustained effort to close the loopholes in control systems, but they are not, for the best part, legally binding and do not yet cover Asia, the Pacific, the Middle East and large parts of Africa – all places where arms brokers operate.<sup>260</sup>

### ***Weak definitions***

It is currently taken as almost axiomatic in UN and some regional discussions that an international instrument on arms brokering should only cover small arms and light weapons (SALW) because this class of arms has been defined as the most widely used in current conflicts. However, most state laws covering the transfer of SALW also include other arms in

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States. Biting the Bullet, “Examining the Implementation of the UN Programme of Action”, IANSA 2005, page 6, and Anders and Cattaneo, *op cit*

<sup>259</sup> Anders and Cattaneo, *op cit*, 2005. Research by Cattaneo for the Small Arms Survey in 2004 found that only 25 states had laws on arms brokering. 21 of these states are in Western Europe, one of these was in the Americas (USA); 1 of these was in Africa (South Africa), one in SE Asia (Japan) and one was in the Middle East (Israel).

<sup>260</sup> Recent international initiatives to promote the regulation of arms brokering activities include the development of an elaborate text by the OAS Inter-American Drug Abuse Control Commission’s “*Model Regulations for the Control of the International Movement of Firearms, their Parts and Components and Ammunition*,” adopted by the OAS General Assembly, AG/RES. 1543 (XXVIII-O/98), June 2, 1998 and “*Draft Study on Small Arms Brokering*”, CP/CSH-544/03 rev. 2 (1997 and 2003, Amendments); following the mention of brokering in the AU “*Bamako Declaration on an African Common Position on the illicit Proliferation, Circulation, and Trafficking of Illicit Small arms and Light weapons*” (2000) and the Southern African Development Community (SADC) “*Protocol on the control of Firearms, Ammunition and Other Related Material in the SADC Region*” (2001), more elaborate text was developed by the states of East Africa, the Great Lakes and the Horn of Africa from their “*Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons*” (2000) to their “*Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa*” (2004); a mention in the United Nations “*Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime*”, UN Doc. A/55/383/Add.2. (2001) and discussions concerning brokering in the “*Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*” UN Doc. A/CONF.192/15 (2001) and subsequent UN Biennial Meetings of States (2003, 2005); and the agreements of the European Union in its “*Council Common Position 2003/468/CFSP on the Control of Arms Brokering*” (2003); of the OSCE in its “*Best Practice Guide on National Control of Brokering Activities*” (2003) and the OSCE “*Principles on the Control of Brokering in Small Arms and Light Weapons*” (2004), and the Wassenaar Arrangement in its “*Elements for Effective Legislation on Arms Brokering*” (2003); and lesser known security-related initiatives that mention brokering such as the UN Economic Commission for Europe “*Proposal for Standard Development in support of Trade Facilitation and Security*” (2003).

the control lists. Moreover, in all current conflicts the opposing forces using SALW also use other arms and military-related equipment, and a number of such items such as military transport and communications equipment are required to deploy forces using SALW.

It is thus a distinct advantage that most existing national laws on brokering cover all conventional arms and other military and dual use items. In the EU Common Position the definition of arms is assumed to be the same as that in the EU Code of Conduct i.e. the common list of conventional arms and dual use items controlled by EU member states, and the Wassenaar agreements to control arms brokering also apply to all conventional arms.

A positive development is that there appears to some convergence in the definition of brokering activities in national laws as the mediation of contracts and the negotiation of services. Existing national controls usually apply irrespective of whether or not the broker acquires, possesses or delivers the arms in question when acting as an intermediary. Some state laws also include provisions requiring the regulation of activities closely related to brokering such as financing, transporting, freight forwarding, and the consulting of partners about arms transfer deals or deliveries, as well as marketing, promoting, advertising to commercial audiences the possibilities of making gains from arms transfer deals. Some definitions mention not only financial rewards from brokering but also possible non-pecuniary benefits that accrue to brokering agents, such as gains from barter trade.

In cases where the recipient and end user is illegitimate or dubious, brokers and their associates will try to circumvent stronger control systems and exploit weaknesses in the laws and practices of states with less control. Typically, they will arrange a transfer of arms from one foreign country to another to try to avoid falling under the jurisdiction of their home state. This is sometimes called “*third country brokering*”, and is even more difficult to control where the arms do not enter into the possession of the broker. Many governments are now considering new laws and procedures to deal with these challenges, but progress has been far too slow.

### ***The American and European approach***

The Organisation of American States (OAS) opted for a wider definition of mediation and facilitation in arms brokering which, although limited to small arms, is helpful insofar as brokers often operate in networks with other subcontractors and experience shows that it is vital to bring the whole network into the frame of the national arms control law in order to prevent illicit trafficking. The Model Regulation for the Control of the International movement of Firearms, their Parts and Components and Ammunition agreed by the OAS in November 2003, defines a “broker” or “arms broker” as “*any person or company who, in return for a fee, commission or other consideration, acts on behalf of others to negotiate or arrange contracts, purchases, sales or other means of transfer of arms.*” As such, “Brokering involves mediation between any of the following other parties: manufacturing, exporting, importing, financing, mediating, purchasing, selling, transferring, transporting, freight-

forwarding, supplying, and delivering arms – or any other act performed by a person, that lies outside the scope of his regular business activities and that directly facilitates such brokering activities.” This regional agreement has many other strong features, but lack of political will in the OAS has meant that so far it has not been widely adopted by OAS member states.

The 1996 U.S. law is generally considered a model for the regulation of arms brokerage.<sup>261</sup> It defines an arms broker as “any person who acts as an agent for others in negotiating or arranging contracts, purchases, sales or transfers of defense articles or defense services in return for a fee, commission, or other consideration.” According to the U.S. law’s broad definition of brokerage activities, the latter “includes the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service, irrespective of its origin. For example, this includes, but is not limited to, activities by U.S. persons who are located inside or outside of the United States or foreign persons subject to U.S. jurisdiction involving defense articles or defense services of U.S. or foreign origin which are located inside or outside of the United States. But, this does not include activities by U.S. persons that are limited exclusively to U.S. domestic sales or transfers (e.g., not for export or re-transfer in the United States or a foreign person).”<sup>262</sup>

Those persons required to register as a broker include “any U.S. person, wherever located, and any foreign person located in the United States or otherwise subject to the jurisdiction of the United States [...] who engages in the business of brokering activities with respect to the manufacture, export, import, or transfer of any defense article or defense service subject to the controls of this subchapter or any ‘foreign defense article or defense service’.”<sup>263</sup>

The U.S. law incorporates a strong extra-territorial component that “requires US brokers living anywhere and foreign nationals residing in the United States to register and obtain licenses for all arms deals they transact. Not only does the law empower US implementing and enforcing agencies to monitor the number of brokers and the type of their operations, it also subjects violators to US jurisdiction wherever an offence has been committed.”<sup>264</sup>

Despite the extensive extraterritorial jurisdiction, certain exemptions included in the same US regulation limit its effectiveness.<sup>265</sup> For instance, it does not require registration by government employees acting in an official capacity, employees of foreign governments acting in an official capacity, or “*persons exclusively in the business of financing, transporting, or freight forwarding, whose business activities do not also include brokering defense articles or defense services. For example, air carriers and freight forwarders who merely transport or arrange transportation for licensed United States Munitions List items*

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<sup>261</sup> International Trade in Arms and Regulations [ITAR] Part 129, “*Registration and Licensing of Brokers*” (last revised April 1, 2005) as mandated by the Arms Export Control Act (22 U.S.C. 2778), Chapter 39, Subchapter III, January 19, 1994; amendment 1996, Section 38[b][1][A][ii]. See [http://www.pmdtc.state.gov/docs/ITAR/2005/22cfr129\\_Part\\_129.pdf](http://www.pmdtc.state.gov/docs/ITAR/2005/22cfr129_Part_129.pdf)

<sup>262</sup> According to the law, the term “foreign defense article or defense service” includes “any non- United States defense article or defense service of a nature described on the United States Munitions List regardless of whether such article or service is of United States origin or whether such article or service contains United States origin components.”

<sup>263</sup> International Trade in Arms and Regulations [ITAR] Part 129, quoted.

<sup>264</sup> Franks, Ronald G., quoted.

<sup>265</sup> See: Franks, Ronald G. “Registration/Licensing of Arms Brokers, Manufacturers, Exporters and Importers,” Braumiller, Schulz & Co., website.

are not required to register, nor are banks or credit companies who merely provide commercially available lines or letters of credit to persons registered in accordance with Part 122 of this subchapter [...].”<sup>266</sup> In other words, many of the middlemen who routinely facilitate the arms trade—including financial institutions, carriers and logistics service providers - are not usually required to register and therefore may escape official monitoring.

The US law states that “banks, firms, or other persons providing financing for defense articles or defense services would be required to register **under certain circumstances**, such as where the bank or its employees are directly involved in arranging arms deals [...] or hold title to defense articles, even when no physical custody of defense articles is involved.”<sup>267</sup> However, it is generally difficult to prove that entities and individuals are “**directly involved**” in arranging arms deals. Yet it is known that managers of financial institutions and transport/logistics companies based in the receiving country, because of their familiarity with the local business environment, are invited to take an active part in providing the expertise and contacts to “facilitate” an arms deal – and they would not expect a receipt for their services.

US courts have recently ruled that “non-US persons’ apprehended abroad as accomplices in brokering deals cannot be indicted under this law—which is another limitation to the jurisdiction.

The Europe Union [EU] and its neighbours generally have weaker laws on arms brokering than the USA, but Europe is the only world region in which a significant number of governments have adopted legislation to cover arms brokering activities – by mid 2005 about two thirds of EU member states had done so. EU agreements and laws covering brokering tend to cover all conventional arms, not just small arms and light weapons, as recommended by the UN Programme of Action (see further below). However, there are some crucial weaknesses in EU laws, notably the lack of full extra-territorial application and the use of “open” licences, as described further below.

The consequences of weak laws on brokering can be shown, for example, by the role of UK arms brokering for Sudan.<sup>268</sup> On May 25, 2004, an End Use Certificate (EUC) apparently issued by the Military Industries Corporation of Sudan authorized a United Kingdom company, Endeavour Resources UK Ltd, to negotiate for the supply to Sudan of twelve Antonov 26 cargo planes and 50 Antonov 2 “crop spraying” aircraft from the Ukrainian arms export company, Ukrspetsexport.<sup>269</sup> The Antonov 26 planes have been used by the Sudanese armed forces to bomb civilian targets in the south and western parts of Sudan. The Antonov 2 can carry light cargo or up to 14 passengers, and is reputed for its suitability for parachute drops and landing on very short, rough runways. This EUC and others were obtained by a UK newspaper.<sup>270</sup> The UK authorities investigated whether the UK firm violated UK law,

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<sup>266</sup> Franks, Ronald G, “Registration/Licensing of Arms Brokers, Manufacturers, Exporters and Importers,” in Braumiller, Schulz & Co., website

<sup>267</sup> International Trade in Arms and Regulations [ITAR] Part 129, quoted.

<sup>268</sup> See Amnesty International, Sudan: arming the perpetrators of grave abuses in Darfur, AFR 54/148/2004, November 2004

<sup>269</sup> End Use Certificate from Military Industry Corp of Sudan to Ukrspetsexport, Ukraine, dated May 25, 2004.

<sup>270</sup> Sunday Times, “Briton supplies arms to Sudan”, September 5, 2004

including a law which entered into force on May 1, 2004 which prohibits the brokering of arms by UK nationals and residents to destinations which are subject to UN, EU or other arms embargoes. No prosecutions took place.

In June 2003 the EU adopted a Common Position on the control of arms brokering that was designed to form a basic guide to develop effective laws and regulatory practices.<sup>271</sup> Since the existing EU arms export control systems were considered quite robust, Article 2 (3) of the EU Common Position was drafted so as to define “brokering activities” as “*activities of persons and entities: — negotiating or arranging transactions that may involve the transfer of items on the EU Common List of military equipment from a third country to any other third country; or — who buy, sell or arrange the transfer of such items that are in their ownership from a third country to any other third country. This paragraph shall not preclude a Member State from defining brokering activities in its national legislation to include cases where such items are exported from its own territory or from the territory of another Member State.*”

Under the European Union Common Position (2003), EU Member States are required to “*take all the necessary measures to control brokering activities taking place within their territory.*” The lawful engagement of such activities will require “*a license or written authorizations... from the competent authorities of the Member State where these activities take place*” and Member States will assess applications “*for specific brokering transactions against the provisions of the EU Code of Conduct on Arms Exports.*” However, the Common Position encourages, but does not oblige EU Member States to “*consider controlling brokering activities outside their territory carried out by brokers of their nationality resident or established in their territory.*” Furthermore, even this “consideration” is only partial, as no mention is made of controlling EU citizens who both reside and broker abroad. Legislation which lacks such extra-territorial scope can be easily circumvented, and rather than preventing harmful brokering activity will simply move it elsewhere.

### ***Other approaches***

In parallel with the EU Common Position on Brokering, the Wassenaar Arrangement - the group of leading conventional arms exporters, including many EU states - agreed in 2003 a set of common *Elements for Effective Legislation on Arms Brokering*.<sup>272</sup> Although this is merely a politically binding agreement, it does raise the bar for brokering controls in a number of areas and does cover all conventional arms. For example, Wassenaar Arrangement participating states agreed to: “*Strictly control the activities of those who engage in the brokering of conventional arms by introducing and implementing adequate laws and regulations.*” “*For activities of negotiating or arranging contracts, selling, trading or arranging the transfer of arms and related military equipment controlled by Wassenaar Participating States from one third country to another third country, a license or written*

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<sup>271</sup> European Union. 2003. Council Common Position 2003/468/CFSP on the Control of Arms Brokering (2003);

<sup>272</sup> The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies firstly agreed in 2002 a “*Statement of understanding on arms brokerage*” and this was followed up in 2003 by “*Elements for effective legislation on arms brokering*”.

*approval should be obtained from the competent authorities of the Participating State where these activities take place whether the broker is a citizen, resident or otherwise subject to the jurisdiction of the Participating State...*” Similarly, a license may also be required regardless of where the brokering activities take place.” “**Records should be kept of individuals and companies who have obtained a license in accordance with paragraph 1. Participating States may in addition establish a register of brokers.**”<sup>273</sup>

In Africa, only one state – South Africa – had adequate laws to control the brokering of all types of arms. Despite suffering from the consequences of brokering of many types of conventional arms, African governments have so far chosen to restrict their regional agreements only to small arms and light weapons. In 2004, the states of east Africa, the Great Lakes and the Horn of Africa adopted the Nairobi Protocol<sup>274</sup> which included a number of requirements to control the brokering of small arms and light weapons, including the licensing of deals, the registration of individual brokers and record keeping.<sup>275</sup> Clauses on the extra-territorial application of laws based on the Protocol were, however, ambiguous (see below) and when officials of these states were asked in early 2005 whether their national laws would be drafted so as to only include small arms and light weapons and not other arms, they were unsure. Most of the states in the Great Lakes Region and the Horn of Africa have not yet established laws to comply with the Protocol, and judging by the high level of illegal arms trafficking in those regions often with the complicity of officials, most still lack the political will and the capacity to properly enforce such laws.<sup>276</sup> However, a positive development was the agreement in June 2005 by the Nairobi Group of states of “best practice guidelines” for authorising arms transfers that are consistent with international law and these could also apply to arms brokering.

Another African regional agreement including reference to arms brokering was previously adopted in 2001 by southern African states in the SADC Firearms Protocol, but some confusion apparently crept into the definition of brokering when the text was published. There has been very little follow up action to implement the SADC Protocol and no agreement to establish best practice guidelines based on international law.<sup>277</sup>

<sup>273</sup> The Wassenaar Arrangement, “Elements for effective legislation on arms brokering”.op cit

<sup>274</sup> See Nairobi Protocol, op cit; These states are Burundi, Democratic Republic of Congo, Djibouti, Ethiopia, Eritrea, Kenya, Rwanda, Sudan, Uganda and Tanzania.

<sup>275</sup> For example, Article 11 of the Nairobi Protocol established fairly high standards for national laws covering “Dealers, Brokers and Brokering” as follows: “State Parties, that have not yet done so, shall establish a national system for regulating dealers and brokers of small arms and light weapons. Such a system of control shall include:

- i. regulating all manufacturers, dealers, traders, financiers and transporters of small arms and light weapons through licensing;
- ii. registering all brokers operating within their territory;
- iii. ensuring that all registered brokers seek and obtain authorisation for each individual transaction taking place;
- iv. ensuring that all brokering transactions provide full disclosure on import and export licenses or authorisation and accompanying documents of the names and locations of all brokers involved in the transaction; and
- v. licensing, registering and checking regularly and randomly all independent manufacturers, dealers, traders and brokers.”

<sup>276</sup> Regarding arms trafficking in this region involving the activities of international brokering networks, see for example: Amnesty International, “Democratic Republic of the Congo: arming the east”, July 2005, and Amnesty International, “Sudan: arming the perpetrators of grave abuses in Darfur”, November 2004.

<sup>277</sup> In the SADC Protocol text brokering was defined as “(a) acting for a commission, advantage or cause, whether pecuniary or otherwise; or (b) to facilitate the transfer, documentation or payment in respect of any transaction relating to the buying or selling of firearms, ammunition or other related materials; and thereby acting as intermediary between any manufacturer or supplier of, or dealer in firearms, ammunition and other related materials and buyer or recipient thereof.” In a subsequent seminar of SADC

The Asian and Middle East regions lack any agreements on arms brokering. An explicit reference was made to preventing arms smuggling in the ASEAN Plan of Action to Combat Transnational Crime, and in the ‘APEC Guidelines On Controls And Security Of Man-Portable Air Defence Systems (MANPADS)’ which was submitted by Russian and U.S. governments during the 16th APEC Ministerial Meeting, November 17-18, 2004, is stated that: “Exporting economies will not make use of non-governmental brokers or brokering services when transferring MANPADS, unless specifically authorized to on behalf of the economy [member government].”

### ***Extra-Territorial Applicability***

Since brokering networks involved in arranging arms supplies to illegitimate end users will tend to conduct their activities outside jurisdictions with robust control systems, states that choose not to exercise a sufficient degree of extra-territorial control of their nationals and residents - as they do to prevent and curb the illicit trade in people, drugs and other items – will generally fail to control such activity. In this respect, such states will usually remain entirely dependent on governments with weak arms control laws and enforcement capacity.

In 2005, only 21 states had laws that provided for some degree of extra-territorial control of arms brokering, and most applied a licensing requirement for arranging an arms transfer for supply and delivery in foreign territories.<sup>278</sup> The USA and South Africa laws have a high degree of extra-territorial application that applies to the brokering of any arms supplies outside the home country by residents, companies as well as nationals wherever they are conducting the brokering activity.

In contrast, the laws in France and Italy did not provide for extra-territorial control. The UK law has a high degree of extra-territorial application that only applies to UK permanent residents and companies who broker arms supplies outside the UK to destinations subject to UN, EU or other embargoes, or to certain prohibited weapons. In the Netherlands, extra-territoriality is limited to controlling the financial involvement of a Dutch resident in brokering arms that physically occur between third countries outside the EU,<sup>279</sup> but apparently Dutch citizens who have established a permanent residence or operate regular business abroad do not require a licence from the Ministry of Finance, and are only subject to foreign laws regarding such activity unless the arms will violate an embargo agreed to by the Dutch government.

Most EU national laws to control arms brokering apply only to “third country” brokering i.e. where the broker who is a citizen or permanent resident helps, from his/her home territory, arrange an arms transfer that takes place outside his or her home territory in two or more

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officials in March 2004, it was pointed out by drafting officials that the word “or” between the two clauses had mistakenly replaced the word “and”.

<sup>278</sup> Such states include the Czech Republic, Estonia, Finland, Hungary, Lithuania, the Netherlands, Nicaragua, Norway, Poland, Romania, Sweden, South Africa and the USA.

<sup>279</sup> The Netherlands, Decree on Financial Involvement concerning Strategic Goods

foreign countries. In some cases, the home state of the brokering agent will require him/her to obtain a brokering license even if only part of the brokering activity is conducted on the home territory, including, for example, the sending or receipt of an e-mail, fax, or telephone call.

The EU Common Position was disappointing because it only requires that member states “*take all the necessary measures to control brokering activities taking place within their territory.*” The OAS on the other hand opted to recommend, in Article 8 of the Model Regulations, that national laws covering brokering activities should apply whether or not such activities are conducted in the controlling state’s territory or in a foreign state.

In other regional agreements, there are also no specific clauses to enable the extra-territorial control of arms brokering by the home state of the broker. For instance, the pre-amble to the Nairobi Protocol reads: “*CONCERNED about the supply of small arms and light weapons into the region and conscious of the need for effective controls of arms transfers by suppliers and brokers outside the region...*” Yet in Article 11, the Nairobi Protocol requires: “*State Parties, that have not yet done so, shall establish a national system for regulating dealers and brokers of small arms and light weapons. Such a system of control shall include: i. regulating all manufacturers, dealers, traders, financiers and transporters of small arms and light weapons through licensing; ii. registering all brokers operating within their territory.*”

### ***Licensing systems and ethical criteria***

All but one of the 21 states with laws on arms brokering in 2004 required a license to “mediate” an arms deal between sellers and buyers. Ten states imposed requirements on the closely associated activities of arms financing and arms transporting. However, in only five states did regulatory systems involve the issuance of “**individual licences**” on a case-by-case basis for each brokered deal involving the transfer of arms – in other states, allowance has been made in the law merely for the granting of “**open general licences**” to a broker who could then mediate or negotiate many transfers usually for the same country or the same list of specified customers. Such open general licences could easily be open to abuse and should be restricted to exceptional cases where there is a high level of ethically responsible management of a defence project, but there is not much evidence published on this practice.

Typically, the brokering agent must submit details to the authorities of the deal and provide documentation on the origin, type, and quantity of the brokered arms, as well as on their intended end user and end-use. In the Netherlands and Finland, for example, the broker is required to submit an end-use declaration and relevant assurances by the intended recipient. This may allow the authorities to place conditions on the end uses and possible re-export of the arms.<sup>280</sup> One weakness in developing this system further is the absence of internationally agreed standards for end-use certificates.

A critical weakness of most laws covering arms brokering is that the criteria for the issuance of licences are ill defined and often inconsistent with international standards. This is

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<sup>280</sup> Anders and Cattaneo, *op cit*

compounded by the absence of adequate operational guidance for the issuance of licences for arms exports and imports.

The EU Common Position requires that member states assess applications “*for specific brokering transactions against the provisions of the EU Code of Conduct on Arms Exports.*” While it embodies higher standards than most regional arms control agreements and standards, the EU Code of Conduct is nevertheless not legally binding and still falls short of requiring full compliance with some relevant provisions of international standards. Efforts are underway to improve the criteria in the EU Code, for example by fully incorporating respect for international humanitarian law, and to make the Code legally binding. These improvements will help the 25 EU Member States to improve their arms control systems as well as gain credibility when supporting the efforts of other states to make their national systems consistent with international law.

Since the development of the EU Code and other regional agreements, an increasing number of states have voiced their support for the establishment of universal minimum criteria to govern arms transfers. As indicated by officials at the Biennial Meeting of States on the UN Program of Action on small arms in July 2005, such universal criteria would give meaning to Section 2, Paragraph 11 of the UN Program if they are consistent with relevant principles of international law. In this regard, the OAS Model Regulations offer states an opportunity for considerable improvement of such criteria because in Article 5 the Regulation states that:

*“the National Authority shall prohibit brokering activities and refuse to grant licenses if it has reason to believe that the brokering activities will, or seriously threaten to:*

- a. result in acts of genocide or crimes against humanity
- b. violate human rights contrary to international law
- c. lead to the perpetration of war crimes contrary to international law
- d. violate a United Nations Security Council embargo or other multilateral sanctions to which the country adheres, or that it unilaterally applies;
- e. support terrorist acts;
- f. result in a diversion of firearms to illegal activities, in particular, those carried out by organized crime; or:
- g. result in a breach of a bilateral or multilateral arms control or non-proliferation agreement.

Amnesty International believes that each of the above criteria for the granting to licenses to arms brokers should be elaborated and made operational in national law in a manner consistent with international law, and applied to international arms transfers whether or not they are brokered. Operational guidelines should include a ban on prohibited and restricted arms, updated lists of embargoed destinations/recipients and those that pose a high risk of diversion, relevant data on the grave abuse of human rights with arms, and other practical advice to ensure compliance with each criterion when considering licenses.

### ***Registration and other controls on brokering, including government personnel***

In addition to licensing requirements, as described above, the official registration of those wishing to conduct arms brokering activities is a feature of some national laws and is recommended in international agreements. Registration should allow national authorities to screen out persons and companies that cannot be trusted to comply with domestic and foreign arms control laws, for example because of past violations of arms transfer regulations or convictions for other serious criminal offences, and also to keep track of the persons and entities authorised to engage in the trade of military equipment.<sup>281</sup> This will be more effective if registrations are subject to regular renewal and if the registration system is transparent and used in combination with a case-by-case licensing system for each proposed brokered deal.<sup>282</sup>

In 2004, twelve states were found to have a regulation requiring anybody or entity engaging in arms brokering activities to be officially registered either (a) as a pre-condition for any licence to ensure some level of screening – e.g. Lithuania, the Netherlands, Slovenia, the USA; or (b) as part of an information collection system during the issuance of licences – e.g. in Norway, Sweden, the UK - where the information required on an application for a brokering license can provide the basis for a *de facto* registry of brokers.

States that reportedly operate some form of screening registration system included Belgium, Bosnia and Herzegovina, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Malta, Nicaragua, Poland, Romania, Slovakia, Slovenia, South Africa, Spain, Switzerland, and the USA.<sup>283</sup> These systems vary greatly in their degree of ethical stringency and transparency. Many states have viewed screening registration as an additional optional element of brokering controls, but stronger systems appear to have some distinct advantages.

For example, Estonian law requires those wishing to engage in brokering activities to register not only to act as a broker but also for the particular categories of military equipment they may wish to broker. Each registered broker can be publicly identified on the electronic state register by name, and information is provided on the categories of arms and countries of destination for which the broker has been registered. In addition, the registration number and date are provided. This system allows for public scrutiny and for prospective clients to verify that an Estonian broker is considered to be a law-abiding agent by the Estonian authorities.<sup>284</sup>

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<sup>281</sup> The EU Common Position on brokering makes registration an optional requirement for Member States and, moreover, allows EU states to opt for whatever registration system they choose. Article 4 states that: “1. Member States may also require brokers to obtain a written authorisation to act as brokers, as well as establish a register of arms brokers. Registration or authorisation to act as a broker would in any case not replace the requirement to obtain the necessary licence or written authorisation for each transaction. 2. When assessing any applications for written authorizations to act as brokers, or for registration, Member States could take account, *inter alia*, of any records of past involvement in illicit activities by the applicant.”

<sup>282</sup> The OAS Model Regulations recommend that: “Registration is **effective for two years** from the date of approval. Subsequent registration can only be effected by the submission and approval of a new registration form.”

<sup>283</sup> Holger Anders and Silvia Cattaneo, 2005, *op cit*

<sup>284</sup> *Ibid*

In addition, all states with laws on brokering are required to keep records, and this requirement is included in international agreements,<sup>285</sup> but the problem is that the official data is almost never published thus undermining accountability and public scrutiny. Moreover, only thirteen of the 21 states found to have laws on arms brokering in 2004 required arms brokers themselves to also keep full records of their activities. Yet this is essential for an adequate system of state record keeping and control.

It is evident through case studies that even where states have established controls on the brokering of arms between third countries as well as directly from their own territories, law enforcement and monitoring agencies do not always have information systems, verification procedures or the institutional capacity to enforce their laws.

Clearly, the exchange of some information on brokering and brokers requires a high level of trust between states that such information is reliable and will not be abused.<sup>286</sup>

Arms exporting and importing states also lack cooperative means of verifying the proper delivery and legitimate end-uses of authorised international arms transfers. There appear to be too few investigations and inspections by states to check the conduct of arms brokers and the outcome of their deals. Only in Belgium is a broker required to pay a deposit to the state authorities who must return the deposit once the authorised delivery of arms is verified. Moreover, the records of brokering agents may not be regularly inspected, although in the EU brokers are usually required to submit regular reports every three or four months.

Existing national laws on brokering appear to include the imposition of criminal sanctions such as prison terms and/or fines for serious violations. EU states variously impose a minimum of four to ten years of imprisonment for serious offences.<sup>287</sup> In Belgium, Estonia and Switzerland it seems the state authorities can legally confiscate the arms as well. It is unclear to what extent the proceeds and assets from criminal brokering activity in these three countries can be confiscated for arms brokering offences or to what extent the law covers accomplices of brokers. Generally speaking, minor offences arising from negligence such as the failure to maintain proper records are subject to administrative fines or debarring from the register of authorized arms brokers.

Government officials sometimes act as arms brokers in an official or unofficial capacity but brokering activity by officials in an official government capacity appears to be exempt from

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<sup>285</sup> The EU Common Position requires that “Member States should keep records for a minimum of 10 years of all persons and entities which have obtained a licence.” Under Article 15 (2) of the UN Firearms Protocol, “States Parties that have established a system of authorization regarding brokering as set forth in paragraph 1 of this article are encouraged to include information on brokers and brokering in their exchanges of information under article 12 of this Protocol and to retain records regarding brokers and brokering in accordance with article 7 of this Protocol.”

<sup>286</sup> Article 5 of the EU Common Position requires that: “Member States will establish a system for exchange of information on brokering activities among themselves as well as with third States, as appropriate. A specific arrangement for such exchange of information will be established. This arrangement will take particular account of the case where several Member States are involved in the control of the same brokering transaction(s)... Information will be exchanged, inter alia, in the following areas: — legislation, — registered brokers (if applicable), — records of brokers, — denials of registering applications (if applicable) and licensing applications.”

<sup>287</sup> Article 6 of the EU Common Position on brokering requires that “Each Member State will establish adequate sanctions, including criminal sanctions, in order to ensure that controls on arms brokering are effectively enforced.” It is, however, unclear what “adequate” means and to what extent brokering agents have been prosecuted in the EU and elsewhere for violations of national laws on arms brokering. This should be the subject of specific analysis by the EU.

registration in most existing national laws and regional agreements such as the OAS Model Regulations. US government employees are exempt from provisions of the law on arms brokering if “*acting in an official capacity and employees of a foreign government or an international organization acting in an official capacity.*”

Officials argue that the exclusion of government employees acting in an “official capacity” from broker registration, licensing, licensing and other legal requirements, even if they routinely engage in activities which actively promote sales of arms and security equipment and services, is justified because “the problem” of arms brokering is caused by uncontrolled private individuals and commercial companies. This argument ignores the fact that arms deals brokered by government officials can also result in the proliferation and misuse of arms unless such brokering is regulated according to strict ethical standards.

To broker an arms deal, government employees may for example use their official position to (i) promise a firm involved in the arms deal that it will be included in government security assistance and arms surplus programs or unfairly aid a firm to tender for such a program; (ii) facilitate a firm’s access to financial aid and credit; (iii) arrange state support to a company for the purchase of its “offset” production of arms components; (iv) mobilize a government to support a barter trade deal to benefit a firm; or (iv) simply accept a bribe. Some of these are crimes, regardless of whether one commits them as a *government* arms broker or in any other official capacity. It should instead be emphasized that general criminalizing legislation is not sufficient to prevent such practices, and therefore specific legislation is required. Sometimes it is alleged that former officials of procurement agencies and high-ranking military personnel on the boards of directors and private consultancies of arms manufacturers and private military companies have benefited from previously arranging lucrative contracts for those same firms.

One of the main ways that governments and defence industry-governmental associations promote sales of weapons and other military and security equipment and services is by regularly organizing international arms fairs and exhibitions. They also stage conferences aimed at promoting particular weapon systems. The speakers’ rosters include military personnel, government officials and experts. These events are used to identify and promote the demand and sources of supply for customers of particular military and security products and services, and for announcing major arms deals and contracts.

**SELECTED MAIN ARMS FAIRS ORGANIZED IN 2005**

IDEX (International defence exhibition and conference, Abu Dhabi, February)  
AERO INDIA (Bangalore, February)  
GLOBAL SECURITY ASIA (Special forces and government security, Singapore, March)  
EXA (Italian and foreign "civilian" firearms, Brescia, Italy, April)<sup>288</sup>  
AEROEXPO (Mexico City, April)  
CANSEC (Security and defence Technology, Ottawa, Canada, April)  
EXPOLTECH (Police, security technology, and equipment, Warsaw, Poland, April)  
LAAD and Helitech Latin America (Rio de Janeiro, Brazil, April)  
IDET (Defence technologies, Brno, Czech Republic, May)  
IMDEX Asia (Naval exhibition, Singapore, May)  
MILEKS (Arms and military equipment, Minsk, Belarus, May)  
BALT MILITARY EXPO (Baltic military fair, Gdansk, Poland, June)  
PARIS AIR SHOW (France, June)  
KARUP AIR SHOW (Denmark, June)  
UDT EUROPE (Undersea defence technology, Amsterdam, Netherlands, June)  
VTTV (Military land equipment, technologies and armament, Minsk, Belarus, June)  
IMDS (International maritime defence show, Saint-Petersburg, Russia, June-July)  
FARNBOROUGH AIR SHOW (Farnborough Aerodrome, U.K. July)  
MAKS (International air show, Zhukovsky, Moscow Region, Russia, August)  
TATE (Aerospace and Defense Technology Exhibition, Taipei, Taiwan, August)  
BEIJING AVIATION EXPO (Civil & Military, Beijing, China, September)  
CIAF (Brno, Czech Republic, September)  
DSEi (Defence systems and equipment international, London, United Kingdom, September)  
HELITECH (Duxford, U.K.)  
IDEF 2005 (International defence industry fair, Ankara, Turkey, September)  
MSPO (International defence industry exhibition, Kielce, Poland)  
DEFENDORY (Conventional land, sea, air systems, Piraeus, Greece, October, 2004, 2006)  
EXPOMIL (military equipment, Bucharest, Romania, October)  
SEOUL AIR SHOW (Aerospace and defence exhibition, Seoul, South Korea, October)  
DEFENSE 2005 (Bangkok, Thailand, November)  
DUBAI INTERNATIONAL AEROSPACE EXHIBITION (U.A.E., November)  
MILIPOL (Internal state security, Paris, France, November)  
LIMA (Langkawi international maritime and aerospace exhibition, Malaysia, December).

Opportunities for brokering deals at such international arms fairs are numerous yet there are usually no procedures to monitor or licence the brokering of specific arms deals as opposed to general sales promotions. For example, in late 2002 the African Aerospace and Defence Exhibition in South Africa attracted more than 20,000 trade visitors from five continents and 40 countries, but many visitors were from South Africa where there is a serious problem of gun violence.<sup>289</sup> In all, 87 official delegations representing 37 countries attended the

<sup>288</sup> Between 1997 and 1999, Italy's commercial exports to Albania (then engaged in supplying arms to the so-called Kosovo Liberation Army) totalled \$1.6 million and, in addition to military firearms and cartridges, included about \$860,000 of "civilian" firearms, parts and accessories. Source: TransArms' Database 1994-2001, based on the UN COMTRADE.

<sup>289</sup> According to a 1998 United Nations survey of 69 countries, South Africa had one of the highest firearm related homicide rates in the world per 100 000 people, second only to Colombia. Quoted in 'Gun related deaths and injuries, Gun Control Alliance, South Africa, [www.sacc-ct.org.za/statistics.html](http://www.sacc-ct.org.za/statistics.html)

exhibition.<sup>290</sup> Yet, a UK government sales agency was issuing a brochure offering for sale “surplus” quantities of the most recent update rifle only just being introduced into the UK armed forces.<sup>291</sup>

At a major international military exhibition in Russia, MAKS 2005, visited by the Russian President, firms based in Russia signed various sales agreements for about \$1 billion including a \$350 million deal to provide India’s Hindustan Aeronautics Ltd with Saturn AL-55I aero-engines despite India’s supply of helicopters to Nepal where aerial attacks on villages have been carried out by the Nepalese armed forces.<sup>292</sup> At a large UK arms exhibition, DSEi<sup>293</sup>, held in September 2005 and visited by the UK Defence Minister, 1,202 companies from many countries including the China Precision Machinery Import-Export Corporation<sup>294</sup> exhibited military and security items despite China being the subject of a European Union arms embargo for its violation of human rights. Conversely, at the Beijing Aviation Expo, held in September 2005, the list of 175 companies from 17 countries exhibiting arms included major military and arms trade companies from France, Italy and the USA despite their countries’ imposition of arms embargoes on China for human rights violations.<sup>295</sup> Other arms fairs offer unique opportunities for the international brokering of arms and security equipment and appear to be subject to few if any controls to ensure respect for human rights.<sup>296</sup> This cannot be justified when the implications for human rights of arms deals at such fairs are so great. It is important that laws and procedures to control arms brokering are strict and based on ethical standards and accountability derived from international law.

Much greater transparency in “authorized” arms exports would also discourage corruption by allowing for easier tracking of weapons and payments.<sup>297</sup> Complementary laws to prevent and prosecute official corruption need to be well designed according to the best international standards and robustly implemented. Such laws should also take into account the possibility of private gains by officials from arms brokering. “Unofficial” brokering by officials is

<sup>290</sup> See for example, Amnesty International, “Undermining Global Security: the European Union’s arms exports”, 2004, page 16

<sup>291</sup> Company brochure, Omega database, offering for sale the SA80 rifle (designated the L85A1), including the most recently updated model L85A2

<sup>292</sup> *Rosoboronexport* State Corporation was the fair’s general sponsor and Russia’s main arms export marketing company. See the *Rosoboronexport* website, September 2, 2005. On Nepal, see Amnesty International, 2005, *op cit*. The deal with India is also relevant because India been engaged in threats of dangerous nuclear confrontation with Pakistan and in borders conflicts with Pakistan and China.

<sup>293</sup> Likely one of the largest and more contested military exhibitions in the world, it advertises itself as “a key-event for the total supply chain” of arms. In 2003 and 2005 editions promoted Denel, Israel Military Industries, and Raytheon products such as cluster bombs. See Peter Spiegel “China invited to weapons exhibition despite EU arms embargo,” *Financial Times*, September 13, 2005

<sup>294</sup> CPMIEC is a producer and exporter of various types of missiles, and a subsidiary of China Aerospace Corp that was sanctioned in 2004 and other years under the U.S. Iran Nonproliferation Act for transferring equipment and technology of proliferation significance. Among the exhibitors, there were 626 U.K. companies, 182 from the U.S., 59 from Germany, 30 from France and Canada, 25 from Israel, 24 from Italy, 22 from Australia; 21 from Netherlands and South Africa, 17 from Denmark and Switzerland, 16 from Austria, 14 from Spain, 13 from Norway, 11 from Sweden, 10 from Czech Republic, 9 from Belgium.

<sup>295</sup> France’s Thales Group, Italy’s *Oerlikon Contraves*, Russia’s Mil Helicopter Plant, Ukraine’s Antonov and *Ukrspetsexport*, United States’ Lockheed Martin, Boeing, and United Technologies.

<sup>296</sup> At IDEX 2005, the main international arms fair of the Middle East, the UAE government announced deals worth \$358 million and very senior U.S. officials promoted arms sales while a major arms corruption procurement scandal was being revealed in Iraq that began under US authority. See for example, AFP “UAE kicks off arms bazaar with deals worth \$359 million,” February 13, 2005.

<sup>297</sup> Rober, Joe. *The Hidden Market: Corruption in the International Arms Trade*, (New York: The New Press, 2001) 224 pages.

difficult to prove but not impossible. Through careful monitoring and spot checks, evidence could be obtained that government employees had received a tangible private fee or other extra benefit from brokering an arms deal.

There are a number of multilateral instruments against corruption and, although none appear to provide for the control of arms brokering as such,<sup>298</sup> they do set out standards that could prevent “unofficial” arms brokering by officials. For example, Article 9 of the 2003 UN Convention against Corruption requires state parties to, “*in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption.*”<sup>299</sup> The Convention goes beyond previous instruments of this kind by providing for the criminalisation, not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and laundering of the proceeds of corruption. Offences committed in support of corruption, including money-laundering and obstructing justice, are also dealt with. Convention offences also deal with the problematic areas of private-sector corruption.

## **6. Arms transfers and routes in Africa**

Most of the world’s armed conflicts between 1990 and 2005 have taken place in Africa, the Middle East and South-Asia with little regard for the rules of international humanitarian law and devastating consequences for human rights. These conflicts have been most numerous in Africa where arrangement and delivery of arms supplies has largely been conducted from abroad.

In Africa, state and non-state fighters in 27 countries have been involved in armed conflicts during the 1990s and early 2000s resulting in hundreds of millions of casualties, permanently disabled, and displaced people, and the perpetration of gross human rights abuses such as extrajudicial executions, rape, torture, deportations and the destruction of livelihood. These conflicts were in Algeria; Angola; Burundi; Cameroon; Central African Republic; Chad; Congo Republic; Democratic Republic of the Congo (DRC); Eritrea; Ethiopia; Guinea-Bissau; Ivory Coast; Liberia; Mali [Azawad]; Morocco and Western Sahara; Mozambique; Namibia [Caprivi Strip]; Niger [Azawad, Eastern Region]; Nigeria [Delta]; Rwanda; Senegal [Casamance]; Sierra Leone; Somalia; Sudan; and Uganda [Northern],<sup>300</sup>

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<sup>298</sup> The Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996, the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on May 26, 1997, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organisation for Economic Cooperation and Development on November 21, 1997, the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on January 26, 1999, the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on November 4, 1999, and the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on July 12, 2003.

<sup>299</sup> The UN Convention against Corruption was adopted by the General Assembly by resolution 58/4 of October 31, 2003, and came into force on December 14, 2005 with 40 ratifications and 138 signatures by states.

See: [http://www.unodc.org/unodc/en/crime\\_convention\\_corruption.html](http://www.unodc.org/unodc/en/crime_convention_corruption.html)

<sup>300</sup> See: Uppsala Universitet, Department of Peace and Conflict Research, “*Countries with one or more armed conflicts 1989-2004.*” [www.pcr.uu.se/database](http://www.pcr.uu.se/database); Ernie Regehr, Project Ploughshares “*Armed Conflicts Report,*” 2000-2002-2003, Waterloo,

In other countries in Africa, large numbers of people have suffered severe human rights violations perpetrated by armed security forces outside the context of armed conflict. These violations have included extra-judicial executions, unlawful and incommunicado detentions, the torture and ill treatment of prisoners, repression of dissent in such countries as Comoros [Anjouan], Djibouti, Egypt, Gabon, Gambia, Ghana, Guinea, Kenya, Lesotho, Madagascar, Mauritania; Swaziland; Tanzania [Zanzibar]; Togo; Zimbabwe and Zambia.<sup>301</sup>

Most of the arms and ammunition used in these conflicts ranged from small arms and light weapons to battle tanks, combat aircraft and helicopters, medium/large calibre howitzers, and missiles, as well as security equipment used by police and militias. These arms were procured in three main ways from:

- authorized arms transfers (government-to-government, brokered commercial transfers);
- non-authorized arms transfers illegally brokered and transported, either from manufacturing countries or from second-hand markets; and
- the arsenals of invading armed forces and private military and security companies.

Several of Africa's arms trading partners also have special programs for selling surplus arms, as well as for security or military assistance. Under these programs, arms are transferred either free of charge, sometimes with the freight cost included, or at a cost that is a fraction of their market value. For example, in the two-year period 2002-2003 and under military assistance programs, France transferred military arms "free of charge" to the following African countries, some of them involved in human right violations: Benin, Burkina Faso, Congo (Brazzaville), Chad, Djibouti, Gabon, Ivory Coast, Mali, Morocco, Niger, Uganda, Senegal, Togo, Tunisia.

However, the value of arms transfers to Africa involving French nationals, residents and registered companies is higher. For example, France's arms trade statistics from 1994 to 2003 show only one entry in 2003 for arms transfers to Angola valued about US\$1 million, whereas the so-called *Angolagate* scandal in France revealed that between 1993 and 1996 Angola covertly received "un-authorized" arms for more than US\$600 million brokered by French and foreign nationals.<sup>302</sup> The arms – rocket launchers, mortar bombs, missiles, bazookas,

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Ontario, Institute of Peace and Conflict Studies, Conrad Grebel College; Waddoups, S., S. Wolfe "Armed Conflicts in the World Since the End of the Cold War (1989 - Present)," US Congressional Research Service, August 2, 2000; Federation of American Scientists, "The World at War," <http://fas.org/man/dod-101/ops/war/index.html>; Peace Pledge Union, "Major Armed Conflicts since 1945," [www.ppu.org.uk](http://www.ppu.org.uk); Parker, K., A. Heindel "Armed Conflict In The World Today: A Country By Country Review," Humanitarian Law Project/ International Educational Development and Parliamentary Human Rights Group, UK), Spring 2000.

<sup>301</sup> Amnesty International, <http://web.amnesty.org/library/>; Parker, K., A. Heindel "Armed Conflict in the World Today: a Country by Country Review," quoted.

<sup>302</sup> See: Amnesty International "Undermining Global Security: the European Union's arms exports," quoted; "A catalogue of failures: G8 Arms Exports and Human Rights Violations," May 19, 2003. The so-called Angolagate reportedly involved in covert and officially "un-authorized" arms transfers the arms traffickers Pierre Falcone and, among others, the son of the late French president Mitterand. See for the first account of the Angolagate, the series by Fabrice Lhomme and Stephen Smith, *Le Monde*, December, 2000-April 2001; Silverstein, K. "The Arms Dealer Next Door: international billionaire, French prisoner, Angolan weapons broker, Arizona Republican. Who is Pierre Falcone?," in *These Times* December 22, 2001; Global Witness

tanks, helicopters, and tons of ammunition – were brokered through a complex network of financial transactions involving future rights on Angola's oil production. A Slovakian company, ZTS-Osos, that specialized in tanks (T-72) and other combat vehicles served as the conduit for the arms of Russian origin and reportedly gained a commission of 1% on the total value of the transactions.<sup>303</sup> In 1999, a company – Falcon Oil & Gas – owned by one of the brokers, the French national Pierre Falcone, obtained a 10% interest in Angola's offshore oil field block 33, operated by Exxon.<sup>304</sup> Angola was at the time involved in a civil war that has taken the lives of hundreds of unarmed civilians each year at the hands of both government forces and the National Union for the Total Independence of Angola (UNITA)<sup>305</sup>

Struggles for political influence and attempts to control the supply of natural resources have all played a role in inducing the main arms exporters to address Africa's growing demand for armaments. Moreover, the sale of armaments to Africa has provided arms exporting countries with an effective way to eliminate relatively obsolete weapons from military arsenals and arms dealers' warehouses.

#### MAP G AND CAPTION (AFRICAN MINING AND WARS)

It is sometimes thought that arms are simply supplied to Africa from a limited number of global and ex-colonial foreign powers, plus some clandestine transcontinental trafficking networks. However, data show that imports of weapons and munitions to African countries come from a very large number of countries and that arms transfers between African countries is also now significant. This reflects the growing globalization of the arms trade, both authorized and non-authorized, as well as the diversification of routes used, by land, sea, and air. During the period 1991-2002, no less than 83 non-African (inter-trade) and 43 African (intra-trade)<sup>306</sup> countries exported military and "non-military" arms and parts to African

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*"All the presidents' men,"* March 2002. Together with a Franco-Russian businessman, Arkadi Gaïdamak, Falcone set up a supply line of arms from Eastern Europe for the Angolan company Simportex, of which Falcone was at that time a director. The scandal of covert backing of these transfers by various French officials is still open [please explain what this means.] See *"Paris Maintains Complaint,"* in Africa Energy Intelligence, July 13, 2005; *"Angolagate follows the money. Switzerland on Wednesday gave French authorities bank documents,"* September 29, 2004.

<sup>303</sup> Interview with Arkadi Gaïdamak, *"Liberation de pilotes en Bosnie, vente d'armes à l'Angola. Gaydamak parle,"* by J. Moore, M. Illouz and A. Schwartzbord, in Liberation, 6 March 2001. According to the inquiry "Making a killing, the business of war" (Center for Public Integrity, Investigative Journalism in the Public Interest, [www.publicintegrity.org](http://www.publicintegrity.org)) *"a Dutch intelligence report obtained by ICIJ said that Gaydamak, through his connections in Russia, was able to purchase old Soviet and East European weapons systems that still had markets in war zones in Africa, Asia or Latin America. For example, the Russian state-owned arms company Rosvooruzhenie was the majority (67.5 percent) shareholder in the Slovakian arms manufacturing company, ZTS Osos, whose weapons Gaydamak sold to the Angolan government during the early 1990s. An Interpol document obtained by ICIJ notes that in 1995 Gaydamak was the representative of ZTS Osos in Russia."*

<sup>304</sup> Global Witness *"Arms and Corruption with Angola,"* December 22, 2000; *"Wide implications for Angola and region from French arms scandal,"* in SouthScan, January 19, 2001, <http://allafrica.com/stories/200101190081.html>

<sup>305</sup> *"The human rights abuses reported included torture, mutilation, abductions and killings of civilians. In 2001 alone, the armed conflict and insecurity were responsible for 300,000 people being forced to flee their homes, bringing the number of internally displaced people to four million,"* Amnesty International *"Undermining Global Security: the European Union's arms exports,"* March 30, 2004.

<sup>306</sup> Due to the limited number of African countries with a sizeable arms production the intra-trade refers to transfers from stocks that were previously imported from other countries, exports or imports destined to peacekeeping operations, and genuine exports from African arms producing countries. Records from commercial transactions also show that many African countries received

countries.<sup>307</sup> Among the countries with the largest number of arms trade partners in Africa were the United States (49 countries); France (47), Italy (45), U.K. (41), Germany (41) China (40), South Africa (35), Spain (35), Belgium (33), Czech Republic (31), Russia (30), and Switzerland (30).

### *Africa's arms routes to conflicts and repression*

Most wars in Africa since 1990 have been internal armed conflicts that are civil wars, involving serious violations of international humanitarian law. Civilian populations in the vicinity of such conflicts have been subjected to gross violations *and abuses* of human rights. The number of countries supplying military and non-military arms, ammunition and parts in one or more years to African countries involved in armed conflicts is set out in the following table.<sup>308</sup>

| <b>COUNTRIES SUPPLYING ARMS, AMMUNITION AND PARTS<br/>TO AFRICAN COUNTRIES INVOLVED IN ARMED CONFLICTS, 1991-2002</b>   |  |
|---|--|
| NOTE: Not all conflicts in the following table lasted the whole period (1991-2000). Therefore some of the states listed may have supplied arms to countries during a time, within this period, when they were not involved in any armed conflict. |  |
| <b>To:</b>  | <b>Suppliers from:</b>   |
| Algeria   | Belarus; Belgium; Bulgaria; China; France; Germany; Iran; Italy; Poland; Romania; Russia; Slovakia; South Africa; Spain; Switzerland; U.K.; Ukraine; United States.  |
| Angola  | Albania; Belarus; Belgium; Brazil; Bulgaria; Burkina Faso; China; D.R. Congo; Czech Republic; France; Germany; Israel; Italy; North Korea; Poland; Portugal; Romania; Russia; Rwanda; Slovakia; South Africa; Spain; Togo; U.K.; Ukraine; United States; Zimbabwe. |
| Burundi   | Azerbaijan; Belgium; Bulgaria; China; Congo D.R.; France; North Korea; Russia; Rwanda; Slovakia; South Africa; Tanzania; Turkmenistan; U.K.; Ukraine; Zimbabwe.  |
| Cameroon  | Belgium; China; Denmark; France; Germany; Italy; Portugal; Romania; Russia; South Africa; Spain; U.K.; United States.  |
| Central African R.  | Belgium; Bulgaria; China; France; Italy; Kenya; Portugal; Romania;   |

arms and ammunition from what Customs agencies define "Areas not elsewhere specified", as well as from Free Trade Zones and classified origins (i.e. from countries that governments do not want to be specified).

<sup>307</sup> See for sources the table below.

<sup>308</sup> The list is the result of information on the listed countries included in COMTRADE database, arms trade statistics, media news, and various reports by Amnesty International, Human Rights Watch, Federation of American Scientists and Parker, K., A. Heindel *Armed Conflict In The World Today: A Country By Country Review*. Humanitarian Law Project/ International Educational Development and Parliamentary Human Rights Group, UK), Spring 2000; Ernie Regehr, Project Ploughshares *Armed Conflicts Report 2000-2002-2003*. Waterloo, Ontario, Institute of Peace and Conflict Studies, Conrad Grebel College

|                  |  |
|------------------|--|
|                  | Russia; South Africa; Spain; Switzerland; U.K.; Uganda; Ukraine; United States; Zimbabwe;  |
| Chad             | France; Germany; Italy; Libya; Netherlands; Poland; Slovakia; United States  |
| Congo R.         | Angola; China; France; Italy; Poland; Russia; South Africa;  |
| Congo D.R.       | Belgium; China; Czech Republic; France; Georgia; Germany; Georgia; Italy; Japan; North Korea; Poland; Romania; Rwanda; South Africa; Uganda; United States; Zimbabwe.  |
| Eritrea          | Belgium; Finland; France; Georgia; Italy; Moldova; Russia; South Africa; United States.  |
| Ethiopia         | Belarus; Bulgaria; China; Czech Republic; France; Germany; Italy; Romania; Russia; Slovakia; South Africa; Spain; U.K.; United States.   |
| Guinea-Bissau    | France; Gambia; Italy; Portugal; Spain; United States  |
| Ivory Coast      | Australia; Belgium; Brazil; Burkina Faso; China; Cuba; Czech Republic; France; Germany; Ghana; Italy; Philippines; Portugal; South Africa; South Korea; Spain; Switzerland; U.K.; United States; Areas not specified.                      |
| Liberia          | Belgium; Burkina Faso; China; France; Guinea; Ivory Coast; Kyrgyzstan; Libya; Slovakia; U.K.; Ukraine; United States; Yugoslavia/Serbia.   |
| Mali             | France; Italy; Switzerland; Tunisia; U.K.; United States.  |
| Morocco/W.Sahara | Belgium; China; France; Germany; Italy; Netherlands; Portugal; Russia; Slovakia; Spain; U.K.; United States.   |
| Mozambique       | Italy; Mexico; Portugal; South Africa; Spain; U.K.; United States, Zimbabwe.   |
| Namibia          | Austria; China; Costa Rica; Czech Republic; Germany; Italy; Russia; South Africa; U.K.; United States; Areas not specified;  |
| Niger            | Belgium; China; France; Germany; Italy; Ivory Coast; Nigeria; Poland; Portugal; Russia; South Africa; South Korea; United States; Areas not specified  |
| Nigeria          | Australia; Belgium; Brazil; China; Czech Republic; France; Germany; India; Indonesia; Iran; Israel; Italy; Norway; South Africa; South Korea; Spain; Switzerland; U.K.; United States.   |
| Rwanda           | Albania; Belarus; Belgium; Bulgaria; China; D.R. Congo; Egypt; France; Germany; Israel; Italy; Kazakhstan; Poland; Romania; Russia; Slovakia; South Africa; U.K.; Uganda; Ukraine; United States; Zimbabwe.                                |
| Senegal          | Belgium; Brazil; China; France; Germany; Guinea-Bissau; Italy; Libya; Portugal; Russia; South Africa; U.K.; United States;   |
| Sierra Leone     | Belarus; Belgium; China; France; Germany; Italy; Liberia; Poland; Romania; Slovakia; Spain; U.K.; Ukraine; United States.  |
| Somalia          | Eritrea (rebel factions); Ethiopia (rebel factions); Iran; Libya; Lithuania; Poland; U.K.; United States; Areas not specified.   |
| Sudan            | Belgium; China; Eritrea (rebels); Ethiopia (rebels); France; Germany; Iran; Iraq; Italy; Jordan; Kazakhstan; Libya; Malaysia; Malaysia; Russia; Saudi Arabia; South Africa; Turkey; U.K.; Uganda (rebels); United States; Yemen; Zimbabwe. |
| Uganda           | Belarus; Belgium; Bulgaria; China; France; Germany; Israel; Italy; Poland; Russia; South Africa; Sudan (rebels); U.K.; Ukraine; United States.   |

As indicated in the table above, several African countries have also procured part of their armaments from domestic production, namely from Nigeria, Uganda, Zimbabwe, and South Africa, and these production facilities are also a source of supply for other countries.

Other African countries not involved during this period in armed conflict as defined in the Geneva Conventions are not listed but several have experienced severe human rights violations and some have acted as supply points to African conflicts, in a few cases from their own domestic arms manufactures. For example, Egypt's military production facilities, located in the Central and Northern region and served by nearby airports, are the source of many types of equipment exported to African and other countries, including infantry weapons and ammunition (including the Egyptian version of the Soviet AK-47 assault rifle), communication equipment and other dual-use electronic goods, radar systems, aircraft and aircraft engines, tanks and other armoured vehicles, ships, chemicals and other civil-military products.<sup>309</sup> The conventional weapons complex includes sixteen factories under the supervision of the Ministry of Military Production<sup>310</sup>; nine companies under the ownership of the Arab Organization for Industrialization<sup>311</sup>; and three companies belonging to the National Service Products Organization and manufacturing chemicals, electronic products and other dual-use products. The Sakr Factory engages in the production of various type of weapon systems, including the RPG7 (portable, shoulder-fired, short-range), the Fateh anti personal and anti-tank mine clearing systems, the Sakr-eye (an anti-aircraft missile system), in addition to light rocket systems and launchers widely exported to other African countries.<sup>312</sup>

Egyptian officials have become noted for their persistent opposition to strong arms control proposals in discussion at the United Nations, and the geo-political spread of Egypt's arms exports indicates the market forces influencing such policies as well as the wide range of routes that must be used to deliver items from this medium-level arms industry, as illustrated in the box below.

#### MARKETS IN AFRICA FOR EGYPTIAN HEAVY MILITARY INDUSTRIES

- French/German-designed Alphajet fighters<sup>313</sup> in service with the Air Forces of Cameroon, Egypt, Ivory Coast, Morocco, Nigeria, and Togo;

<sup>309</sup> Nasr, H. *Military Factories. Egypt*. Washington, U.S. Foreign Commercial Service, U.S. Department of State, 1998; Federation of American Scientists website; Global Security.com website; Arab Organization for Industrialization website.

<sup>310</sup> The Ministry of Military Production controls various production facilities, including factory 54 (Maadi Co. for Engineering Industries), which produces Egyptian AK-47 assault rifles, and factory 200 (Tanks Production and Repair Co.), which manufactures, under a co-production agreement, the U.S. M1A1 military tanks.

<sup>311</sup> Funded in 1975 by Egypt, Qatar, Saudi Arabia, and UAE and since 1993 solely controlled by Egypt. It owns seven of its nine companies and holds a majority stake in two joint-ventures with international partners. During the last decades, OAI has co-operate with foreign companies such as Chrysler, Dassault-Breguet, General Dynamics, and General Electric.

<sup>312</sup> Arab British Dynamics produces, among other equipment and installation works, the modified Swingfire (an anti-tank guided missile system). The Electronic Factory manufactures various types of aircraft communication, test, and control devices, while another AOI company, Kader Factory, engages in the production and export of armoured fighting vehicles, such as the Fahs-240 and 240-30, and light armoured vehicles.

<sup>313</sup> See: Aviation Week & Space Technology *Aerospace Source Book 2002*; Jane's All the World Aircraft 200-2001. London, Sampson Low, Marston & Co. 2001; Durham, S. *Jane's International Defence Directory 2000*. Coulsdon, Surrey, UK, Jane's Information Group, 2000

- Brazilian EMB-312 Tucano military trainer aircraft in service in Egypt and Kenya;
- R-13 engines for MiG 21 jets in service in Algeria, Angola, D.R. Congo, Egypt, Ethiopia, Guinea-Bissau, Libya, Madagascar, Mali, Mozambique, Nigeria, Uganda, and Zambia;
- T-56 engines for C-130 Hercules (Lockheed-Martin) tactical aircraft in service in Algeria, Angola, Botswana, Cameroon, Chad, D.R. Congo, Egypt, Gabon, Libya, Morocco, Niger, Nigeria, and South Africa;
- CT-64 engines for the DHC-5 Buffalo transport aircraft in service in D.R. Congo, Egypt, Kenya, Mauritania, Sudan, Tanzania, Togo, and Zambia;
- ATAR-9C engines for Mirage jets in service in D.R. Congo, Egypt, Gabon, Libya, and Morocco;
- The Arab British Engine Company, one of the two AOI joint-ventures,<sup>314</sup> produces TV2-117A engines for Soviet Mi-8 military helicopters in service in Algeria, Burkina Faso, Djibouti, Egypt, Eritrea, Ethiopia, Gabon, Libya, Madagascar, Mali, Mozambique, Sudan, and Zambia, and the Astazou 14H engine for French-designed Gazelle helicopters, in service in Angola, Burundi, Cameroon, Chad, Egypt, Ghana, Guinea, Kenya, Libya, Morocco, Mozambique, Rwanda, and Senegal.

South Africa also has a significant military-industrial complex that exports to a large number of African countries and influences its cautious approach to the strict control of arms in the United Nations. During the *apartheid* regime, this arms industry was centred on the leading African arms manufacturer Armscor but the company has been substantially remodelled since the beginning of the 1990s. In 1992, Armscor ceased to be an arms manufacturer and became an organization responsible for the acquisition of items for the Department of Defence, the Security Services, the Police Services and Correctional Services, as well as a company that, among other functions, assists South Africa's defence industry to access foreign markets.<sup>315</sup> Arms manufacturing was assigned under a 1992 separate Act of Parliament to Denel, the former manufacturing arm of Armscor. This company was reorganized as an independent and private entity with the name of Denel Group of South Africa and had 10,700 employees in 2005.<sup>316</sup> Companies within the Denel Group produce a wide range of military items, including military jet aircraft and helicopters, armoured vehicles and artillery, small arms and light weapons and components and ammunition.<sup>317</sup> South Africa's military-industrial complex

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<sup>314</sup> The other joint-venture, Arab American Vehicle, manufactures military jeeps and civilian vehicles.

<sup>315</sup> ARMSCOR's *Annual Report 2003/2004* ([www.armscor.co.za](http://www.armscor.co.za)). Armscor's new marketing functions were officially mandated in a new Armscor Act signed by South Africa's President in April 2004

<sup>316</sup> Denel Group's *Annual Report 2004* ([www.denel.co.za](http://www.denel.co.za))

<sup>317</sup> Denel Group's *Annual Report 2004* ([www.denel.co.za](http://www.denel.co.za)) The Denel Group presently includes an Aerospace Group (Aerospace Systems; Optronics; Airframe Manufacturing; Aerospace Engineering; Aircraft Logistics) and a Land Systems Group (Systems; Large Calibre Ammunition; Explosives and Pyrotechnic Ammunition; Small/medium Calibre Ammunition [formerly PMP] "one of the largest small arms ammunition manufacturers in the world and an internationally established manufacturer of small and medium calibre military and commercial [sporting] ammunition products, as well as components"; Mine Action, manufacturer of platforms for the famous Mine-Protected Vehicle). The two divisions have variously reorganized and merged the production of subsidiaries and divisions such as Atlas, Kentron (including Elopro and Irengo), LIW [formerly Lyttleton Engineering Works], Mechem, Musgrave, Naschem, La Forge, OTB, PMP [Pretoria Metal Pressings], Somchem, Swartklip, Vektor, and Denel Informatics.

includes many other companies, engaged in various military and military-related productions.<sup>318</sup> South African arms exports to African countries since 2000 include Algeria, Angola, Botswana, Cameroon, Democratic Republic of the Congo, Djibouti, Egypt, Ivory Coast, Kenya, Lesotho, Mali, Mozambique, Nigeria, Rwanda, Swaziland, Tunisia, Uganda, Zimbabwe and Zambia.<sup>319</sup>

Nigeria's Defence Industry Corporation, DICON, located at Kaduna about 500 miles northeast of Lagos, has during different stages of its 36-year existence produced small arms ammunition, rifles and pistols. DICON received assistance and licenses from FN Herstal in Belgium to produce the NR-1 rifle and from Beretta in Italy to produce pistols, and it was also involved in assembling helicopters with help from Germany and armoured personnel carriers with assistance from Austria.<sup>320</sup>

Uganda's, Nakasongola Factory<sup>321</sup> or National Enterprise Corp., reportedly owned by Chinese interests and further developed with the aid of Chinese, North Korean and South African assistance, manufactures land mines, ammunition, and infantry weapons, as well as performs repairing and maintenance of military equipment. Two other companies, Saracen Electronics and Saracen Guns & Ammunition – established in 1997 by the security company Saracen Uganda – supply alarm systems (and security services), handguns, hunting and sporting rifles.

Zimbabwe's State-controlled Zimbabwe Defence Industries (ZDI, Harare) has produced ammunition and infantry weapons since the 1980s, including small calibre ammunition, landmines and 81 and 120 mm calibre mortar shells.<sup>322</sup> Nearly bankrupted in October 2001,<sup>323</sup> two months later the company started negotiations with Angola for an arms joint-venture company to be built in Harare (mostly for exports), after failing to finalize a similar operation with Namibia in 2000.<sup>324</sup> In addition, there are two companies for de-mining works, Mine-Koch and Mine-Tech, and a privately transport company (Zvinavashe Transport) that operates military transport, owned by the former head of Zimbabwe Defence Forces.<sup>325</sup>

<sup>318</sup> *Africa Defence Industry* in Africa Defence Journal 2001, Ashford, Middlesex (UK), Spitteler Private Ltd; South African Defence Industry Directory, 2004-2005 ([www.sadid.co.za](http://www.sadid.co.za)); NISAT and University of Cape town's Center for Conflict Resolution (see [www.nisat.org/database\\_info](http://www.nisat.org/database_info); <http://ccrweb.ccr.uct.ac.za>).

<sup>319</sup> South African Export Statistics for Conventional Arms, 2000-2003, and company statements

<sup>320</sup> *Africa Business*, February 1998. According to the Small Arms Survey 2001 (p. 41), early in 2000, as in other periods, financial difficulties forced DICON to suspend operations, but in 2001 the South Africa's defence group Denel proposed (UN Office for the Coordination of Humanitarian Affairs, Integrated Regional Information Network for West Africa, February 12, 2001) a joint-venture to take over the management of DICON. In June 2001, Mohamed Buba Marwa, chairman of DICON stated that the company will soon enter the production of mortars, missiles, guns and small arms ammunition (*Nigeria to manufacture heavy weapons*. Concord Times, June 28, 2001). The company has a subsidiary in the DRC (Congo-Duka, Kinshasa), but it is now inoperative.

<sup>321</sup> *Africa Defence Industry* [quoted]; Jane's International Defence Review, August 1998; New African, January 1999; Indigo The Indian Ocean Newsletter n.772.

<sup>322</sup> *Africa Defence Industry* [quoted]; Mlambo, N. *The Zimbabwe Defence Industry, 1980-1995*. Defence Digest Working Paper No. 2, SACDI, 1998

<sup>323</sup> Luke Tamborinyoka, "Zimbabwe Defence Industries failing to pay its workers". In National News, October 19, 2001.

<sup>324</sup> "Zimbabwe, Angola to operate joint arms firms?". In Financial Gazette, December 24, 2001

<sup>325</sup> In partnership with John Wabira, Permanent Secretary in the Ministry of Defence. Zvinavashe and Wabira also own the companies Zvinavashe Investments and the mine company Osleg, founded in 1998 to trade gold and diamond of the "allied" Kabila's Congo. See Taylor, I., *The "Blind Spot" of the UN Expert Panel on illegal resource extraction in the DRC*, EDC News, January 2001; UN Security Council *Report of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of DR Congo* (4/12/01).

Other African countries, such as Tanzania, have some capacity to manufacture small arms and infantry weapons and ammunition. Tanzania has recently tried to expand the ammunitions factory owned by its People's Defence Forces at Mzinga in Morogoro with the help of the munitions manufacturing company, New Lachaussee of Liege (Belgium). However, in response to the concerns and opposition expressed by parliamentarians, the media and NGOs, the Belgian Federal government suspended the licence necessary to export equipment and materials needed for the expansion project.<sup>326</sup> Sudan is also reported to have military production facilities for ammunition and other arms.<sup>327</sup>

### *Africa's transport networks and arms transfers*

As indicated in the table above, arms inflows to African countries whose people were suffering violent conflicts originated from a very wide geographical spread of countries. Thus, the routes used to supply arms to Africa's conflicts have included the majority of the trade lanes connecting the continent to the rest of the world, as well as Africa's internal transport networks.

Africa's transport networks are both complex and highly differentiated in terms of efficiency, security and reliability. Poverty, unemployment, lack of official accountability and training, and the presence of criminal rings in many of Africa's gateways make it easier for traffickers and corrupt officials to outwit transport officials and law enforcement personnel.<sup>328</sup> Thus, the proper monitoring of cargoes and the enforcement of regulations in many of Africa's transport networks is more difficult than in other regions, even where the authorities are committed to curbing and eradicating illegal trafficking. Such monitoring and control is even more difficult if political leaders and senior officials are ordering or sanctioning illegal trading and transport activities. One consequence is the diversion of small arms involving local officials, traders and transporters and the consequent arming of armed gangs and warlords.

### *Sea-borne trade*

Africa hosts 47 main sea ports, nearly all with container terminals, along its 18,950 mile-long coastline and in Cape Verde, Mauritius, Reunion, Sao Tomè, and Seychelles Islands. However, there are 184 ports that can accommodate ocean-going vessels and 469 ports in

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<sup>326</sup> "Belgian Imbroglia over a munitions factory", The Indian Ocean Newsletter n. 1126, March 12, 2005; "Belgium Pulls Out of Dar Ammo Deal", in The East African, April 4 2005 (allAfrica.com).

<sup>327</sup> For example at Yarmouk near Khartoum; <http://www.globalsecurity.org/wmd/world/sudan/yarmook.htm>; and Eric Reeves, "Sudan at the Crossroads: Transforming Generations of Civil War into Peace and Development", The Fletcher School of Law and Diplomacy (Tufts University), March 11-12, 2004

<sup>328</sup> See, for example, the recent case of corruption and high-place complicities at Mombasa port: S. Muiruri "Port boss freed after political tug-of-war," The Nation (Nairobi), January 14, 2005; US Department of State, Bureau for International Narcotics and Law Enforcement Affairs "International Narcotics Control Strategy Report 2002, 2003. Africa and the Middle East," March 2003, March 2004; "Narcotics Control 2005," March 2005.

total in which feeder ships can unload sizeable arms cargoes. In addition, smaller fishing ports are often used for this purpose, for instance to supply the UNITA opposition movement via ports in southern Angola.

North Africa has 73 ports; West Africa 201; South and East Africa 117; and the Red Sea 78.<sup>329</sup> Many of these ports, including major developed ones, suffer security problems<sup>330</sup> that only a few countries in North Africa and South Africa are presently able to address. Evidence suggests that smugglers of illegal arms and drugs have targeted ports such as Port Said (Egypt); Port Sudan (Sudan); Aseb (Eritrea); Djibouti (Djibouti); Mogadiscio and Merca (Somalia); Mombasa (Kenya); Dar es Salaam (Tanzania); Beira and Nacala (Mozambique); Durban (South Africa); Lobito and Luanda (Angola); Pointe Noire (Republic of Congo); Monrovia (Liberia); Freetown (Sierra Leone); Conakry (Guinea); and Dakar (Senegal).<sup>331</sup>

Maritime routes linking ports in Northern Europe, the Mediterranean, the Black Sea, China, South-East Asia, and North and South America's east coast to ports in Africa have played a major role in the supply chain of major weapon systems, heavy infantry weapons and ammunition. For example, a recent study on maritime routes used to transport arms to countries involved in conflicts<sup>332</sup> has shown that out of twenty-four cases of ships involved in illegal transfers of arms by sea six involved African countries, namely Angola; Burundi; Ethiopia; Somalia; Sudan; and Uganda. Reportedly, the shipments came from countries as various as China, North Korea, South Africa, Zimbabwe, Poland, and Ukraine and carried by ships registered in Cambodia, China, Greece, Denmark, Eritrea, and Honduras.

Several container trade lines regularly serve all of Africa's main ports, either as origin/destination or transit points, and the volume of containerised and dry bulk cargo they carry can very easily conceal arms shipments, in particular infantry weapons. As an indication of the importance of the trade lanes, the table below shows the number of companies that serve them (not listed in the table, Mediterranean Sea's internal routes and Mediterranean-Red Sea routes – served by 67 and 21 shipping lines respectively - include several ports in North Africa and along the Red Sea).<sup>333</sup>

| <b>NUMBER OF SHIPPING LINES SERVING TRADE ROUTES TO AND FROM AFRICA</b> |           |                                      |           |
|---|-----------|--------------------------------------|-----------|
| <b>Trade Route</b>  | <b>N.</b> | <b>Trade Route</b>                   | <b>N.</b> |
| Southern Africa-Far East  | 41        | West Africa-N. America Gulf Coast    | 5         |
| West Africa-Europe  | 30        | Southern Africa-Mediterranean        | 5         |
| African Coastal   | 25        | Southern Africa-Caribbean/C. America | 4         |

<sup>329</sup> Lloyd's SeaSearcher. Ports by Region

<sup>330</sup> See, for example, Minnaar, A. *An assessment of security measures at sea and air ports-of-entry in South Africa*. Pretoria, Institute for Security Studies, May 2003.

<sup>331</sup> See: United States White House "International crime threat assessment," Washington, DC, The White House, 2000; US Department of State, Bureau for International Narcotics and Law Enforcement Affairs "International Narcotics Control Strategy Report 2002, 2003. Africa and the Middle East," March 2003, March 2004; "Narcotics Control 2005," March 2005; "Arms Crisis is Not Inherently African," in The Nation (Nairobi), August 13, 2001.

<sup>332</sup> Colby Goodman "Monsters of the Sea, Insights into How Gun-running Ships Avoid Capture,"

<sup>333</sup> Containerisation International Yearbook 2003.

|  |    |                                       |   |
|--|----|---------------------------------------|---|
| West Africa-Mediterranean                            | 17 | Southern Africa-America East Coast    | 4 |
| Southern Africa-S. America East Coast                | 14 | North Africa-North America East Coast | 2 |
| East Africa-Mediterranean-Europe (Suez))             | 14 | Southern Africa-Australasia           | 2 |
| Southern Africa-Middle and Near East                 | 12 | Southern Africa-N. America Gulf Coast | 2 |
| East Africa-Mid East                                 | 12 | East Africa-Red Sea                   | 2 |
| East Africa-Indian Subcontinent                      | 12 | West Africa-N. America East Coast     | 2 |
| Southern Africa-Europe                               | 11 | West Africa-S. America East Coast     | 2 |
| Southern Africa-Indian Subcontinent                  | 10 | North Africa-Far East                 | 1 |
| West Africa-Far East                                 | 9  | East Africa-N. America Gulf Coast     | 1 |
| East Africa-Far East                                 | 8  | West Africa-St. Lawrence Seaway       | 1 |
| West Africa-Indian Ocean                             | 5  |                                       |   |
| Source: Containerization International Yearbook 2003 |    |                                       |   |

The coastline of Somalia is the longest in Africa and littered with small ports and berthing places. According to UN arms investigators, there is little control there and a complete disregard for international maritime regulations so it has become a haven for illicit arms shipments, including some arms passing unsuspected through larger seaports.<sup>334</sup> For example, in September 2004, a prominent Mogadishu businessman with seaport business interests procured three ocean freight containers containing explosives. The UN Monitoring Group for the arms embargo on Somalia obtained documents indicating that the shipper of this cargo was located in the UK and that the explosives were loaded onto a container ship at Antwerp on July 29, 2004. The bill of lading described the cargo as “agricultural chemicals”, supposedly in transit to Bukavu in the eastern DRC. The clandestine shipment was offloaded at Mombasa in late September where a freight forwarding and clearing business, which also acts as a front for the transnational criminal organization, outwitted customs officials who merely reviewed the documents without inspecting the contents of the containers, and approved their onward shipment. The three containers were loaded onto three lorries in Mombasa and transported north to a small Kenyan coastal town. There the explosives were loaded in portions into two trucks that made three trips north along the coast to Watamu, Kenya, to a boat loading point. The boat carrying the explosives transported them to Kismaayo, Somalia. From Kismaayo, the explosives were further distributed to other locations including north to Marka and south to Raschiamboni in Somalia.

The UN investigators reported that, using such methods, a well-organized network allegedly supports trafficking operations for some warlords to bring arms into Somalia in addition to the arms obtained at the local markets. As a result of the continued heavy flow of arms, most of which has been directed to those elements opposed to the transitional government, there is a seriously elevated level of threat of violence. Already, fighting and political violence in Somalia continue and the stage for peace and reconciliation in the country is far from set. The

<sup>334</sup> Report of the United Nations Monitoring Group on Somalia in accordance with paragraph 3 (e) of Security Council resolution 1558 (2004), UN Doc. S/2005/153, March 9, 2005.

country is beset by extreme poverty and years of civil wars have destroyed its infrastructure.<sup>335</sup>

### *Air-borne trade*

Due to the poor state of inland transport routes in many parts of Africa, the delivery of small arms and light weapons is more frequently carried out by air, including direct flights from airports located in Europe, Israel, U.A.E., Iran, South Africa, and South America's East Coast. Africa's armed conflicts and problematic land transport networks have often made air transport the modality of choice for international arms transfers to the interior of countries subject to arms embargoes even though they have viable seaports such as Angola, Liberia, Sierra Leone, Ivory Coast, Sudan and the DRC, as well as to land-locked countries when they were renowned for diverting arms, such as Burkina Faso, Uganda and Zambia, or using them to perpetrate human rights violations, such as Burundi, Rwanda and Zimbabwe.

Weak or non-existent air space, airport and airstrip monitoring systems in most of the African region, make air transport a less detectable modality to transfer arms to embargoed countries and to customers who persistently use arms to abuse human rights in conflict zones and in acts of repression.<sup>336</sup> Thus, to name but a few, the airports at Ouagadougou (Burkina Faso), Monrovia (Liberia), Abidjan (Ivory Coast), Luanda and Huambo (Angola), Brazzaville (R. of Congo), Walvis Bay (Namibia), Lanseria and Pietersburg (South Africa), Harare (Zimbabwe), Entebbe (Uganda), Kinshasa, Goma and Kisangani (DRC), Kigali (Rwanda), and Khartoum (Sudan) have frequently been used as destinations or trans-shipment points for such arms shipments.

There are 59 airports with sufficiently long runways to enabling the landing of any of the cargo aircraft presently in service, out of a total 4,070 airports and airstrips, of which only 1,446 hold either an ICAO or a IATA identifier code.<sup>337</sup> The remaining minor airports (306) and airstrips (2,318, of which at least 145 are private) form an additional network of possible landing places for illegal transfers of arms and smuggled goods.<sup>338</sup> Among the countries with a substantial number of airports and airstrips are South Africa (727), Zimbabwe (430), Angola (243), Kenya (230), Democratic Republic of the Congo (229), Mozambique (165), Algeria

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<sup>335</sup> Amnesty International, Somalia: Urgent need for effective human rights protection under the new transitional government, (AI Index: AFR 52/001/2005)

<sup>336</sup> See for example, Johan Peleman *The Logistics of Sanctions Busting* in J. Cilliers, C. Dietrich *Angola's War Economy*, Pretoria, ISS, 2001; Amnesty International "Democratic Republic of Congo. *Arming the East*," July 2005

<sup>337</sup> Each ICAO (International Civil Aviation Organization) and IATA (International Air Transport Association) code identifies an airport (either a domestic or an international airport) for air navigation purpose. The codes are regularly updated and it is compulsory to include them in all flight plans and flight communication (for example, for specifying origin and destination airports). There are, however, many airports and air strips of local or military importance that do not have a ICAO or IATA code. They are usually listed in databases (such as Fallingrain and Landings.com) that keep track of every landing facility in the world.

<sup>338</sup> Among airports with an identifier code, 559 have asphalt runways. The main airports have runways between 11,000 and 16,000 feet, or 3,355 and 4,880 m, but there are 227 airports with runways between 7,000 and 10,800 feet (2,135-3,294 m); 284 between 5,000 and 6,900 feet (1,525-2,104 m); 861 between 2,000 and 4,900 feet (610-1,495); and 321 with runways under 2,000 feet (<610 m). Most of these airports can accommodate medium cargo planes. Source: Air Broker Center, Sweden ([www.airbroker.se](http://www.airbroker.se)).

(136); Libya (136); Namibia (135); Tanzania (123), Madagascar (121), and Zambia (109). Several of these airports and airstrips have neither a radar system nor security policies in place. However, it is possible to land cargo aircraft on them – even a large Ilyushin 76 can land and take off from a gravel strip.

Between 2001 and 2005, as many as 146 airline companies were registered in about 40 African countries with all-cargo (freighters) or combi aircraft fleets. Out of that total, about 60% were registered in only eight countries - 18 in South Africa, 17 in D.R. Congo, 14 in Sudan, 11 in Equatorial Guinea, 8 in Angola, 7 in Nigeria, 6 in Kenya, and 5 in Egypt. In 2005, there were 140 airline companies in business and they were registered in 37 countries, with a total fleet of 262 freighters and 103 combi planes<sup>339</sup> In addition there are several Africa-based general sales agents or aviation brokers that charter cargo planes from various non-African countries to serve their customers.

Another distinct characteristic of the airline companies registered in Africa is that several are not based in African airports at all, i.e. they are only nominally “African,” and in fact only registered in African countries as flags of convenience. As many as 39 companies registered under Africa registries are based abroad, in particular in Sharjah (U.A.E.) or in East European and CSI countries. For example, in the last four years, nine out of 11 companies registered in Equatorial Guinea were based in U.A.E. in turn controlled by other foreign business interests in most cases. Among the companies registered under flags of convenience, there are companies that were used for arms trafficking both recently and in the past.<sup>340</sup> Equatorial Guinea, Sudan, Somalia and Sierra Leone recently replaced Central African Republic, Liberia and Swaziland as the favourite flags of convenience. Several U.N. reports [cite 1-2 examples?] concerning the violation of UN arms embargoes on war-torn countries – in particular on Angola, Liberia, Sierra Leone, DRC, and Somalia from 2000 to 2005 - have in addition documented the long-standing involvement of several air companies registered outside Africa. These companies were reportedly involved in military operations, arms supplies to governments of embargoed countries and to rebel armies, and in supporting the illegal exploitation of natural resources, in particular precious stones and metals. The companies were also active in legitimate business and some were even involved in international peacekeeping or humanitarian relief operations<sup>341</sup>, reflecting the *de facto* “internationalization” of Africa’s air cargo markets.

One of the main characteristics of many air cargo fleets in Africa is the obsolescence of the aircraft – to save costs serving remote areas and rough runways, many old planes are run sometimes with no valid airworthiness checks or with dubious documentation, contributing to the high rate of aviation accidents.. The most common freighters used are old Boeing DC-3, DC-8, and B-707s, Lockheed 100-30 Hercules, some Ilyushin Il-76s and Il-18s with varied specifications, as well as a large number of different types of Antonov planes.

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<sup>339</sup> See: JP Airline-fleets International, editions from 2001/2002 to 2005/2006

<sup>340</sup> See Amnesty International “Democratic Republic of Congo. Arming the East,” July 2005.

<sup>341</sup> They were directly contracted by the UN Logistics office and by humanitarian organizations, *ibid.* See also in this report Chapter 4

**AFRICA'S ANTONOV AIRCRAFT FLEET**

In 2005, Antonov planes manufactured in Ukraine were owned, leased, active or stored by 39 companies, registered in Angola, Chad, Congo Brazzaville, D.R. Congo, Equatorial Guinea, Kenya, Libya, Mauritania, Nigeria, Sao Tome', Sierra Leone, Somalia, Sudan, and Togo. This fleet includes a total of 88 freighters and 20 combi planes. The most common types used by these companies are:

- four engines military/civilian cargo plane AN-12s (produced between 1962 and 1973 in USSR in versions that variously improved the basic model, including the 12A/12AP /12B/12BP /12BK [assault transport] / and 12TB) that in general requires a crew of 5/6 and can fly 5,700 km at a cruising speed of 670 km/h, transporting 20 ton of cargo or 60/90 paratroopers;
- two engines short-range freighter AN-24T (in production from 1967 to 1971) that requires a crew of 3 and can fly 2,440 km (640 km with a maximum cargo of 4.6 tons or 50 paratroopers) at a cruising speed of 450 km/h;
- AN-26 (often used in military cargo lift and relief operations because it does not need much ground support thanks to its rear loading ramp) that requires a crew of 5 and can fly 2,550 km (980 km with max payload of 6 tons or 40 paratroopers) at a cruise speed of 430 km/h;
- AN-32 that requires a crew of 5 and can fly 2,000 km at a cruise speed of 530 km/h with a max payload of 6.7 tons or 40 paratroopers.

Source: TransArms Database

A recent case of intercontinental transfers of arms by air concerns the Great Lakes Region where armed forces as well as allied militia and armed groups have perpetrated gross human rights violations. Following the delivery in late 2002 of a series of six planeloads of arms by a UK-South African air company from Albania to Rwanda, from where arms were diverted to armed groups in eastern DRC, another company based in Rwanda, Silverback Cargo Freighters, used two DC8 aircraft to carry out another series of ammunition deliveries from Eastern Europe to Rwanda.<sup>342</sup>

The two DC-8 aircraft operated by Silverback Cargo Freighters were each obtained for a symbolic price of US\$10 in a complex deal from the United States and delivered to the company in May 2002.<sup>343</sup> According to Albanian officials, at least four arms flights were carried out to Kigali from Tirana from April to at least June 2003.<sup>344</sup> Albanian officials said these flights involved the shipment of large quantities of ammunition - 3,590,000 rounds of 7.62mm ammunition (for Kalashnikov assault rifles) and 85,000 rounds of 9mm (pistol or sub-machine gun) ammunition. At least one arms flight from Tirana was reported by Albanian

<sup>342</sup> Silverback Cargo Freighters was founded in 2002 and in December was reportedly scheduled to serve the cargo needs of a start-up passenger company called Rwandair Express, based in Kigali, partially State-owned, and operational from December 2002 (*Rwanda, Behind the Headlines*, issue 7, December 2002). Telephone interview with Silverback Cargo Freighters, Kigali, May 2005

<sup>343</sup> According to FAA and industry records, the two DC-8-62 aircraft (formerly N990CF – serial number 46068 - and N994CF – serial number 45956) were de-registered from the US registry in early May 2002, just after the last owner, a San Francisco-based company, had notified the FAA that the planes had been bought by an unspecified Rwanda purchaser. On 7 May 2002, the same records show that the last owner company sold the planes on to an entity with an address in the financial district of Tortola island, in the British Virgin Islands.

<sup>344</sup> Transcript of a meeting between the Secretary General of the Albanian Ministry of Defence and his officials with a delegation from Amnesty International, Tirana, 11 August 2003

officials to have involved “explosives” routed from Belgrade.<sup>345</sup> While a “Delivery Verification Certificate” from the Rwandan Ministry of Defence, dated June 24, 2003, confirmed receipt of the 3,590,160 cartridges in Kigali, three “end use certificates” indicate that the Rwandan Ministry of Defence had ordered another one million rounds of 9mm ammunition from Albania.<sup>346</sup>

From Rwanda, arms have been routinely transferred across the border by plane, road and boat to opposition groups in the DRC. For example, within days of the first series of arms deliveries from Albania, an Antonov with Russian crew was used to ferry arms from Kigali to the Ituri district of the DRC for the UPC armed group, renowned for its gross human rights *abuses* and attempts to control the gold and other trade.<sup>347</sup>

Further illustration of the role of contract aircrew in intra-Africa deliveries, was provided in a taped video interview to Oxfam when a British contract pilot described how in 1999 and 2000 he flew AK47 assault rifles from Rwanda and Uganda into the rebel-held town of Kisangani in the DRC. He claimed the planes were registered in Swaziland for Planetair and New Gomair. The UN identified New Gomair as probably carrying illegal natural resources from the DRC and the US government named Planetair as supplying arms to eastern DRC. The contract pilot recalled that:

“Mostly the stuff we carried was brand new AKs plus the ammunition. They're all packed in plastic bags and in beautiful condition... It's quite a standard operation for us... We know there is a war on. We are not involved in it because we...are just charter pilots... We were doing about 80 to 90 hours flying a month... It is very easy. Leave the hotel, do a little hour there and two hours on the ground and you are back in time for dinner.”

### *Land routes*

Sea and air arms transport routes are complemented by road, ferry and rail routes. This is not only for intra-country traffic. For example, arms were transported on South African rail networks in the 1990s, in particular to Burundi rebels in Tanzania.<sup>348</sup> Combined rail networks have a nominal length of about 84,000 km, most of them in poor and sometimes unserviceable conditions, with the exception of lines in Eastern and Southern Africa.<sup>349</sup> Ferryboats on lakes such as Lake Tanganyika and Lake Kivu have been used for arms deliveries, and Lake Victoria connects with Mwanza airport and the rail system to Dar-es-Salaam where arms have been unloaded. Rivers have also played a limited but probably not negligible role in the transport of light weapons, namely for West Africa on the Senegal and

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<sup>345</sup> *ibid*

<sup>346</sup> End Use Certificates received from Rwanda by the Albanian Ministry of Defence, February 6, March 20, and May 15, 2003, and Delivery Verification Certificate from the Rwandan Ministry of Defence dated June 24, 2003.

<sup>347</sup> See Amnesty International, “DRC: arming the east”, June 2005

<sup>348</sup> Human Rights Watch, “Burundi: Stoking the Fires: Military assistance and Arms Trafficking in Burundi,” New York, Washington, December 1997

<sup>349</sup> See *AfricaRail 2003 Conference*, Proceedings. Terrapin, Bryanston, South Africa.

the Niger rivers; for Sudan on the River Nile; for D.R.C on the Congo River, and, for UNITA-held provinces of Angola, the Zambezi River.<sup>350</sup>

Prolonged wars such as that in Angola have seen a complex network of land, maritime, and air routes used for arms supplies. For its arms imports, the Angola government mainly used the seaports and airports of Luanda and Lobito, whereas the UNITA rebels mainly procured their arms by land using trucks and railways passing through Namibia, Botswana, Zambia and D.R. Congo, linking to the ports in Dar es Salaam, Nacala, Point Noire and Durban. UNITA also used air routes connecting its southern military bases with, for example, airports such as Manzini and Mmabatho (in Swaziland), Lanseria and Pietersburg (in South Africa), Sharjah (UAE), Kinshasa and Goma (D.R. Congo – then Zaire), Lusaka and Ndola (Zambia), Bangui (Central African Republic), Kigali (Rwanda), Ostend (Belgium), Burgas (Bulgaria), and Bratislava (Slovak Republic - then Czechoslovakia).

Tanks and armoured vehicles used by Angolan government came directly or through second-hand markets from USSR/Russia, East European countries, and France. Infantry weapons came from Belgium, Bulgaria, Czechoslovakia, Croatia, Germany (RFT and RDT), Hungary, Israel, North Korea, Pakistan, Poland, Portugal, Romania, Spain, South Africa, and former Yugoslavia.<sup>351</sup> Military aircraft and helicopters came from, or were manufactured in, Brazil, France, Germany, Netherlands, Slovak Republic, Spain, Switzerland, Ukraine, United Kingdom, USSR/Russia, and the United States. UNITA armaments were procured mainly from East European countries (Bulgaria, Romania, Ukraine), South Africa, and C.I.A. covert operations, directly or through arms dealers and transporters such as Victor Bout and Savanjah Ruprah and their network of air companies or through air companies and dealers based in the DRC (then Zaire) and close to the entourage of the then president Mobutu Sese Seko (Air Excellence, for example).<sup>352</sup>

PICTURE H AND CAPTION (AFRICAN RAILS)

## **7. The logistics of major military operations**

Logistic support from hundreds of privately owned transport companies has in recent years been mobilised by NATO, the United States, the United Kingdom and their allies to carry out major military operations in the former Yugoslavia, Afghanistan, and Iraq in which serious

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<sup>350</sup> U.N. Economic Commission for Africa Transboundary River/Lake Basin Water Development in Africa: Prospects, Problems, and Achievements. Addis Ababa, U.N.E.C.A., December 2000.

<sup>351</sup> See: Peleman, J. *The logistics of sanctions busting: the airborne component*. In Cilliers J. C. Dietrich, Angola's War Economy. Pretoria, Institute for Security Studies, 2000; Finardi, S., C. Tombola "Le strade delle Armi," [The Arms Routes] Milan, Jaca Book, 2002, chapter 5 "The Angola Case".

<sup>352</sup> Ibid

violations of international human rights and humanitarian law have been perpetrated.<sup>353</sup> The major military operations conducted by Russia in the Caucasus also resulted in such violations. These were mostly carried out with the support of state-run military logistic units that fall directly under the command of the Russian government.

The large scale UN, NATO and allied military operations and post-war peacekeeping missions in the Balkans, Afghanistan, and Iraq have involved the participation of a growing number of private commercial transport and logistics companies. These companies have been mostly, but not exclusively, based in North America, Europe, the Balkans, former USSR countries, and Australia. A number of these companies were either part of a network of carriers and logistics firms that has served military operations and covert actions of the major powers since the 1980s, or newcomer companies eager to gain – sometimes without real qualifications and adequate means – a share of the huge financial expenditure on military logistics entailed in those military operations and post-war peacekeeping operations. The following examples are not exhaustive of the role of such commercial companies to those operations.

### ***“Operation Allied Force” in the Balkans***

NATO’s Operation Allied Force involved attacks against targets in the Federal Republic of Yugoslavia beginning on March 24, 1999 and related military operations in the region involving civilians casualties.<sup>354</sup> To do this, various logistic supply missions were organised with support from private commercial contractors.

Logistic supply missions for NATO included: support of the air campaign; support for the missions of Allied Force’s troops in Albania; support for the mission “Task Force Hawk” for the deployment of U.S. units with Apache attack helicopters from the United States and Central Europe countries; emergency assistance to refugees from Kosovo; support for NATO’s Joint Guardian operation and the NATO-led Kosovo Force (KFOR) that included, in various stages, troops from Canada, Czech Republic, France, Germany, Greece, Italy, Netherlands, Poland, Russia, Spain, Turkey, Ukraine, United Kingdom, and United States. Prior of the air campaign, fighter planes were deployed at various European airbases, such as

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<sup>353</sup> Amnesty International recognises that 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 .

<sup>354</sup> Amnesty International believes that in the course of Operation Allied Force, civilian deaths could have been significantly reduced if NATO forces had fully adhered to the laws of war and operated a clear chain of command within and outside the organization for each state and each individual involved in military operations conducted under its aegis.<sup>354</sup> NATO did not always meet its legal obligations in selecting targets and in choosing means and methods of attack. While large scale human rights abuses resulted from ethnically and politically motivated conflict between the Serb and Albanian communities and armed groups, by 30 May 1999, hundreds of civilians had been killed in NATO air raids

Lakenheath (United Kingdom), Spangdahlem and Ramstein (Germany) Aviano, Cervia, and Gioia del Colle (Italy).<sup>355</sup>

One of the main actors in the logistic support of Operation Allied Force was USTRANSCOM (U.S. Transportation command), as it was then called, which worked alongside the British MoD's Defence Logistics Organization. Since 1987, USTRANSCOM had integrated air, land, and sea transportation for the needs of the U.S. armed forces. According to USTRANSCOM chief, General C.T. Robertson, in his statements before the U.S. Senate Armed Services Seapower Subcommittee,<sup>356</sup> the Air Mobility Command performed thousands of refuelling missions for the planes bound for Kosovo, as well as:

“1,108 strategic airlift missions and contracted for an additional 66 commercial airlift missions...simultaneously, MTMC [Military Traffic Management Command] operated at two US seaports and eight European seaports in support of the deployment and onward movement of unit equipment, supplies, and ammunition. As NATO air strikes began against Serbia, MTMC began transshipment operations at seaports closest to the strike area.” Moreover “MSC [Military Sealift Command] supported Allied Force with 34 strategic sealift ships to include three pre-positioning ships. Additionally, MSC tankers carried most of the fuel products used in support of the operation, totalling more than 300 million gallons. MSC supported 29 strategic lift movements, including the movement of US Army combat forces from Bremerhaven, Germany to Thessaloniki, Greece. Sealift carried over 1.2 million sq. ft. of vehicles and equipment; 245,280 sq. ft. of ammunition.”

In a 1999 testimony to the House Armed Services Readiness Subcommittee,<sup>357</sup> General Robertson stated that: “*for sealift, we rely on commercial liner service to move 81 percent of the warfighters’ requirements.*” In a testimony before the U.S. Congress in same 1999,<sup>358</sup> General John W. Handy highlighted the role of commercial operators in operation Allied Force, saying “*we also relied heavily on commercial carriers to deliver spare parts. On average, the time from when an item was shipped in the U.S. until the requesting unit received it was 3.7 days.*”

Commercial transport companies and civilian ports/airports and crews<sup>359</sup> thus participated significantly in the NATO war and post-war efforts. The facilities of European ports such as Durres (Albania), Rijeka (Croatia), Thessaloniki (Greece), Brindisi and Leghorn (Italy), Bremerhaven (Germany), Rota (Spain), as well as the Italian airports of Bari and Brindisi, were fully involved in the operations. So were commercial operators of ships and aircraft.

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<sup>355</sup> Task force Falcon Multi-National Brigade.

[www.eucom.mil/Directorates/ECPA/index.htm?http://www.eucom.mil/Directorates/ECPA/Operations/main.htm&2](http://www.eucom.mil/Directorates/ECPA/index.htm?http://www.eucom.mil/Directorates/ECPA/Operations/main.htm&2); GlobalSecurity, [www.globalsecurity.org/military/agency/army/tf-falcon.htm](http://www.globalsecurity.org/military/agency/army/tf-falcon.htm); and Lt Gen William J. Begert, USAF, Kosovo and Theater Air Mobility,” in *Aerospace Power Journal- Winter 1999*. For the ill-conceived Task Force Hawk (deployment of apache helicopters), see Frontline, [www.pbs.org/wgbh/pages/frontline/shows/future/experts/taskforce.html](http://www.pbs.org/wgbh/pages/frontline/shows/future/experts/taskforce.html).

<sup>356</sup> Statement of General Charles T. Robertson, Jr., USAF Commander-in-Chief, United States Transportation Command, Before the Senate Armed Services Seapower Subcommittee On Strategic Airlift and Sealift Imperatives for the 21st Century, April 26, 2001, [www.senate.gov/~armed\\_services/statemnt/2001/010426rob.pdf](http://www.senate.gov/~armed_services/statemnt/2001/010426rob.pdf);

<sup>357</sup> Submitted Written Statement to the House Armed Services Readiness Subcommittee, October 26, 1999.

[www.transcom.mil/speeches/991108-3.html](http://www.transcom.mil/speeches/991108-3.html)

<sup>358</sup> Statement of Lieutenant General John W. Handy, USAF Deputy chief of staff/installations & logistics, United States Air Force. [www.house.gov/hasc/testimony/106thcongress/99-10-26handy.htm](http://www.house.gov/hasc/testimony/106thcongress/99-10-26handy.htm)

<sup>359</sup> “Key to efficiency: Civilians sharing military workload,” in *Translog Summer 1999*.

Moreover, Inter-European rail networks were used either from Germany to Brindisi or from Germany to Kosovo via Bulgaria and Macedonia.<sup>360</sup> Logistics support and construction works were also provided including at US Bondsteel in Kosovo under contract by private companies, such as Brown & Root Services, Division of Kellogg, Brown & Root Inc.<sup>361</sup>

Ships from various U.S. sealift programs were active participants at various stages of the operations,<sup>362</sup> such as, to name a few, the ro/ro ships with civilian master and crew USNS Bob Hope (one of 28 ships in the Sealift Program), and USNS Soderman (one of the 36 ships in the Prepositioning Program), the long-term chartered containership M.V. Steven Bennett (one of the 7 container ships in the Prepositioning Program). In addition, the Voluntary Intermodal Sealift Agreement and Maritime Security Program in 1999 included 35 commercial operators, among them many global companies<sup>363</sup> or chartered ships such as the general cargo Osprey<sup>364</sup> and the ferry Villa dei Fiori (Lloyd Sardegna).<sup>365</sup>

Logistical support to troops from private contractors was also provided in various stages through military amphibious assault ships, tug boats, and cargo planes such as Antonov 22 and Ilyushin 76 freighters (for the Russia's mission),<sup>366</sup> by 21 chartered ships (for the U.K. mission),<sup>367</sup> by the Portuguese freight-forwarder Navigomes (on behalf of Portugal's armed forces) along with an Antonov-22 plane and the ro/ro ship Ivan.<sup>368</sup>

For subsequent U.N. peacekeeping operations, the charter airline companies included small and medium cargo firms such as the Ukraine/US helicopter company Air Chayka, Egypt Air, Heliopolis-based Midwest Airlines, Bratislava-based Slovak Airlines, and others.<sup>369</sup> One firm

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<sup>360</sup> Statement of General Charles T. Robertson, 2001, quoted

<sup>361</sup> [http://www.defenselink.mil/contracts/1999/c02191999\\_ct069-98.html](http://www.defenselink.mil/contracts/1999/c02191999_ct069-98.html)

<sup>362</sup> See Military Sealift Command: [www.msc.navy.mil/N00P/overview.asp?page=nmr](http://www.msc.navy.mil/N00P/overview.asp?page=nmr); and "MTMC begins deliveries to Albanian docks," and "Croatian ports - MTMC crews" in Translog Summer 1999; "NATO moves out to Kosovo," in Translog Fall 1999.

<sup>363</sup> Members of the agreement were in 1999: Alaska Cargo Transport, Inc.; American Auto Carriers, Inc.; American Automar, Inc.; American President Lines, Ltd.; American Ship Management, LLC.; Central Gulf Lines, Inc.; Crowley American Transport, Inc.; Crowley Maritime Service; Dixie Fuels II, Ltd.; Double Eagle Marine; Farrell Lines, Inc.; First American Bulk Carrier Corp.(and subsidiaries); and Foss Maritime Corp.; Lynden, Inc.; Lykes Lines, Ltd, LLC.; Maersk Line Limited; Matson Navigation Co., Inc.; Maybank Shipping Co., Inc.; McAllister Towing and Transportation Co., Inc.; Moby Marine Corp.; NPR, Inc.; OSG Car Carriers, Inc.; Osprey Shipholding Corp., LLC; Resolve Towing and Salvage, Inc.; Seacor Marine International, Inc.; Sealift Inc.; Sea-Land Service, Inc.; Smith Maritime; Totem Ocean Trailer Express, Inc.; Trailer Bridge, Inc.; Trico Marine Operators, Inc.; Troika International, Ltd.; Van Ommeren Shipping (USA), LLC; Waterman Steamship Corp.; Weeks Marine, Inc.

<sup>364</sup> The MV Osprey, a ship of 26,000 tons, 241 meters long, entered Durres May 2, 1999, according to General Charles T. Robertson' testimony and Albanian Telegraphic Agency: "U.S. navy ship brings equipment for Rinas airport" (May 2, 1999); "Machineries on the board of U.S. ship Osprey being unloaded" (May 3, 1999). According to Robertson, "The Osprey, a MSC charter, carried 60 vehicles, or 11,000-square feet of Air Force cargo. It was loaded by MTMC's 839<sup>th</sup> Transportation Battalion, Livorno, Italy and unloaded in Durres by MTMC's 840th Transportation Battalion, Izmir, Turkey." The vehicles were mainly truck trailers and bulldozers. See also: "MTMC begins deliveries to Albanian docks," quoted.

<sup>365</sup> "Golfo dei Fiori unloading in Thessaloniki." In Translog, Fall 1999

<sup>366</sup> "Russia sends heavy-duty equipment to Kosovo," "in [www.aeronautics.ru/nws001/tass056.htm](http://www.aeronautics.ru/nws001/tass056.htm); "Russian deployment to Kosovo," in *Venik 07-15-99* [www.aeronautics.ru/nws001/news006.htm](http://www.aeronautics.ru/nws001/news006.htm)

<sup>367</sup> See for the list the Statement of the British minister of Defense:

[www.parliament.the-stationery-office.co.uk/pa/cm199798/cmhansrd/vo971112/text/71112w09.htm](http://www.parliament.the-stationery-office.co.uk/pa/cm199798/cmhansrd/vo971112/text/71112w09.htm);

and for the deployment in Kosovo "Kosovo, Lessons from the crisis, Annex B. Maritime Operations – Assets Deployed," <http://www.kosovo.mod.uk/lessons/annexb.htm>, June 2000. See for other ships deployed, such as the the ro/ro Sea Centurion of the Joint Rapid Deployment Forces leased from Stena and Sea Crusader, see: [www.armedforces.co.uk/navy/listings/10030.html](http://www.armedforces.co.uk/navy/listings/10030.html).

<sup>368</sup> "Navigomes transport Portuguese armed forces vehicles and equipment from Kosovo;" "Air transport of military provisions originating from Kosovo;" in Heavy Lift Group' news, October %, 2001 and March 8, 2002.

<sup>369</sup> See U.N. contracts for January 2001, <http://www.un.org/Depts/ptd/jan01.htm>.

contracted was Veteran Airlines based in Diankoy, Ukraine, which had flown humanitarian cargoes to various locations but also has supported UNITA rebels in under a UN arms embargo in Angola.<sup>370</sup> Another was the small Italian charter company Si Fly whose old plane, an ATR 42 F-OHVF, was chartered “on the spot” by a South African company, Balmoral Central Contracts. This plane fatally crashed on November 12, 1999 approaching Pristina from Rome on a World Food Program mission.<sup>371</sup>

Prior to the 9/11 attacks on the USA, the U.S. armed forces had granted new lucrative contracts to major shipping companies to transport military cargo on their vessels along the most busy international trade lanes. Between January 1998 and July 2001, such U.S. Army contracts were valued cumulatively at 1 billion dollars.<sup>372</sup> During the same period, the Navy awarded Maersk Line US\$239 million for operation and maintenance of 14 ships and the charter of two containerships<sup>373</sup> and from May, 2000 and December 2001 the U.S. Military Sealift Command awarded 33 other maritime companies (both national and foreign flagged) approximately US\$200 million for the provision of various kind of transport services,<sup>374</sup> while in 2000 and 2001 the U.S. Air Force’s Air Mobility Command awarded, among other airlines, the Georgia-based World Airways with contracts worth 127 and 175 million, respectively.<sup>375</sup>

### ***“Operation Enduring Freedom” in Afghanistan***

The U.S.-led invasion of Afghanistan and then Iraq entailed an even larger support program from commercial transport and logistics companies, either in preparation for the war or during the major military campaign itself and the following phases. On the basis of previous experience such as the Gulf War of the early 1990s and the war in the Balkans<sup>376</sup>, the systems of logistical support were changed because of the larger scale use by the military authorities

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<sup>370</sup> Vines, A. Angola Unravels, Arms Trade and Embargo Violations. Human Rights Watch, 1999; Expresso (Lisboa), April 20, 1999. The plane was its AN-12BP UR-11305. See also Veteran website [www.skylineaviation.co.uk/veteran.html](http://www.skylineaviation.co.uk/veteran.html).

<sup>371</sup> See the accident report by Bureau Enquêtes-Accidents - Ministère de l'équipement, des Transports et du Logement Inspection Generale de l'aviation Civile et de la Meteorologie France. February 2000. [www.bea-fr.org/](http://www.bea-fr.org/). The plane, in service since 1986 and leased from ATR (Avion de Transport Régional, a joint-venture Aerospatiale and Alitalia) has been previously in service with the US-based American Eagle Airlines.

<sup>372</sup> See: <http://www.defense.gov/contracts>, among other carriers, American President Lines, SeaLand Services (later Maersk/SeaLand), Matson Navigation Co., Maersk Line, Lykes Lines, American Auto Carriers; American Roll-on Roll-off Carriers; Crowley Maritime Corp. and Liner Services, Farrell Lines Inc., Lykes Lines, Central Gulf Lines, Waterman Steamship Corp., P. O. Nedlloyd, P&O North Sea Ferries, PM & O Navigation, Eastern Car Liner Ltd, Central Gulf Lines, Samskip (Bremen)

<sup>373</sup> Ibidem.

<sup>374</sup> Military Sealift Command, Contract Award(s) Announcement (<http://www.mtmc.army.mil>).

<sup>375</sup> “World Airways announces results for the fourth quarter and year ended December 31, 2001”, February 21, 2001, World Airways’ website.

<sup>376</sup> Included in this experience there was a particular type of warfare, in some way more suited for the globalization trends than the “total destruction” of the industrial complex of the enemy during the World War II: “In the 1999 Nato bombing campaign state-owned companies, rather than military sites, were targeted by the world’s richest nations. Nato only destroyed 14 tanks, but 372 industrial facilities were hit, leaving hundreds of thousands jobless. Not one foreign or privately owned factory was bombed.” Clark, Neil “*Division of the spoils*,” in Mail&Guardian, September 29, 2004.

of commercial logistic techniques - to control the supply-chain - and their increased use of civilian operators.

The first phase of Operation Enduring Freedom in Afghanistan, which lasted from October to November 2001, was conducted mostly with conventional military logistic units and air and sealift programs. The main base for air strikes was the base of Diego Garcia Island in the Indian Ocean. The US-led forces coordinated air strikes with the National Islamic United Front [also known as the Northern Alliance] and provided other assistance. Amnesty International and other impartial observers were denied information and access to verify reports of attacks on civilians and indiscriminate bombing.<sup>377</sup> By November 11 the United Front had captured much of northern Afghanistan and on November 13 entered Kabul. Amnesty International opposed the US use of cluster bombs and also the transfers of arms or security equipment and training to the Taleban, the United Front and other armed groups in Afghanistan that contributed to gross human rights abuses committed by their armed combatants.<sup>378</sup> In 2001, members of the US Congress proposed legislation to provide up to \$300 million of direct US government military assistance to the United Front and other “eligible Afghan resistance organizations” without providing for rigorous monitoring and reporting on compliance with international human rights standards and international humanitarian law.<sup>379</sup>

The subsequent operations, including humanitarian assistance<sup>380</sup> by various organizations, were conducted with the support of many commercial carriers. However, as in the case of Operation Allied Force, the main US program for forcibly mobilizing commercial air carriers in an emergency, the Civil Reserve Air Fleet which includes 18 US airlines for long range transport, was not activated because many airlines volunteered their planes, in particular Boeing 747s cargo planes, to help the Air Force to divert all its assets for the operation.<sup>381</sup>

During this first phase, the U.S. and Coalition forces used the experience gained in Pakistan by American President Lines (APL) to deploy troops and cargo. APL was a U.S. company that since 1997 had been a subsidiary of the Singapore-based Neptun Orient Lines, and APL’s vice-president for Government Affairs described the support his company gave to the US military as follows:

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<sup>377</sup> Amnesty International Report 2002, page 26

<sup>378</sup> Amnesty International’s position on arms transfers and military aid to Afghanistan, October 21, 2001, AI Index: ACT 30/033/2001

<sup>379</sup> By authorizing assistance “notwithstanding any other provision of law,” the US legislation negated existing US laws, including Sections 116 and 502B of the Foreign Assistance Act of 1961 (as amended), which prohibited foreign assistance to “the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights,” and the Leahy Amendment to the Foreign Operations Act and the Defense Appropriations Act, which prohibited military assistance “to any unit of the security forces of a foreign country if the Secretary of State has credible evidence that such unit has committed gross violations of human rights, unless...the government of such country is taking effective measures to bring the responsible members of the security forces unit to justice.”

<sup>380</sup> For the human costs of the operation Enduring Freedom, see for example the December 2002 report by Human Rights Watch “*Fatally Flawed: Cluster Bombs and Their Use by the United States in Afghanistan*.” See also: Conetta, C. *Operation Enduring Freedom: Why a Higher Rate of Civilian Bombing Casualties*. Project on Defense Alternatives Briefing Report #11, January 24, 2002. [www.comw.org/pda/0201oef.html](http://www.comw.org/pda/0201oef.html); and Human Rights Watch “*Enduring Freedom: Abuses by U.S. Forces in Afghanistan*.” [www.hrw.org/reports/2004/afghanistan0304/](http://www.hrw.org/reports/2004/afghanistan0304/).

<sup>381</sup> Robbins, M., P. Boren, K. Leuschner *The Strategic Distribution System in Support of Operation Enduring Freedom*. Rand Corporation, March 2004. [www.rand.org/publications/DB/DB428/DB428.sum.pdf](http://www.rand.org/publications/DB/DB428/DB428.sum.pdf)

*“The [APL’s] investment in the Karachi container terminal and APL’s familiarity with the trucking infrastructure in Pakistan permitted us to put together a chain of supplies that took containers entering the port of Karachi, trucked them by trusted suppliers used to dealing with APL and its commercial activities, up the length of Pakistan and over the Khyber Pass, into Afghanistan and Kabul. APL was able to put this chain together because it had the commercial infrastructure in place: the truckers, the port, the ships, and secondly, because it had the nimbleness and innovation acquired from years of reacting to commercial supply and demand changes to react with dispatch. Not least, it also had the knowledge of the local political customs in Pakistan and the ability to work with the all-important Pakistan army.”*<sup>382</sup>

Once the first phase of military operations ended and Kabul airport was re-opened under the control of NATO and its allies, an array of military aircraft and commercial airlines were allowed to start flying to Afghanistan from the Middle East, Central Asia, and Europe in support of either humanitarian assistance or peacekeeping operations.

Thus, from February 2002 to March 2004, in addition to the military and government aircraft<sup>383</sup>, Kabul airport hosted numerous planes belonging to a number of commercial companies. These planes were mostly freighters, some with fake registration numbers, and some from companies known to have been involved in arms smuggling. Between February 2002 and March 2004, aircraft of 32 different companies from 21 countries were active,<sup>384</sup> but many other planes operated in Afghanistan to transport allied troops, military equipment and humanitarian assistance.<sup>385</sup> Some of the airlines conducting flights to Kabul had also worked in Albania during Operation Allied Force. Afghan truck companies and drivers were also used and the US authorities claimed to provide safe passage *“through different friendly militia areas in order to transport supplies to the firebases.”*<sup>386</sup>

During the period between October 2002 and January 2003, the U.S. European Command’s Joint Movement Center (Stuttgart, Germany) coordinated the movement of 140,000 “passengers”, 207,400 tons of material and 10,723 mq of ship tonnage in support of the military operation.<sup>387</sup> In February 2003, the Military Sealift command asked the US Maritime

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<sup>382</sup> Bowman, Roy G. *The Asymmetric Threat and Defense Transportation Planning*. Vice President, Government Affairs, APL Limited. Presented to the Transportation & Distribution Panel, SOLE 38th Annual International Logistics Conference & Exhibition, August 3, 2003.

<sup>383</sup> Belonging to United States, United Kingdom, Russia, France, Canada, Germany, Italy, Tajikistan, Turkey, Netherlands and other states

<sup>384</sup> For a partial list of companies having operated in Kabul airport. [www.jetphotos.net/](http://www.jetphotos.net/); [www.airliners.net/](http://www.airliners.net/)

<sup>385</sup> See El Mundo, May 30, 2003 on the fatal crash of the UM Air YaK-42 (chapter 1), “El Estado Major defende la seguridad de los vuelos contratados para misiones de paz.” The companies included in the NATO’s agency NAMSA’s contract with Chapman-Freeborn were UM-Air (Ukrainian-Mediterranean Air); Volga-Dnepr; Transavia Export (Belarus); Euratlantic Airlines (Portugal), and Midwest Airlines (Egypt). The responsibilities and mismanagements involved in the crash of the Yak-42 ended up with the substitution by the Spanish government of three of the top military authorities. See: Lee, K. “Spain: military chiefs replaced over Yak-42 plane crash” in World socialist Website, July 19, 2004.

<sup>386</sup> Lt. Col. David R. McClean and Capt. Phillip E. Henson “Moving the Force Across Europe,” in Challenges in Support of Operation Enduring Freedom,” in Army Logistician September/October 2004. In one case, however, Afghan truckers working for the US Army were attacked by Taleban ‘insurgents’ and survived unscathed but the trucks were destroyed. The truck owners sought compensation from the US army and wanted to have trucks to resume work for the US army but were told that since they lost the trucks as a result of military action, they could not get compensation.

<sup>387</sup> Major James J. McDonnell and Major J. Ronald Novack “Logistics Challenges in Support of Operation Enduring Freedom,” in Army Logistician September/October 2004.

Administration to activate 32 out of the 76 ships in the Ready Reserve Fleet, operated by commercial companies and civilian crew.<sup>388</sup>

One offshoot was that the U.S. Army re-awarded a US\$6 million contract in February 2002 to the U.S. Connecticut-based company Transatlantic Lines for providing transport services to the US base and detention facility at Guantanamo Bay.<sup>389</sup> Transport companies that rarely advertise themselves are said to have also provided their services to operations of the U.S. Special Forces and other missions, such as the U.S. Tennessee-based Prescott Support<sup>390</sup> and the U.S. Florida-based Tepper Aviation,<sup>391</sup> the latter involved in supplying arms to UNITA rebels on behalf of the C.I.A.

Operation Enduring Freedom attracted not only privately owned transport companies but also individuals who had been involved in the illicit trade in arms who were eager to sell their services to the US and Coalition forces. One of them was the arms and diamond dealer Sanjivan Ruprah, named in UN reports for violating the embargoes on Liberia and Sierra Leone, who tried to convince U.S. government agents to support a shipment of arms to an anti-Taliban faction during the first phases of Operation Enduring Freedom. Ruprah had been arrested in Belgium in February 2002 and, after escaping controls, re-arrested in Italy in August 2002, then released shortly afterwards. He had been director of the Sharjah-based company San Air that was involved in various arms shipments to Africa, as well as being a long-standing friend of the Russian arms trafficker and air businessman Victor Bout, also accused by the UN of violating UN arms embargoes.<sup>392</sup>

### ***“Operation Iraqi Freedom,” the early phases***

Operation Iraqi Freedom (OIF) began on March 19, 2003 when U.S. Special forces entered Iraq and on March 21, U.S. and UK aerial bombing was started.<sup>393</sup> Hundreds of civilians were killed during the war by US and UK forces, often through the use of excessive and indiscriminate force. Some were victims of cluster bombs, and others were killed in disputed circumstances, while Iraqi forces used unlawful tactics endangering and abusing civilians.<sup>394</sup>

However, the US and UK movement of large quantities of military materiel and troops was initiated many weeks beforehand, including through the use of private contractors. After the Iraqi regime collapsed on April 9 and “major military operations” officially ended, the first

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<sup>388</sup> See: The Transportation Institute, [www.trans-inst.org/2.html](http://www.trans-inst.org/2.html)

<sup>389</sup> See [www.dod.gov/contracts/2002/c02142002\\_ct072-02.html](http://www.dod.gov/contracts/2002/c02142002_ct072-02.html). In June 2001, the company had already received an award for transport services to the same destination. [www.dod.gov/contracts/2001/c06142001\\_ct268-01.html](http://www.dod.gov/contracts/2001/c06142001_ct268-01.html)

<sup>390</sup> Prescott Support, based in Knoxville, has recently used a L-100-30 Hercules (N-8213G) in various European airports. The company is a CIA asset and his L-100-30 plane is leased from a company called H.S.L. based in Great Falls, MT.

<sup>391</sup> Peleman, J. *The logistics of sanction busting: the airborne component*. In Cilliers, J., C. Dietrich *Angola's War Economy*. Pretoria, ISS, 2000. The company operates L-100-30 Hercules from its base in Crestview-Bob Sikes, FL. And is a tenant at the Okaloosa County Industrial Airpark, FL.

<sup>392</sup> TransArms database and Ruprah's trial document

<sup>393</sup> For a summary of the U.S. military operations see: USCENTAF, Assessment and Analysis Division *Operation IRAQI FREEDOM – By The Numbers*. USCENTAF, April 30, 2003.

<sup>394</sup> Amnesty International Report 2004

humanitarian relief cargo arrived in Bashur on April 16. At this point, OIF adopted a new approach to logistics, increasing commercial techniques and the private operators employed.

Well in advance of any announcements of the intention to wage war against Iraq,<sup>395</sup> the U.S. Air Force was stockpiling military equipment and weaponry in the Persian Gulf and US chartered ships were moving to various ports in the Middle East. In a deal seemingly prepared in April 2002, the US Navy awarded Maersk Line (a subsidiary of Denmark's A.P. Moller/Maersk A.S.) a contract on August 5, 2002 valued at US\$220 million:

*“for the operation and maintenance of eight government-owned large, medium-speed, roll-on and roll-off ships. These ships - USNS Watson, USNS Watkins, USNS Red Cloud, USNS Sisler, USNS Soderman, USNS Charlton, USNS Dahl, and USNS Pomeroy - carry U.S. Army cargo such as ammunition and vehicles such as M1A1 tanks, cargo/utility trucks, ambulances and tanker trucks [...] The ships will operate primarily in the waters around Diego Garcia, but must be deployable worldwide.”*<sup>396</sup>

Thus, from December 2002 to February 2003, nine pre-positioned ships carried nearly 128,000 tons of US Army equipment from Diego Garcia to Kuwait.<sup>397</sup> In mid-March 2003, *“more than 165 of the 210 ships [managed by the Military Sealift Command, MSC] were directly supporting OIF operations by carrying the heavy volume of equipment for war fighters or replenishing U.S. Navy ships at sea.”*<sup>398</sup> The MSC fleet included commercial carriers under various programs<sup>399</sup> and from September 11, 2001 to May 2004, MSC moved 5.7 million m<sup>3</sup> of military cargo worldwide and provided more than 5.2 billion gallons of fuel for the “global war on terrorism.”<sup>400</sup>

Ports in the USA, Canada (Montreal), Europe, Central America, the Far East, and the Middle East were sites of MSC operations. For instance, at al-Shuaybah, Kuwait, and the Kuwait Naval Base, MSC coordinated the unloading of about 2 million m<sup>3</sup> of dry cargo, 95 million tons of ammunition, and 260 million gallons of fuel. OIF used as many as 30 European ports either as transshipment points or to embark Coalition troops and their military cargo during

<sup>395</sup> On 12 September 2002, the US government “challenged UN to confront the “grave and gathering danger” of Iraq.”

<sup>396</sup> See: [www.dod.gov/contracts](http://www.dod.gov/contracts), August 5, 2002. See also: *“The last hours of peace, American tanks are being delivered on shores of Iraq,”* Pravda <http://english.pravda.ru/world/2002/09/04/35996.html>; and World Policy Institute, ATRC Newswire: August 14, 2002, *“US Navy chartering ships to move military equipment to southwest Asia,”* by Jim Mannion, Agence France Presse, August 14, 2002; ATRC Newswire: August 19, 2002, *“American Arsenal in the Mideast Is Being Built Up to Confront Saddam Hussein,”* by Eric Schmitt and Tom Shanker, in The New York Times, August 19, 2002.

<sup>397</sup> MSC press release, *“MSC area commands provide a world of service to military forces in Middle East,”* July 23, 2003.

<sup>398</sup> Quoted from *“Navy cargo ship loads in Charleston in support of Operation Iraqi Freedom,”* MSC, Press release, January 12, 2004.

<sup>399</sup> The MSC programs were as follows: Naval Fleet Auxiliary Force; Special Mission ships; Afloat Pre-positioning Force; Sealift ships that include short- and long-term charter tankers and dry cargo ships; Ready Reserve Force (these ships are owned and maintained by the U.S. Maritime Administration and come under MSC control when activated). Container ships include: MV Steven L. Bennett; MV Bernard F. Fisher; MV William H. Pitsenbarger; MV Merlin; MV John U.D. Page; and MV Edward A. Carter Jr.. Large, Medium-Speed, Roll-on/Roll-off Ships include, among others: USNS Bob Hope; USNS Fisher; USNS Seay; USNS Mendonca; USNS Piliilau; USNS Brittin; USNS Benavidez; USNS Watson; USNS Sisler; USNS Dahl; USNS Red Cloud; USNS Charlton; USNS Watkins; USNS Pomeroy; USNS Soderman; USNS Shughart; USNS Gordon; USNS Yano; USNS Gilliland.

<sup>400</sup> Randall, F. *“Military Sealift Command Maintains an Accelerated Pace,”* in Navy League of the United States website, July 2004.

late 2002 and early 2003.<sup>401</sup> MSC also awarded the Italian group Grimaldi, through its company “Industria Armamento Meridionale,” a contract of US\$5.8 million for a three-month charter of a ro/ro ship.<sup>402</sup>

#### PICTURE M AND CAPTION (THEBELAND IN MONTRAL)

The Suez Canal was heavily used by OIF as point of transit for ships loaded with military cargo bound to Iraq and the canal profits surged in 2003.<sup>403</sup> MSC Europe also established a transit centre in Crete, at Souda Bay. In a first phase, OIF also included contracts for 400 trucks and drivers from 14 different countries and this was supplemented by the UK program of mobilising commercial support.<sup>404</sup> According to UK Ministry of Defence:

*“...Over 90% of the freight was deployed by ship. Military sea lift capability benefited from the recent introduction, some 20 months early, of MOD’s four new roll-on-roll-off vessels procured through the Private Finance Initiative [...]. They were supplemented by the charter of 60 commercial ships...the costs of chartered air and sea lift capability was £53.5M and £70M respectively.”<sup>405</sup>*

As far as airlift operations are concerned, on February 8 the US Air Mobility Command (AMC) ordered the activation of the CRAF (Civil Reserve Air Fleet) system that compulsorily mobilizes US commercial airlines aircraft in an emergency. According to the AMC “from Feb. 8 through June 2, 11 CRAF carriers flew more than 1,625 missions and airlifted over 254,143 troops to destinations around the world, the majority of those missions

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<sup>401</sup> Among the European ports hosting US ships in the MSC fleet or moving military cargo for the coalition forces were the Baltic port of Szczecin, Poland (container and roll-on/roll-off ships MV Lince and MV Baltic, container ship MV Blue Oxygen and multipurpose ship ITB Strong American); Rotterdam, Netherlands, and Antwerp, Belgium (USNS Watkins of 63,000-ton; the Panama-flagged chartered MV Asian Vision; the Italian-flagged ship MV Jolly Turchese, owned by the Messina group; the USNS Mendonca; MV Skodsborg; British-flagged MV Thebeland; USNS Gilliland; MV Cape Diamond); the British Southampton’s Marchwood military port (MV Dart 8, among others); the Italian ports of Livorno, Gioia Tauro, La Spezia, Napoli, Reggio Calabria, Salerno, and Talamone (among others, MV Thebeland; the Liberia-flagged containership MS Rosa Delmas – owned by the French Delmas -; the ferry Partenope – owned by Levantina Trasporti -; and the ships of the US Farrell Line – owned by the former P&O Nedlloyd - Argonaut, Chesapeake Bay, Delaware Bay, Endeavor, Endurance, and Enterprise).

<sup>402</sup> MSC press release, *MSC ships lift allied forces*, by Edward Baxter, August 2003; MSC press release *MSC ships move Army division to Iraq*, by Edward Baxter, June 2003; *MSC’s Bellatrix lifts Army’s new Stryker Brigade* by Larry Crutchfield, June 2003; “Navy SEAL special operations boats roll off Skodsborg in Kuwait” , by B.J. Talley, May 2003; “Navy ships transport Army’s Stryker Brigade vehicles to Persian Gulf”, November 10, 2003; MSC press release “MSC area commands provide a world of service to military forces in Middle East,” July 23, 2003; “Disobedients occupy an armed boat,” [www.de.indymedia.org/2003/02/42944.shtml](http://www.de.indymedia.org/2003/02/42944.shtml);

*“Iraq: Livorno, Ships With Military Supplies Sail After Protests”* by AGI 11/03/03; Mastrandrea A. “Livorno la notte dei porti viventi” in “il manifesto” March 12, 2003; Lucca, D. S. Finardi “Armi USA per armature italiano” in “il manifesto” March 4, 2003; Industria Armamento Meridionale’s contract at [www.defenselink.mil/contracts/2003/c02202003\\_ct075-03.html](http://www.defenselink.mil/contracts/2003/c02202003_ct075-03.html)

<sup>403</sup> Luxner, B. “Suez Canal traffic booms,” in *Journal of Commerce*, September 6, 2004.

<sup>404</sup> Ministry of Defence website and Lloyd List/David Osler “UK Ministry of Defence set to confirm Gulf ro-ro charters,” January 6, 2003; “UK prepares to outline Iraq charter detail,” January 7, 2003; UK charters more ro-ros ready for Iraq,” January 8, 2003, available at Indymedia website, “UK military logistics to Gulf - ‘secret’ details! The Insider, January 21.,2003.

<sup>405</sup> UK Ministry of Defence report “Operations in Iraq: Lessons for the Future” Date? Among the chartered ships used, according to articles published by Lloyd List in January 2003, were the MV Sochi Russian, Novoship), the Sea Admiral and the Wind Admiral (Russina/Barcelona), the Stena Shipper (Swedish operator Stena Ro-Ro), the Thebeland, Tyrusland, Vegaland and Vikingland (Swedish Orient, reflagged UK), the Nordana Surveyor (St Vincent & Grenadines-flagged) and the Tor Anglia (DFDS’s Swedish-flagged).

going to the Middle East.”<sup>406</sup> However, most of the airlines included in the CRAF system<sup>407</sup> had already provided voluntary cargo planes for Operation Iraqi Freedom.

European and Middle Eastern airports were also involved in OIF, among them, particularly busy were the Irish Shannon airport (for refuelling) and the Italian Fiumicino airport, where activists were able to track many other companies’ planes in addition to those one quote above, such as planes from Pleasant Hawaiian Holidays and Evergreen International Airlines, the latter a company that was heavily involved in the Iran-Contra Scandal in the 1980s along with another company, Southern Air Transport (today Southern Air) that is presently in the CRAF system. Many other air cargo companies also provided planes, such as the Kyrgyzstan registered company British Gulf International (based in Sharjah, UAE). AirFoyle/Antonov (Design Bureau and its commercial arms Antonov Airlines) also provided its giant 124s for OIF military and humanitarian operations.<sup>408</sup> In January 2004, AMC also awarded a contract valued at US\$18 million to the Mercury Air Group’s subsidiary, Maytag Aircraft Corporation, based in Colorado, USA, for providing cargo terminal services of US and allied planes at the Kuwait International airport.<sup>409</sup>

The war in Iraq and the post-war conflicts and insurgent attacks claimed at least 25,000 civilians lives;<sup>410</sup> thousands of military casualties on both sides; “disappearances” in CIA-run secret prisons; and the torture and ill-treatment “enemy combatants” and Iraqis captured by the U.S. troops and U.S. special forces.

Nearly three years after United States and allied forces invaded Iraq and toppled the government of Saddam Hussain, the human rights situation in the country remains dire. The deployment of US-led forces in Iraq and the armed response that engendered has resulted in the death of thousands of civilians<sup>411</sup> and widespread abuses amid the ongoing conflict, including incidents of torture and ill-treatment.<sup>412</sup> Reports coming out of Iraq have indicated that attacks by armed groups have continued unabated. Amnesty International also remains concerned about reports that the Multinational Force (MNF) is using force against civilians indiscriminately.<sup>413</sup> Incidents of disappearances, kidnappings and extra-judicial killings -

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<sup>406</sup> See Air Mobility Command Press Release, November 6, 2003.

<sup>407</sup> Companies in the CRAF system were: American Airlines, ATA Airlines, Continental Airlines, Delta Airlines, Hawaiian Airlines, North American Airlines, Northwest Airlines, Omni Air International, United Airlines, US Airways and World Airways.

<sup>408</sup> See Shannon Peace Camp website [www.shannonpeacecamp.org/](http://www.shannonpeacecamp.org/) and S.Finardi, D. Lucca “La portaerei Italia,” in “il manifesto” March 5, 2003. The planes that loaded troops and military cargo at Fiumicino were, among other, the N493MC (B.747-47UF/SCD), r/n 29254; N415MC (B.747-47UF/SCD), 32837; N518MC (B.747-243F/SCD), 23476, former Alitalia I-DEMW; N526MC (B.747-2D7B/SCD), 22337; N809MC (B.747-228F/SCD), 20887. See also, for example, “[NAVIGOMES awarded transportation of 130 men and women of a special Portuguese police force to accomplish a mission in Iraq](#)” from the Heavy Lift Group’s website [www.ehlg.org/hlg/news/headlines.asp?offset=30](http://www.ehlg.org/hlg/news/headlines.asp?offset=30).

<sup>409</sup> PR Newswire “Mercury Air Group’s Maytag Aircraft Corporation Wins Contract To Provide Air Terminal Services in Kuwait,” January 26, 2004.

<sup>410</sup> BBC World Service “25,000 civilians killed in Iraq,” July 19, 2005; recent reports by Amnesty on the subject.

<sup>411</sup> The Iraqi Body Count, an independent group which monitors the number of civilian casualties in Iraq since the 2003 military intervention in March 2003, indicates that the number of civilians killed lies somewhere between 34,000 and 39,000. These numbers cannot however be verified. More information can be obtained at their website: <http://www.iraqbodycount.net/>.

<sup>412</sup> Amnesty International, *Iraq: Beyond Abu Ghraib, torture and detention in Iraq*, 6 March 2006, AI Index: MDE 14/001/2006.

<sup>413</sup> Amnesty International, *Iraq: Amnesty International’s concerns with regards to “Operation Swarmer”*, March 17, 2006, AI Index: MDE 14/011/2006.

which seem to be taking place along sectarian lines - have also been on the increase.<sup>414</sup> Moreover, several Iraqi families are now being forced to leave their homes out of fear - the Iraqi Ministry of Displacement and Migration has recently come out to say that around 10,000 families have been uprooted as a result of the ongoing sectarian killings.<sup>415</sup> Additionally, a large number of Iraqis have fled Iraq, and took refuge outside the country (especially in Jordan).

## 8. Brokering a covert arms supply operation<sup>416</sup>

Large quantities of small arms and light weapons from the Bosnia and Herzegovina (BiH) war-time stockpiles and tens of millions of rounds of ammunition were exported and supposedly shipped to Iraq by a chain of private brokers and transport contractors under the auspices of the U.S. Department of Defense (DoD) between July 31, 2004 and June 31, 2005, according to sources within the EU-led peace-keeping force (EUFOR) the Organisation for Security & Cooperation in Europe (OSCE) and the Office of the High Representative (OHR).<sup>417</sup> However, whether a series of shipments of AK47-type assault rifles documented as weighing 99,000 kg reached or remained in Iraq remains in doubt.<sup>418</sup>

Despite the strong US law regulating the activities of arms brokers and freight-forwarders, the use of multiple private sub-contractors in this US-sponsored arms brokering and transportation process has included the involvement of foreign companies one of which was named by the United Nations for arms smuggling and another of which was unregulated by its own government. As the following case shows, US tax dollars from the Pentagon have been used to fund foreign arms shipments delivered by an east European air cargo company which in the previous months had been accused in a highly-publicised UN investigation report of violating the UN arms embargo on Liberia and which had no valid operating certificate.

*“The largest arms shipments from Bosnia since the second world war have occurred in the last year. There are Swiss, US and UK companies involved. The deal was organised through the embassies and the military attaché offices were involved. The idea was to get the weapons out of Bosnia where they pose a threat and to Iraq where they are needed. But NATO has no way of monitoring the shipments once they leave Bosnia, there is no tracking mechanism to ensure that they do not fall into the wrong hands. There are concerns that some of the weapons may have been siphoned off. A lot of the weapons left from Tuzla airforce base, others from the port at Ploče [Croatia],”* said one NATO official in June 2005.<sup>419</sup>

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<sup>414</sup> New York Times, Eric Schmitt and Edward Wong, *US Study Paints Somber Portrait of Iraq Discord*, April 9, 2006.

<sup>415</sup> Agence France-Presse, Ten thousand Iraqi families displaced by violence: official, 13 April 2006.

<sup>416</sup> Research for this chapter was undertaken by Hugh Griffiths, an investigations consultant working in the Balkans and eastern Europe, contracted by Amnesty International.

<sup>417</sup> Figures and information on arms from multiple senior EUFOR sources. Additional information provided by the OSCE and a source at OHR. Meeting was also attended by OSCE public affairs officials in August 2005.

<sup>418</sup> Precise weight of weaponry obtained from BHDCA and confirmed by primary contractor Taos

<sup>419</sup> Briefing by NATO intelligence officer

Bosnia & Herzegovina's weapons stockpiles are a legacy of the 1992-1995 armed conflict as BiH emerged as one of the successor states to the Socialist Federal Republic of Yugoslavia (SFRY). NATO and subsequently the EU-led force mandated to provide a safe and secure environment under the Dayton Peace Agreement have monitored the stockpiles since 1996.<sup>420</sup>

Weapons stockpiled in Bosnia & Herzegovina numbered approximately 850,000 small arms and light weapons (SALW) in February 2004 while EUFOR say the figure had been reduced to approximately 300,000 by the time a small arms moratorium was established in August 2005.<sup>421</sup> The arms range from side arms to heavy machine guns up to 14.5 mm although the vast majority have been 7.62 calibre AK47-type derivatives. While over 50,000 have reportedly been destroyed in the last two years by the United Nations, a far greater number have been exported.<sup>422</sup> According to UN documentation, by December 2004, 239,958 pieces of SALW had been approved for export. Of those approved for export, 96,518 had been transferred by December 3, 2004, while a further 143,440 were awaiting export. The UN documentation shows that another 212,628 pieces of SALW were subject to export applications in December 2004. The BiH state authorities have to date not responded to requests for additional information on the exact quantities and destination of the SALW export applications which were approved and undertaken in the first six months of 2005, prior to the establishment of the SALW moratorium.<sup>423</sup>

EUFOR's figures for the Iraq transfers are higher than official Bosnian government statistics. According to a document obtained from the state-level Ministry of Foreign Trade and Economic Relations, MoFTER, some 63,815 AK47 derivatives, 2,200 grenade launchers<sup>424</sup> and 23 million rounds of ammunition from 7.62 to 12.7 mm have been transferred to Iraq in a series of shipments to users variously and vaguely named as "Coalition forces in Iraq",

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<sup>420</sup> Between 1992 and 1995, the three main ethnic groups in the country – Bosnian Muslims (Bosniaks), Bosnian Croats and Bosnian Serbs – fought a conflict for political and economic control of areas of the country. The fighting was brought to an end with the signing of the General Framework Agreement for Peace in December 1995, in Dayton, Ohio. This agreement is also known as the Dayton Agreement. Under the agreement, two distinct 'entities' were established – the Federation of Bosnia and Herzegovina (FBiH), a federation of Bosniaks and Bosnian Croats; and the Republika Srpska, the Bosnian Serb-controlled entity. A third area, the Brčko District, was given special administrative status after international arbitration. The Dayton Agreement in Annex 1A laid down the basis for the creation of a multinational Implementation Force (IFOR), composed of units from NATO and non-NATO nations and with a one-year mandate, and laid down the mandate of IFOR in Article VI. IFOR was replaced in 1996 by the NATO- led Stabilization Force (SFOR). SFOR began an operation in 1998 to collect and destroy unregistered weapons, known as Project Harvest. This was done under Article 1(2)c of Annex I of the Dayton Agreement which mandated IFOR "to establish lasting security and arms control measures as outlined in [Annex 1-B](#) to the General Framework Agreement". In December 2005, SFOR was replaced by a smaller European Union-led presence, EUFOR. The BiH authorities invited some US troops to remain, based at the "Eagle Base" in Tuzla, and some NATO presence, mainly officers, in Butmir. Annex 10 of the Dayton Agreement established the Office of the High Representative, tasked with overseeing the implementation of the civilian aspects of the agreement. The OHR remains the final arbiter in civilian matters in BiH under the "Bonn powers" and is appointed by the UN Security Council.

<sup>421</sup> Statistics confirmed by an OSCE official who says that there is some confusion regarding actual numbers of weapons – whether weapons should be measured by weight (tonnage) or quantity of individual arms.

<sup>422</sup> UN figures from Amra Berbić, United Nations Development Program SALW project manager, telephone interview, October 2005

<sup>423</sup> UN document obtained in February 2006

<sup>424</sup> EUFOR say the Bosnian government RPG figure is incorrect. They say a total of 1,600 RPG launchers were transferred to Iraq, the remaining 600 were additional rockets.

“Ministry of Defence, Republic of Iraq”, “Coalition Provisional Authority, Ministry of Defence” and “Interim Government of the Republic of Iraq.”<sup>425</sup>

However, both EUFOR and UN officials say that the BiH official data is out-dated as the Ministry relied on information supplied by the two entity-level governments that comprise BiH. Unlike EUFOR, MoFTER has no computerised weapons tracking system and currently have neither the resources nor the equipment to accurately determine the number of weapons and munitions that have been transferred out of the country at least during 2005.<sup>426</sup>

The Bosnian authorities at entity level - the FBiH and RS Ministries of Defence have been responsible for selling such weapons and munitions to networks of private contractors ostensibly operating on behalf of Iraq[footnote]" until the arms moratorium was introduced in August 2005. Any future sales or transfers are the responsibility of the new unified Bosnia & Herzegovina Ministry of Defence that was established in 2005 to replace entity institutions at state level.<sup>427</sup> and munitions to networks of private contractors ostensibly operating on behalf of Iraq.<sup>428</sup> However, following 2002 revelations that military companies in both the RS and the FBiH were supplying Saddam Hussein's Iraq through state-controlled companies in Serbia that were also smuggling to Liberia,<sup>429</sup> NATO member states pressured the Bosnian authorities into implementing a new arms import/export regime.<sup>430</sup> Under the new arrangements, state-level bodies including the Ministry of Security, the Ministry of Foreign Affairs and the Ministry of Foreign Trade and Economic Relations, MoFTER are involved in arms transfer, import and export certification.<sup>431</sup> Elements within the entity structures particularly in the RS, connected to the arms trade in the past have been resisting moves to place the remaining stockpiles under the control of the unified MoD which has led to statements of concern by EUFOR and NATO.<sup>432</sup>

However, real power – that is the power to authorise any arms transfer from a stockpile depot to BiH's borders for export - continues to be vested within international organisations working in BiH, including the EU-led peacekeeping force, EUFOR, the Office of the High Representative, OHR and the Organisation for Security & Cooperation, OSCE. The EU-led peacekeeping force, EUFOR, and its US-led NATO predecessor up to 2 December 2004, SFOR, have been the only agencies able to authorise movement of arms across BiH territory.

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<sup>425</sup> Bosnian government note

<sup>426</sup> MoFTER official confirmed EUFOR and UN statements.

<sup>427</sup> “Internationals dispute destiny of Bosnia's deadly arsenals”, Hugh Griffiths, Balkan Investigative Reporting Network, October 20, 2005, [http://www.birn.eu.com/insight\\_04\\_1\\_eng.php](http://www.birn.eu.com/insight_04_1_eng.php)

<sup>428</sup> The contractors are named in a MoFTER document, a version of which with contractors' data omitted was supplied to HG. Weapons from Bosnia were also shipped for the Israeli government, according to EUFOR.

<sup>429</sup> See International Crisis Group, ICG, report “Arming Saddam – the Yugoslav Connection”, ICG 2002. HG spoke at length with author, ICG analyst Dr. James Lyon for additional information.

<sup>430</sup> OHR source – background briefing

<sup>431</sup> Explanation provided by assistant minister Dragisa Mekic

<sup>432</sup> “The OSCE Mission to BiH, EUFOR and NATO are concerned over reports indicating that some elements in the Entities believe they should retain rights over ammunition, weapons and explosive that would allow them to dispose of these through their sale and/or export to other countries.” OSCE/EUFOR/NATO press release, 6 April

Application and movement orders known as “*forms five and six*” are required in order for any arms deal to physically proceed.<sup>433</sup>

New documents gathered for this research relate to a case of arms and ammunition transfers approved by the BiH and US authorities from Tuzla to Rwanda in December 2004 despite reports by the United Nations implicating the Rwandan authorities in aiding armed groups in the eastern part of the Democratic Republic of the Congo (DRC). The actual delivery the BiH government reportedly cancelled or postponed at the last moment on 10 December.<sup>434</sup> These documents record that, on 18 November 2004, SFOR approved a notification of the BiH authorities to export a large quantity of small arms and light weapons to Rwanda using the services of a Croatian broker and a company which is part of Unis Promex arms manufacturing company, owned by the Bosnian government. EUFOR then approved the transport of four consignments of arms and ammunition on December 8 to leave from Tuzla airport on the following evening.<sup>435</sup> On 9 December, SFOR approved the transport of a consignment of almost 47 tonnes of arms and ammunition from Tuzla airport in BiH to Rwanda<sup>436</sup>, while on the same day the BiH government announced publicly that arms and ammunition transfers to Rwanda would not proceed.<sup>437</sup> It should be noted that SFOR had ceased its controlling authority in BiH on December 2, 2004, when EUFOR took over the overseeing of the military implementation of the Dayton Agreement. The question of whether one or more of these consignments was delivered to Rwanda remained in doubt and could have been related to one or more of the outbound flights of Ilyushin 76 cargo aircraft observed in Tuzla between December 10 and 22. The BiH authorities and SFOR had previously approved the export of large quantities of small arms, light weapons and ammunition from late 2001 to mid 2003 to Uganda using a brokering firm in Cyprus, at a time when Ugandan armed forces were aiding armed groups committing human rights abuses in eastern DRC, and further arms exports to Guinea in 2003 using a broker in the UK.

### ***“Peeling the skin of an onion” – establishing accountability***

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<sup>433</sup> Information provided by EUFOR sources. Currently, EUFOR circulate information regarding end-users and the identities of arms brokers to the OSCE and OHR and the data is also shared with Nato member state national security and intelligence agencies.

<sup>434</sup> The background to this case can be found in Amnesty International report, “Democratic Republic of the Congo: arming the east,” July 5, 2005.

<sup>435</sup> On December 8, EUFOR Colonel Jacono approved and signed other four shipments to Rwanda for roughly the same volume of the SFOR-approved shipment.

<sup>436</sup> On December 9, 2004, SFOR Major Kauer - on behalf of Lt. Colonel Costeira, SFOR Chief of Current Affairs and Compliance - approved and signed a shipment to Rwanda of 46 pallets (2,760 cases) of 12.7mm DSK ammunition for a total weight 46.7 tons (a cargo that could fill the maximum capacity of a Ilyushin 76). This shipment was intended to leave Tuzla December 12.

<sup>437</sup> On 10 December 2004 the Bosnian newspaper Dnevni Avaz, published a story entitled ‘Export of weapons from FBiH to Rwanda stopped’ in which it stated that “the Federation of BiH has postponed delivery of the first amounts of weapons and military equipment to Rwanda following a request by the international community to do so. It was about weapons and ammunition intended for infantry including hand grenades prepared to be sent to Rwanda late on Thursday from the Tuzla Airport . Rwanda is under UN embargo as their troops are being deployed on the border with Congo.” <http://www.avaz.ba/>

<sup>437</sup> On December 8, EUFOR Colonel Jacono approved and signed other four shipments to Rwanda for roughly the same volume of the SFOR-approved shipment.

The US-sponsored arms deal for Iraq was technically a state-to-state affair – the Bosnian state authorities officially gave permission for the sale following the presentation of end-user certificates from the US Coalition Provisional Authority (CPA) and the interim Iraqi administration. However, the sale, purchase, transportation and storage of the weapons has been handled entirely by a complex network of private arms brokers, freight forwarders and air cargo companies operating at times illegally and subject to little or no governmental regulation. Governmental and inter-governmental oversight ended at the cargo aircraft point of departure from US “Eagle base” in Tuzla.<sup>438</sup>

It appears that the BiH Directorate of Civil Aviation (BHDCA)<sup>439</sup> and Eurocontrol, the pan-European body responsible for the control of European airspace,<sup>440</sup> did not receive all the data on arms flights declared from BiH to Iraq.

The blurring of roles between government agencies and private contractors is a key aspect of arms deliveries. In BiH, US DoD officials and US agencies staff have assisted the primary contractor in identifying weapons, facilitating their purchase and helping enable their movement across Bosnian territory.<sup>441</sup> A NATO intelligence officer said that the embassies of other major European states assisted companies originating from their own countries to export weapons whose ultimate destination was Iraq.

In Iraq, US government agency procurement officers responsible for the arrival of the weapons in Baghdad from BiH were not Federal government employees but contractors working for CACI, a Virginia-based private security company that is better known for its role in interrogations at the Abu Ghraib prison complex in Iraq.<sup>442</sup> The CACI-contracted staff member named as responsible for authorising the shipments to Iraq and liaising with the freight-forwarders could not be contacted and his office telephone numbers no longer worked.<sup>443</sup>

State and entity agencies in BiH have also been reluctant to provide information on either the transfer process or the network. The Bosnian Serb Ministry responsible for arms sales stated that clauses within the contracts signed with the private contractor network forbid any disclosure of information relating to the sale of arms.<sup>444</sup> The BiH state-level Ministry of Foreign Trade and Economic Relations (MoFTER) have, in accordance with the new,

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<sup>438</sup> A NATO official admitted that: “NATO has no way of monitoring the shipments once they leave Bosnia” while a EUFOR official claimed that “it is up to the subcontractors to ensure that the weapons reach the intended destination.”

<sup>439</sup> “We only have records of three flights, on the 7, 8 and 21 August,” interview with BHDCA official

<sup>440</sup> Information on Eurocontrol’s records of three Aerocom flights first supplied orally by Eurocontrol official and then confirmed through the forwarding of Eurocontrol records by Eurocontrol officials.

<sup>441</sup> Information provided by Taos executives, telephone conversation. Information also provided by NATO intelligence officer, and by US State Department official

<sup>442</sup> Information on individual PCO staff member responsible (Michael LeMaster) supplied by Artic and Taos. Taos said LeMaster was a CACI-contractor, second source is a letter from LeMaster posted on “VeteransToday.com stating he is CACI contractor. CACI were also contracted in intelligence role and interrogated prisoners at Abu Ghraib according to Major General Antonio Taguba’s report. CACI quoted as having staff deployed at Abu Ghraib although they deny any involvement in improper conduct.

<sup>443</sup> He worked at the US Department of the Army/Department of State, Project Contracting Office (PCO) based in the Baghdad “green” zone together with the Multi-National Security Transition Command-Iraq (MNSTC-I) according to information obtained from officials. His contact numbers were cited by one of the air cargo firms involved, Artic Group, and the freight brokering firm, Speedex, as well as a Taos executive who supplied additional information.

<sup>444</sup> Letter to HG from RS Minister of Energy & Development responsible for directorate of arms trade, transfer and military equipment Dr. Miladin Gligoric

internationally-sponsored arms transfer legislation provided the legal minimum of information required and admitted to being pressured by foreign diplomats into not discussing the identity of contractors named in arms documentation which was altered in order to prevent that disclosure.<sup>445</sup>

In Iraq, the level of transparency appears even lower. Although the altered MoFTER documentation cites “Coalition forces in Iraq” as the official end-users in five shipments of arms to Iraq, the Multi-National Security Transition Command in Iraq, MNSTC-I, the coalition force responsible for training the new Iraqi security forces, and their commanding US General have claimed “*not to have ...received any weapons from Bosnia*” and say they are “not aware of any [arms] purchases for Iraq from Bosnia”.<sup>446</sup> MNSTC-I claimed in September 2005 that “the Iraqi Security Forces received more than 172,000 AK-47 automatic rifles, 163,000 pistols, 8,000 heavy machine guns and 195,000sets of body armor.”<sup>447</sup>

The process of discovering which company made which delivery was defined by an executive of the primary arms dealing company as “peeling the skin of an onion” – with layer after layer of sub-contractor in both the brokerage and transportation networks.<sup>448</sup>

### ***US sponsored arms brokering and freighting network***

The US-sponsored BiH-Iraq transfers provide insight into the structure and processes by which contemporary state-sanctioned arms brokering is conducted. The arms brokering and freight forwarding network can be viewed in this case as a pyramidal structure with an primary contractor sitting at the apex astride a collection of largely unregulated, secretive companies operating out of private apartment buildings and gun shops but involved in an arms deal worth tens of millions of dollars.

The primary contractor in the BiH-Iraq transfers has been Taos Industries Inc. (“Total Acquisition One Source”) based in Madison, Alabama. Taos claims to have 27 staff and describes itself as a “small business” which has “satellite” offices in Baghdad, Iraq; Kiev, Ukraine; Sofia, Bulgaria; and in Florida at Elgin Air Force Base, the headquarters of US forces Central Command responsible for the Middle East, south-west and central Asia.<sup>449</sup> Taos may consider itself a small company, but its website advertises “complete procurement services” and offers a wide range of military materiel including items spanning the entire ex-Soviet armed forces arsenal including advanced missile systems, main battle tanks, portable anti-aircraft missiles (SAMs) as well as more than a dozen rocket-propelled grenade launcher variants and AK47 derivatives.<sup>450</sup>

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<sup>445</sup> Interview with MoFTER official

<sup>446</sup> Email correspondence with Lt Col. Wellman.

<sup>447</sup> This Week in Iraq, MNSTC-I, September 14, 2005

<sup>448</sup> Remark made by Taos executive, telephone conversation

<sup>449</sup> Taos website : [http://www.taos-inc.com/about\\_us.htm](http://www.taos-inc.com/about_us.htm)

<sup>450</sup> <http://www.taos-inc.com/foreignmat.htm>

Taos promotes its close connections to the U.S. Department of Defense and other DoD agencies including the Strategic Defense Command, the US Army and Aviation Command and DoD staff stationed in various US diplomatic missions in eastern Europe and the US Central Command orbit.<sup>451</sup>

Taos has, in turn, subcontracted downwards to companies in Israel, Switzerland, Bulgaria and the UK who in turn sub-contracted to other firms, creating a network of business relationships involving a variety of companies. Other companies within the network, which have not been named in open-source materials relating to arms trafficking, operate from offices in BiH, Croatia, Kyrgyzstan, Russia, Serbia and the Ukraine, states in which government oversight is weak and there is little in the way of independent scrutiny. Despite owning arms brokering and transportation licences, the authorities in a number of these states profess to be unaware these companies' involvement in the Iraq arms network.<sup>452</sup>

The US DoD and its principal US contractor, Taos, appear to have no effective systems to ensure that their contractors and sub-contractors do not use firms that violate UN embargoes and also do not use air cargo firms for arms deliveries that have no valid air operating certificates, despite strong clauses regarding unlawful conduct by contractors and sub-contractors in DoD sponsored supply agreements for Iraq.<sup>453</sup> *"I find that shocking that they [a Bulgarian brokering firm] used a company [an unlicensed Moldovan air cargo company, Aerocom, that had violated a UN arms embargo – see below] involved in smuggling,"* said a Taos executive on checking this in the Taos hard copy records.<sup>454</sup> The US Dept of Commerce appears to maintain no fewer than five lists of restricted parties, including parties that have been barred by the UN Security Council, but Aerocom does not seem to be on the lists examined by Amnesty International.

Taos had personnel periodically present in Iraq from 2003 onwards but became directly involved in the Iraq arms transfer process when the company won a Coalition Provisional Authority, CPA, contract worth over \$20 million which was part of a wider \$34,432,072 deal under DoD auspices on April 28, 2004 [US DoD Contract W914NS-04-D-0115].<sup>455</sup> According to Taos's press statement of July 12, 2004, Taos won an "indefinite delivery, indefinite quantity" contract worth \$50 million over three years to provide "equipment for

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<sup>451</sup> *ibid*

<sup>452</sup> According to secondary source, Croatian officials in Ministry of Interior (MUP) and Counter Intelligence Agency (POA) were unaware of the involvement of a company called Scout [see below] in weapons transfers from Bosnia.

<sup>453</sup> For example, in a U.S. Department of Defense (TACOM) solicitation dated April 29, 2004 and related to military equipment to be sent to Iraq (Kirkush and Tadjji military training bases, An Numaniyah, and Al Kasik), it is clearly stated – under the section "Standards of Conduct – Improper Business Practices" – that *"corruption or any other improper business practices related to this solicitation and any resulting contract(s) will not be tolerated. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct by contractors, subcontractors, and any other agent acting in connection with this contract. Examples of such unacceptable behavior include providing or offering of bribes to any person associated with the contract or any subcontracts; soliciting or accepting kickbacks or bribes; and knowingly making any false or misleading accounting reports or financial statements. Contractors, subcontractors, and any other agents acting under the contract awarded herein are expected to employ due diligence and have internal controls in place towards practicing good governance in execution of this contract. Any one of these entities found to have engaged in illegal activity, improper behavior, or corrupt practices will be subject to corrective actions in accordance with the respective FAR or DFARS clause incorporated into this solicitation and any resultant contract."*

<sup>454</sup> Telephone conversation with HG, recorded in note form

<sup>455</sup> <http://www.taos-inc.com/press.htm> and confirmed by the US Defense Department

Afghanistan”.<sup>456</sup> The company website also states that on February 21, 2005, Taos Industries together with four other businesses were awarded a two year \$300 million indefinite delivery, indefinite quantity contract to “supply security equipment in support of US nation building in Iraq.”<sup>457</sup> Moreover, Taos announced that on August 18, 2005, it won a further DoD contract worth \$13.5 million to provide “110 armoured (sic) vehicles in support of US forces in Iraq”.<sup>458</sup> EUFOR and Taos executives confirmed that the company is the apex contractor, closely linked with Pentagon officials working in the Balkans who helped facilitate the weapons transfer arrangements.<sup>459</sup>

As information from both the company and EUFOR make clear, Taos has been a main player in US-sponsored arms transfers from BiH. Following the award of the contract in April 2004, Bosnian stockpiles previously identified by US DoD and other government agencies were formally selected by Taos as providing the volume and quality necessary for equipping the new Iraqi security forces under the DoD contract. Meetings between US diplomats, Taos executives, BiH state officials, various arms brokers and NATO-led Stabilisation Force (SFOR) commanders led to successful licensing movement applications which allowed the consortium of arms brokers to purchase weaponry and transfer the arms out of BiH from July 31, 2004 onwards.

Taos say that they handled the initial high-level contacts in Bosnia with the NATO-led peacekeeping force, SFOR and the various Bosnian entity directorates, airports and local interface brokers. The first transportation of weaponry was arranged by Taos’s European freight forwarding broker, Speedex, which has offices at Sofia airport in Bulgaria.<sup>460</sup> Senior Taos executives stated that the choice of Aerocom as a cargo airline selected by Speedex was the European broker’s decision alone.<sup>461</sup>

### *Croatian, Swiss and UK brokers*

Scout d.o.o., of Croatia, was the interface arms brokering company which acted as a conduit between the Federal BiH Ministry of Defence, Taos and related sub-contractors.<sup>462</sup> According to a US State Department diplomat from the Bureau of Political-Military Affairs, Scout have “a long-standing relationship with the Pentagon” and “good connections with the [Bosnian] Federation Ministry of Defence.”<sup>463</sup> According to EUFOR and OSCE sources, Scout played a key role in the early stages of the arms transfer process. Scout obtained the contract from the

<sup>456</sup> <http://www.taos-inc.com/press.htm>

<sup>457</sup> *ibid* Taos state that “to date the US government has purchased less than \$50M[million] for all parties under this contract”, email from Taos executive. According to Taos, the contract number is W914NS-05-D-9010.

<sup>458</sup> *ibid*

<sup>459</sup> Multiple EUFOR sources, plus information from Taos executives and cross checked with a US State Department official

<sup>460</sup> Telephone conversation with Speedex “boss” Krassimir Semkov, email correspondence with Krassimir Semkov. Confirmed by Taos executives

<sup>461</sup> Information from Taos executives

<sup>462</sup> Notes taken from arms transfer documentation, EUFOR sources statements (note form) Taos executive (recorded, evidence folder). The Federal BiH Ministry of Defence was responsible for this contract at the time and these responsibilities have since passed to the unified BiH state level ministry.

<sup>463</sup> Off-record meeting with state department official

FBiH Ministry of Defence and then proceeded to sell tens of thousands of weapons to the Taos brokering network.<sup>464</sup> The relative power accorded to Scout was explained by a Taos executive: “*We could not buy the weapons without going through Scout. Scout owned every one of those weapons in that warehouse...and SFOR...they allowed these guys [Scout] in and out...we had no choice...frankly it was a good deal for the US government rather than having them demilled...they could be used in Iraq where they were needed.. It [Scout] was the only party we could go to.*”<sup>465</sup>

Scout’s business address in the arms transfer documentation is a fifth-floor flat in a shabby apartment building in an outlying suburb in Zagreb. The business address is the private residence of the two directors of the company listed in Croatia’s business directory.<sup>466</sup> Ivan Peranec together with his wife, Dragica Peranec run the company which lists its business activities as a travel agency, tour operator, a producer of electronic equipment, a representative of foreign companies among others. Last on the list is “*arms and ammunition broker*”.<sup>467</sup>

Scout do not appear to advertise in either mainstream or commercial media and the only indication of the business registered at Varićakova is a tiny 1cm by 1cm adhesive sticker attached to the mailbox in the apartment block entrance.<sup>468</sup> According to Scout’s declared financial statement in the Croatian business register, the company sells 100% of all its goods abroad from which it derives its income. The company was founded on September 9, 1992 and claim its income peaked in 2000. Scout’s declared profit in 2004 was less than 10,000 euros.<sup>469</sup>

Another sub-contractor involved in the brokering and shipping network transferring arms from BiH was a Swiss arms brokering company, Marius Joray Waffen. Like Scout, its business address listed in the arms transfer documentation gives no indication as to the company’s involvement in a multi-million dollar arms deal, and the owner of the company appears to be the sole employee involved in transferring weaponry to the Middle East.

Marius Joray’s business address is a gun shop in the prosperous but sleepy town of Laufen, close to Switzerland’s border with Germany. The shop, Marius Joray Waffen, proudly displays Heckler & Koch and Uzi-type sub-machine guns, military sniper rifles and AK47 derivatives in the front window.<sup>470</sup> Joray Marius Waffen is listed as a distributor for Brugger & Thomet, a larger Swiss weapons purchaser whose manager Heinrich Thomet is involved in another Taos-related contract for the Pentagon for the US Special Operations Command (SOCOM).

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<sup>464</sup> Confirmed by Taos executive who said: “The specific reason is that the coalition in Bosnia had all these arms that were either going to be demilled or sold...they issued it [the contract] to Scout.”

<sup>465</sup> Ibid

<sup>466</sup> Photographic evidence

<sup>467</sup> Croatian business directory

<sup>468</sup> Photographic evidence. Mr. Peraneć Peranec was not at home at the time of visit and responded in a verbally offensive manner to a local journalist who tried to contact him.

<sup>469</sup> Notes from Croatian business directory

<sup>470</sup> Photographic evidence. Mr. Joray’s business is popular with gun enthusiasts who buy eastern European and Soviet-era assault rifles and semi-automatic weaponry and the company is said to operate a flourishing mail-order service. Evidence of this found in gun enthusiasts web-based “chat rooms”.

Like Scout, Marius Joray, the proprietor of both the shop and the arms brokering service was reluctant to talk about his role in the network.<sup>471</sup> But when pressed, Joray admitted to being involved in the shipments “indirectly” but would not discuss the matter further. Nevertheless, a source within the BiH Directorate of Civil Aviation (BHDCA) explained that Mr Joray visited the BHDCA’s offices regularly to ensure that the paperwork for arms shipments was in order and deal with any delays and technical problems with the documentation.

Another company named by EUFOR officers as having been authorised to transfer thousands of Kalashnikov rifles as part of the Iraq deal was the UK firm York Guns Ltd. The manager of York Guns is also the director of another UK firm Jago Ltd mentioned in records as trading in surplus arms from BiH but he told Amnesty International that “*we were going to make a purchase but in the end we did not make a purchase, there was no need to make a purchase, we did not take them up on their offer with those company names.*”<sup>472</sup> York Guns Ltd became well known in the UK after it sold a Browning 9 mm pistol to a UK civilian who he then used to murder 15 school children and their teacher in the Scottish village in Dunblane in 1996, an event which led to the wholesale reform of British gun licensing laws.

### *Air carriers and the lack of delivery verification*

The first four flights carrying arms destined for Iraq were carried out by Aerocom, an air cargo company accused in an April 2003 UN report to the UN Security Council for smuggling weapons from Serbia to Liberia in 2002 in contravention of the UN arms embargo on Liberia.<sup>473</sup>

Aerocom’s flights from the US-military controlled Eagle base at Tuzla in BiH were carried out on August 7, 8, 21, and 22, 2004.<sup>474</sup> Planned and actual take-off times were noted. According to BHDCA documentation and confirmed by Taos, the flights comprised of 99,000 kg of small arms and light weapons, almost entirely Kalashnikov AK47 assault rifle variants and derivatives. In addition to this, neither the BHDCA nor Eurocontrol were informed about the fourth flight on August 21, records of which were only kept at Tuzla airbase.<sup>475</sup>

Apart from using a company named by the UN as engaged in weapons smuggling from Serbia in previous months, there were a number of other irregularities of concern. The plane, a Russian-made Ilyushin 76, registration number ER-IBV, using call signs MCC9071 and MCC9073 when departing Tuzla, was flying illegally because Aerocom had lost its Air

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<sup>471</sup> “Yes, I have weapons from Bosnia, but I don’t want to talk about this.” “Journalists are my favourite people.” (sarcasm implied) “I don’t want to talk about this over the phone.” “Who are you” etc.

<sup>472</sup> Telephone interview with manager of York Guns, May 2, 2006, who stated in a subsequent email “We were going to make a purchase but in the end we did not. Furthermore, we have not imported guns to the UK from Bosnia nor have we exported anything to any other country from Bosnia. We run a 100% legitimate business practice and are fully licensed by the British Government Authorities.”

<sup>473</sup> Letter to the UN Secretary General, report on the arms embargo on Liberia, 24 April 2003, s/2003/498

<sup>474</sup> According to Eurocontrol (three flights, written correspondence) BHDCA source, (three flights) All four flights confirmed in written correspondence by Speedex, Artic and Taos.

<sup>475</sup> Information obtained from two Bosnian staff, one working in the section of Tuzla airbase controlled by Kellogg, Brown & Root on behalf of US military, the other working in the civil aviation section..

Operating Certificate (AOC) on August 6, 2004 the day before it carried out the series of arms flights from Tuzla.<sup>476</sup> The AOC is the single most important document required by airline companies in order to operate. The flights were actually scheduled for August 1, but were delayed for reasons unknown.<sup>477</sup> According to a flight operations specialist at the Moldovan Civil Aviation Authority, CAA<sup>478</sup>, Aerocom's AOC was not renewed following concerns expressed by Germany and other EU member states regarding the company's "safety and security record".<sup>479</sup>

Even more importantly, it cannot be established with any certainty that the weapons carried by Aerocom were actually delivered to Baghdad. The coalition air traffic control authority, the Regional Air Movement Coordination Control Center (RAMCC),<sup>480</sup> has no records of any landing slot requests made by Aerocom under their registered call signs during the month of August. RAMCC Iraq chief Major Fred Boehm told in written correspondence that Aerocom had filed requests to land at Baghdad but that these flights originated from Kuwait and related to an Antonov 12 aircraft.<sup>481</sup>

Requests for further information from the Iraqi Civil Aviation Authority (CAA) met with no response. According to civil aviation sources flying into Iraq, the Iraqi CAA has remained non-functional, and full authority in practice was vested in the RAMCC, something that the RAMCC documentation makes clear. In addition to this, it is alleged that the Iraqi CAA was not in a position to keep records of landing slot requests during the period in question – August 2004 – as they existed at best on paper.

Subsequent appeals to the RAMCC to re-check records by Artic Group Ltd, a Ukrainian company which acted on behalf of Aerocom for the BiH-Baghdad flights [see further below], failed to elicit any response from the RAMCC.<sup>482</sup> Under military regulations, all planes landing at Baghdad airport have to file landing slot request forms with the RAMCC except in emergencies. It would be extremely dangerous for an unauthorised aircraft to attempt a landing at Baghdad airport as there are rigorous security protocols and defences in place, giving added weight to the RAMCC motto "Better not fly without us".<sup>483</sup>

Speedex and Artic both state that they have documents to prove the delivery of the weapons to Baghdad but they have refused to make such documentation available, saying it would compromise client confidentiality.<sup>484</sup> This argument is slightly spurious given the fact that

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<sup>476</sup>Civil aviation companies require AOCs in order to fly legally – CAA and ICAO. Aerocom did not have AOC from August 6 onwards – Moldovan CAA.

<sup>477</sup> Information from Speedex

<sup>478</sup> Telephone interview inspector at the Moldovan CAA

<sup>479</sup> Telephone interview, notes

<sup>480</sup> The name Regional Air Movement Coordination Cell, as previously used, became the "Regional Air Movement Coordination Center (RAMCC) outside the AOC structure. The RAMCC had no planning role and served mainly to control slot times into Bosnian airfields for the international Stabilization Force." The RAMCC was based at Vicenza, Italy. See <http://ramcc.dtic.mil/>

<sup>481</sup> Meaningful dialogue with the RAMCC was ended following the intervention of an individual describing herself as a US military public affairs officer who advised to contact the Iraqi Civil Aviation authority for further information regarding any possible over-flight request slots.

<sup>482</sup> Email from Artic to RAMCC.

<sup>483</sup> See RAMCC website for detailed information on landing slot request application procedure, forms and de facto control exercised by coalition air control cell over Iraqi air space. <http://ramcc.dtic.mil/iraq.htm>

<sup>484</sup> See correspondence with Speedex and Artic Group.

they themselves have identified the consigner – Taos Industries - and the consignee – the US Department of Army/Department of State, US Mission Iraq – and claim to have delivered the weapons.<sup>485</sup>

Taos claims the weapons were delivered to Baghdad but say they do not possess documentation that would prove the planes actually landed at Baghdad and that the weapons were actually delivered. However, Taos do say they have documents to prove that they were paid for the weapons.<sup>486</sup> Taos claims that it would be difficult to obtain documentary evidence of landings and delivery because of the chaotic situation in Iraq combined with high staff turnover in Baghdad.<sup>487</sup> This may seem unconvincing given that the operation was a significant and sensitive US-sponsored arms deal and it is the US authorities that have most control over military affairs in Baghdad, yet an executive of Taos Industries described his experience:

“Sometimes we’re not paid for as much as six months because they can’t find the material, they can’t [unclear] the documents....I mean we have guys...I have a guy over there about every two months to walk around with the officers and point out the boxes with our material, to point out our material... and to find our documents, things can easily get lost or get confused.”<sup>488</sup>

The US government department responsible for authorising the arms shipments to Iraq and liaising with the freight-forwarders, the Project Contracting Office, PCO, is not the agency responsible for receiving the weapons on arrival in Baghdad.<sup>489</sup> Weapons delivery is “probably” handled by the US “Defense Contract Management Activity.”<sup>490</sup> This is part of the Office of Management and Budgets (OMB).

Taos Industries claims that even if the person in Baghdad who signed for the receipt of the weapons delivered by Aerocom could be found, it may prove very difficult to identify the arms themselves since there was no tracking system once the weapons left the airport.<sup>491</sup> Taos supplies were intended for the police as well as army units in Iraq and claims that EUFOR in BiH should have received documents following the Aerocom shipments, specifically a US

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<sup>485</sup> Ibidem.

<sup>486</sup> “Those [the Aerocom flights] were over a year ago, we have delivered, we bought...the weapons they were delivered and we bought from the SFOR there, the multi-national coalition who had sold them to Taos under a tender and they were delivered to Baghdad and they were delivered and we’ve been paid for them, so I’m sure they were delivered.” Telephone conversation with Taos Industries executive.

<sup>487</sup> “. . .the records during that period - I am not surprised the people in Baghdad didn’t have records of it. We’ve had numerous problems with record keeping, such a turnover of people there even if I can get you proof that we got paid for them [the weapons] I don’t know that that would indicate that they were the weapons on those two airplanes [Aerocom flights]” *ibid*, evidence folder.

<sup>488</sup> *Ibid*, evidence folder.

<sup>489</sup> “Le Master was the contracting officer, he’s not the one who receives the goods there’s a whole n’other chain of command who receives the goods on the ground.” *Ibid*, evidence folder.

<sup>490</sup> That party is probably long gone, whoever signed it [receipt of weapons]. They [the weapons] come into Baghdad airport and they’re carried to a BU (phon) which is where the facility is then they’re signed for....*probably* by Defence Contract Management Activity which is US....whoever they have on the ground signs it...substantial amount of weapons delivered... different parties so they’re accepting stuff all the time.....all I’m saying is that I don’t know...you’re going to have different signatures.....probably on every one of these depending on the person who received it.” *Ibid*, evidence folder.

<sup>491</sup> “If we found the guy who signed for this it was probably one of twenty he signed that week, that all had arms when they arrive, once they’ve cleared the airport and customs there’s no identification of where the weapons came from....” *Ibid*, evidence folder.

DoD form known as DD1907, a signature and tally record in which the consignee representative should sign for all items at point of delivery. A Taos executive stated that the DD 1907 form should have turned up in BiH “four weeks” after delivery of the shipment. EUFOR officials said that completed DD1907 forms were the only evidentiary documents for delivery verification of arms and such forms should be completed and sent to show that the weapons have been delivered - and that this had been the case with other shipments.<sup>492</sup>

However, EUFOR refused to respond to written requests for confirmation that they are in receipt of the DD1907s for the Aeroacom shipments.<sup>493</sup> One EUFOR official stated that “*the DD1907 document is in practical terms meaningless since it deals with shipment weight, tonnage, rather than the number of weapons and systems delivered, we do not give the DD1907 any credibility, they could have delivered steel pipes and we in Sarajevo would be unaware if the shipment that arrived actually comprised of the material that left Tuzla.*”<sup>494</sup>

According to Turkish air traffic control documentation, five Aeroacom flights did exit and enter Turkish airspace on the dates in question, ostensibly bound for and returning from Baghdad international airport. However this by itself does not constitute evidence that the planes themselves actually landed at their stated destination or that the cargoes ended up with the authorised end-users.<sup>495</sup>

While the coalition air traffic control stated that they have no record of the Aeroacom shipments, even if the weapons were delivered to Iraq, there has been a significant risk of diversion of US-supplied weaponry inside Iraq to actors associated with grave violations of human rights. Firearms delivered to Iraq as part of a deal involving Taos Industries and two UK companies, Super Vision International and Helston Gunsmiths have allegedly ended up “in Al-Qaeda hands.”<sup>496</sup> In another report, US officers training the new Iraqi Security Forces are quoted as describing the arms distribution process as becoming “very murky” with one official estimating that “unaccounted equipment [including weapons] could total \$500 million in value”. The article also quoted a lawyer representing an arms broker which had supplied the Iraqi ministry of defence as saying that out of a shipment of 1,500 AK-47s, “nearly all of the AK-47 rifles disappeared.”<sup>497</sup>

There were also other actors within the arms freighting and logistics network that have close, yet undefined, links to Aeroacom, a now-defunct company. As already mentioned, the Aeroacom flights involved Artic Group Ltd. In the BHDCA take-off slot request form, the telephone numbers provided by Aeroacom do not contain the Moldova country code where Aeroacom were officially based prior to AOC decertification. Instead, the contact numbers and staff names for Aeroacom are identical to the numbers listed to Artic Group Ltd, a Kiev-based company.<sup>498</sup> The man named as “Aeroacom operations manager” in the BHDCA

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<sup>492</sup> Interview with EUFOR officials. The form is also part of the deployment documentation requirements “*Signature & Tally Record (DD 1907) (when applicable) (for sensitive cargo accountability)*”

<sup>493</sup> HG email to EUFOR chief political advisor to EUFOR commander General Leakey requesting information

<sup>494</sup> Interview with EUFOR officer.

<sup>495</sup> Turkish air traffic control records obtained from the Turkish CAA (faxed in hard copy format)

<sup>496</sup> “UK guns in al-Qaeda hands” Mark Townsend and Barbara McMahon, *The Observer*, UK, March 19, 2006

<sup>497</sup> “US Expands Training to Address Iraqi Police Woes”, Solomon Moore, *Los Angeles Times*, March 9, 2006

<sup>498</sup> Documentation read over phone by BHDCA source. Artic group’s manger does not dispute that he sent a fax to BHDCA and that they share the same numbers. In response to the question : “ *We note with interest that the Aeroacom contact numbers*

documentation stated that he works for Artic and written correspondence with him originated from an Artic email address.<sup>499</sup> While Artic claims to have consulted with Aerocom staff in replying to written correspondence, they repeatedly failed to provide the requested contact names and numbers for Aerocom offices and staff and declined to respond to the allegation that Artic was in fact Aerocom operating under a different name.<sup>500</sup>

The aircraft used by Aerocom/Artic for the weapons flights to Iraq, was registered as ER-IBV (an Ilyushin 76T), and was leased by Aerocom from Jet Line International, an air cargo firm named as a partner company in the Artic Group website. However, since August 6, 2004 Aerocom could not legally operate the Ilyushin ER-IBV because the company had lost its Air Operating Certificate (AOC). Aerocom's international call designator, MCC, assigned from the International Civil Aviation Organisation, was withdrawn in the first 2005 listing.<sup>501</sup>

This Ilyushin has since been operating under the AOC of Jet Line International. One Jet Line official, said that in fact "they [Artic] operate that aircraft under our AOC" and that "Artic owns ER-IBV".<sup>502</sup> Artic has been advertising the use of an Il-76 for charter flights from its website. A representative of Speedex, the freight-forwarding company responsible for contracting Aerocom, also said that Artic owns the ER-IBV plane.<sup>503</sup> Another Artic staff member appears to be the previous contact person for Jet Line International in Kiev.<sup>504</sup>

Jet Line International and Aerocom are also linked through Asterias Commercial, SA, describing itself as a company registered in Greece but also based in Kiev, Ukraine, and listing Jet Line International as one of its "partners." Asterias is named as the holder of an insurance policy for another Aerocom plane, ER-IBE for the period 2004 – 2005.<sup>505</sup>

PICTURE I AND CAPTION (ER-IBV)

PICTURE L AND CAPTION (ROUTES OF ER-IBV FROM TUZLA TO BAGHDAD)

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*supplied to the BHDCA are the same contact numbers used by Artic and that you as Aerocom Operations Manager now work for Artic. Please comment on the nature of the relationship between Aerocom and Artic." He replied: "Regarding the tel/fax of AEROCOM and ARTIC GROUP, as I mentioned above we were a company which made provision of these flight and that is why we acted on behalf of AEROCOM. We know that AEROCOM uses not only our company but another companies for flight planning and provision, it depends on cost of services. We also work with several companies." Extract of email correspondence, complete correspondence with Artic Group forms part of evidence folder.*

<sup>499</sup> Ibid.

<sup>500</sup> Ibid.

<sup>501</sup> Telephone interview with ICAO official

<sup>502</sup> Telephone conversation with Jet Line International office in Ukraine

<sup>503</sup> "It's all the same, let me explain, Artic and Denis are the owners of the aircraft, Aerocom is only the operator..." Conversation with Speedix

<sup>504</sup> Phone conversation with JetLine Sharjah staff member who declined to fully identify himself, notes.

<sup>505</sup> Photocopy of certificate obtained from UN official

### *Israeli, Swiss and UK firms and exports from Serbia & Montenegro*<sup>506</sup>

The current moratorium on arms transfers originating from the BiH wartime stockpiles has helped focus attention on arms stockpiles and the arms industry in Serbia and Montenegro. International and local observers in Belgrade say that arms stockpiles of newly manufactured weapons and ammunition from Serbia and Montenegro are being transferred to Iraq and Afghanistan.

The Taos executives mentioned the involvement of a previously unknown Israeli-registered company, “*Talon*,” which they said was an arms-brokering company “*based in Tel Aviv, Israel*”, playing a major role to facilitate the transfer of weapons from Serbia to the Middle East.<sup>507</sup> A Montenegrin arms company executive also stated that Talon acted as an “agent” on behalf of Taos in Serbia & Montenegro, but that a confidentiality clause in their contract forbade them for discussing the company’s identity. Moreover, the Serbia & Montenegro Ministry of International Economic Relations (MIER) stated that the company involved in procuring weapons for Iraq in Serbia & Montenegro is Talon Security Consulting and Trade Ltd, registered at an address in the “Diamond Tower” Twin Towers complex in Jabotinsky street, Ramat-Gan, Tel Aviv.<sup>508</sup>

Talon’s owner is Major Shmuel Avivi, according to the Federation of Israeli Chambers of commerce website. An Israeli source described Shmuel Avivi as “*former Israeli military attaché in Switzerland*.” Mr. Avivi declined to say whether he was currently a serving member of the Israeli defence forces.<sup>509</sup> Mr. Avivi appears to have served as Israel’s military attaché in Denmark and Sweden. The Israeli source stated that “He [Mr. Avivi] operated out of Switzerland with a Swiss business partner whose first name is Henri.” Henri goes by the name of Heinrich in Switzerland where he is known as Mr. Heinrich Thomet, associated with at least two companies involved in arms dealing, Brugger & Thomet AG and BT International Ltd. Mr Heinrich Thomet stated that he worked together with Mr. Shmuel Avivi “occasionally” and that his company “are supplying Taos Industries on the US SOCOM<sup>510</sup> business” but that his company was not “actually providing any services for Iraq or Afghanistan, we are mainly working on the US government contract which is a SOCOM transaction.”

Another company involved in arms transfers to Iraq is a UK-based company called Global Trading Group Ltd. Global have purchased large quantities of small arms and light weapons

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<sup>506</sup> Serbia and Montenegro is a State Union comprising the two republics of Serbia and Montenegro who each have a large degree of autonomy and distinct authorities. The focus here is principally on activities involving persons in the Serbian Republic.

<sup>507</sup> Telephone conversations with Taos executives, confirmed by a state arms sales executive who stated that: “Talon [phon] bought more than 50,000 weapons from us on behalf of the American company. The contract included a confidentiality clause which means we can’t talk about them. I don’t know where their offices are.”

<sup>508</sup> Interview with senior MIER official

<sup>509</sup> “Nothing to do with this business [arms transfers], and I don’t think I have to give this information.” [on being asked if he had retired or was a serving army officer]

<sup>510</sup> SOCOM is an abbreviation for the US Special Operation Command

for Iraq, including an order for 1000 sniper rifles.<sup>511</sup> In documentation supplied to the Ministry of International Economic Relations, Global Trading Group Ltd give as their address premises currently used by a high street store selling hi-fi equipment. This is a different address from the one supplied in their official UK company registration papers.

Global Trading Group Ltd is a new company, incorporated on April 5, 2005, the only publicly available document is the appointments report which describes the company as a “private limited company”; no information is supplied under section entitled “Nature of business” and no accounts have been filed to date. According to UK company house data, Global’s business address is a private one, which appears to be the home of one of the directors of the company. One of the directors of Global Trading Group Ltd is listed in the Company house documentation as “Fawzi Francis Toma”, who is described as a British citizen born in 1958. Mr Fawzi Toma is known in Iraq as Mr. Fawzi Hariri, a one-time aide to Kurdish faction militia and political leader Massoud Barzani and now a senior figure within Barzani’s political party the Kurdish Democratic Party (KDP). Mr. Hariri liaises with foreign governments on behalf of the KDP and currently serves as chief of staff of the Iraqi foreign ministry, currently headed by Mr. Hoshyar Zebar, also of the KDP.<sup>512</sup>

According to Companies’ House documentation, Global Trading Group Ltd’s registered business address is at the home of another company director, Praidon Darmoo, who lobbied the UK government to support the war in Iraq in 2003. A Global Trading director stated that the weapons supplied by Global Trading Group Ltd were on behalf of another company in Jordan who held the contract with the Iraqi Ministry of Defence but that he had seen the end user certificate which he said was issued on behalf of the Iraqi ministry of defence and was sent to Belgrade.<sup>513</sup>

### *Airline companies involved in Serbian arms exports*

According to aviation sources and Taos Industries, other companies involved in transporting weapons from BiH to Iraq include Kosmas Air based in Serbia, Atlant-Soyuz based in Russia, Reem Air based in Kyrgyzstan and Vega Airlines based in Bulgaria. Kosmas, Reem, and Vega were all named in official reports as flying from Tuzla airbase in December 2004 and in 2005.<sup>514</sup> Aviation sources and Taos Industries state that the majority of the flights from Tuzla

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<sup>511</sup> Information on contracts provided by the MIER.

<sup>512</sup> Information on Mr. Hariri’s current position supplied by another director of Global Trading Group Ltd

<sup>513</sup> “I can tell you that the contract was between the [Iraqi] Ministry of Defence and another company in Jordan, it wasn’t between us and we did not export direct to Iraq; but there was a contract between the ministry of defence and another company so that company because at the time they couldn’t get a visa to go to Belgrade and they were importing mainly from Poland, they asked us if we could help them and I did see a contract signed by the Ministry of Defence, between them and the end user was the ministry of defence....we were if you like just an intermediate....I was trying to help them get some armoured cars from Landrover but in the end Landrover wanted the company in Turkey to build them and export them to Iraq.” Telephone interview, April 28, 2006.

<sup>514</sup> Bosnian authorities public statement regarding Amnesty International allegations of suspected arms trafficking from Tuzla airport, July 2005, and Eurocontrol documents, 2005.

to Baghdad were performed by Kosmas Air which has been operating cargo flights, including of weapons, in support of “US nation-building” for Taos from Serbia and Montenegro.<sup>515</sup>

Kosmas Air stated that they had flown over 70 flights of weapons and ammunition to Iraq from Tirana (Albania), Tallin (Estonia), Brno (Slovakia), Plodiv (Bulgaria) as well as Bosnia & Herzegovina and Serbia & Montenegro.<sup>516</sup> Kosmas is registered in Serbia and has been formed by Russian investors.<sup>517</sup> Serbian commercial registry documentation states that Kosmas Air is owned by Mildstream, a UK-based company. According to UK Companies House documentation, the contact details for Mildstream are listed as “Investment & Tax International” a website in Russian which provides information on how to set up an off-shore bank. Mildstream appear to be a shell company and share their address with a large number of other companies with Russian connections, all officially owned by two UK nationals who according to the UK Companies House documentation reside on the Caribbean island of Nevis.

According to the website of Kosmas Air Germany Ltd – a company that markets Kosmas Air d.o.o. in the European Union - Kosmas Air was established in May 2003 with its home base in Surčin, a suburb of Belgrade. Its German subsidiary was opened in 2004 at the Cologne/Bonn Airport. Kosmas reportedly operated its first Ilyushin 76TD freighter with registration number YU-AMI from May 2004, the first to be registered in SCG.<sup>518</sup> According to Kosmas Air’s own website, in January 2005 it obtained two further Ilyushin 76TD cargo planes and according to aviation sources these appear to have been leased from the GST Aero Air company of Kazakstan which operates from the United Arab Emirates. However, the website was substantially altered in February 2006 and this information was removed. The company says it carries out air cargo freighting and the transport of humanitarian aid relief in the regions of Europe, Middle East, Asia and Africa. The company claims to have special authorization for the worldwide air transport of dangerous goods.

According to a civil aviation source, Kosmas Air have “*mostly Russian technical crew with Yugoslav (sic) escort, most flights are transport of ammunitions (sic) locally made in Serbia into two countries west and east of Iran (obviously with US approval) .. and beyond. Pretty busy, office floors rented from Belgrade museum.*”<sup>519</sup>

Kosmas Air was heavily involved in the flights from Tuzla to Baghdad and now employs in Belgrade a former Tuzla airport staff member who supervised aircraft loading and departure operations.<sup>520</sup> According to a Taos executive, Kosmas Air forms part of a network of transport and logistics companies and arms suppliers in SCG which now account for the bulk of Balkan US DoD-sponsored, Taos-contracted transfers to the Middle East and beyond. Kosmas Air works with *SDPR Yugoimport*, the Serbian republic state company involved in arms transfer

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<sup>515</sup>Taos executive, Kosmas Air official

<sup>516</sup> Interview with Kosmas officials

<sup>517</sup> Interview with Kosmas officials, May 2006; See also Flight International “Kosmas Air ready for launch” June 29, 2004. According to the AeroTransport Database, a company called Tesis based in Russia formerly operated this particular aircraft.

<sup>518</sup> Flight International, quoted.

<sup>519</sup> Email correspondence with Martinair manager

<sup>520</sup> Eurocontrol, Taos executive, Kosmas Air staff member

and export.<sup>521</sup> SDPR was a major supplier of goods and services to Saddam Hussein's Iraq up until 1990, accounting for some \$7.5 billion-worth of pre-1991 contracts. SDPR was implicated in an arms smuggling scandal to Iraq in 2002 and was also the source of an illegal shipment of weapons to Liberia that was transported by Aeroacom.<sup>522</sup>

### ***What happened to the arms deliveries and stockpiles in Iraq?***

The fate of hundreds of thousands of Kalashnikovs, already in Iraq before the US and allied train and equip program for the Iraqi security forces began is unclear. While thousands of weapons were looted, or taken home, by deserting Iraqi soldiers at the end of Operation Iraqi Freedom in April 2003, the Iraqi Ministry of Defence is known to have had large quantities of light weapons nominally under its control as late as August 2004.

Amnesty International has been unable to determine whether any of Iraq's fresh supplies of small arms and light weapons from the Balkans were diverted or sold abroad. However, on August 4, 2004, three days before the Aeroacom shipments, ostensibly to Iraq began, the Iraqi Ministry of Defence agreed to sell surplus arms stocks, including "light weaponry," to US company Wye Oak Technologies as part of an agreement to recondition military equipment worth \$283 million. The manager of Wye Oak Technologies was Dale Stoeffel who had previously run Miltex, another arms brokering company dealing in east European arms. Miltex was cited in a human rights report as having been allegedly involved in supplying or attempting to supply missiles to an African state.<sup>523</sup>

Under the terms of the contract with the Iraqi MoD, all financial transactions for the surplus deal went through a Lebanese middleman Raymond Zayna. Following a \$24.7 million payment to Zayna's bank account, Stoeffel wrote a series of letters to senior DoD officials, US senators and high-ranking military officers alleging corruption. Stoeffel also requested that an international audit firm be employed to monitor financial transactions and ascertain where the \$24.7 million had gone.

On December 8, 2005, Stoeffel went to Taji military base outside Baghdad to examine stockpiled Iraqi weaponry and equipment. Taji is believed to have been one of the sites where newly-arrived equipment supplied by US contractors was also stored. On his return trip from the base to Baghdad Stoeffel was ambushed by a previously unheard of group describing themselves as the "Brigades of Islamic Jihad". Following his murder, Wye Oak Technologies lost their contract with the Iraqi Ministry of Defence and with it the right to sell Iraqi military surpluses.

What happened to Iraq's surplus, and whether any of it was diverted, or sold abroad, is unknown. United Nations customs data indicates that a quantity of armoured vehicles valued at US\$752,854 was exported from Iraq to Uganda in 2004 at a time when the United Nations

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<sup>521</sup> Kosmas Air website, now altered

<sup>522</sup> See April 2003 UN Security Council report, op cit, and International Crisis Group report "Arming Saddam – The Yugoslav connection", 2003

<sup>523</sup> "Bulgaria – Money Talks: Arms Dealing with Human Rights Abusers" Human Rights Watch, April 1999

reports criticised Ugandan political and military authorities of assisting armed groups in the Ituri district of the DRC.<sup>524</sup>

## **9. The current UN framework – too slow and limited**

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. Despite the global nature of the markets and networks used by arms brokers, transporters and logistics agents, many governments are resisting or delaying proposals to negotiate an effective global instrument to control such activities.

Ongoing worldwide concern following revelations about arms brokering and shipping techniques used to repeatedly circumvent UN arms embargoes and to facilitate gross human rights violations by states and armed groups in many countries has prompted some progress by governments in establishing regional standards for the state control of arms brokering in the Americas, Europe and eastern Africa. However, these regional standards have been limited in their scope and not fully implemented by states in those regions. Moreover, many states do not appear to strictly monitor or prosecute the violation of UN arms embargoes by their nationals and residents, or to follow up vigorously on the UN Security Council's "designation lists" to freeze the assets and ban the travel of those individuals and companies involved in gross violations.<sup>525</sup>

In 1991 the UN General Assembly had agreed that: "*States should maintain strict regulations on the activities of private international arms dealers and cooperate to prevent such dealers from engaging in illicit arms trafficking.*"<sup>526</sup> Ten years later, in March 2001, a UN Group of Government Experts reported to the General Assembly on the feasibility of "*restricting the trade in small arms and light weapons to manufacturers and dealers authorized by states.*"<sup>527</sup> Its report included some recommendations, outlined below, for the control of manufacturers, dealers, brokers and transporters to prevent the illicit trafficking of small arms and light weapons, but some of the recommendations were weak or tentative, and many states ignored them. The latest agreement in December 2004 by the General Assembly for the establishment

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<sup>524</sup> Data from the United Nations statistics division, 2005. On the Ugandan involvement in the DRC, see Amnesty International, "DRC: arming the east", op cit

<sup>525</sup> In Resolution 1196 of September 16, 1998, the Security Council called upon States to adopt legislation making the violation of arms embargoes a criminal offence. See <http://www.grip.org/bdg/g1804.html>. Regarding the UN arms embargo "designation lists", the US Treasury Department has for example implemented these in a number of cases notably linked to the companies and close associates of Victor Bout.

<sup>526</sup> General Assembly resolution 46/36, December 6, 1991.

<sup>527</sup> Report of the Group of Governmental Experts established pursuant to General Assembly resolution 54/54 V of 15 December 1999, entitled "Small arms". UN Doc. A/CONF.192/PC/33, 12 March 2001

of another Group of Government Experts to consider options for the prevention of illicit brokering activities on small arms and light weapons reflects ongoing international concern about arms brokering but any concerted action could easily take until 2008 or beyond – twenty years after the original expression of concern by the General Assembly, and then only for action on small arms and light weapons.

### ***The UN consultations on brokering in small arms and light weapons***

The UN process to consider controls on arms brokering was prompted by revelations in UN reports in the late 1990s of the violation of UN arms embargoes on Rwanda, Angola and Sierra Leone by networks of arms dealers, brokers and transporters, and an initiative by the Norwegian government and civil society in 1999 to control arms brokering and shipping.<sup>528</sup> The UN reports included reference not only to small arms and light weapons but to all arms and related items being used in current armed conflicts.

In May 1999, a UN consultative meeting of non-government experts was held to examine the feasibility of a study to regulate manufacturers and dealers of small arms and light weapons as recommended by the General Assembly. The meeting agreed that such a study by the UN was feasible and that it “*should cover the possibility and desirability of licensing and/or regulating the activities of all participants in the process of small arms and light weapons and ammunition production and international transfers, including not only manufacturers and dealers, but also brokers, transportation agents and financiers. In particular, the different roles and responsibilities of dealers, brokers, transportation agents and financial institutions need to be clarified.*”<sup>529</sup>

Between 1999 and 2001, the main international initiative for a legally binding UN instrument on small arms transfers was focused on the issue of trafficking firearms used in organized crime. The UN Firearms Protocol<sup>530</sup>, negotiated in 2001 and entering into force on July 3, 2005 after ratification by 40 Member States, sets out some basic legal obligations of states to control the brokering of firearms and related parts and ammunition in Article 15(1):

*“With a view to preventing and combating illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, States Parties that have not yet done so shall consider establishing a system for regulating the activities of those who engage in brokering. Such a system could include one or more measures such as:*

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<sup>528</sup> Signalled by the launch in November 1999 at a conference in Oslo of “*The Arms Fixers: controlling the brokers and shipping agents*”, op cit, sponsored by the Norwegian Government.

<sup>529</sup> United Nations, Report of a consultative meeting of experts on the feasibility of undertaking a study for restricting the manufacture and trade of small arms to manufacturers and dealers authorized by States, UN Doc. A/54/60, July 6, 1999, Annex, para. 6.

<sup>530</sup> United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, adopted by resolution by the UN General Assembly, UN Doc. A/RES/55/255 on 31 May 2001. This treaty was spurred on by the OAS which had adopted the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials in November 1997.

- (a) *Requiring registration of brokers operating within their territory;*
- (b) *Requiring licensing or authorization of brokering; or*
- (c) *Requiring disclosure on import and export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction.”*

In addition to this crime control initiative on firearms, some states wanted the UN to address the humanitarian impact of the proliferation and misuse of small arms and light weapons. Through UN General Assembly resolutions, the UN Secretary General had convened a series of expert groups to report on this wider issue from 1996.

In March 2001, the UN Group of Governmental Experts (GGE), established in December 1999 pursuant to General Assembly resolution 54/54 V, reported on the feasibility of restricting the trade in small arms and light weapons to manufacturers and dealers authorised by states.<sup>531</sup> The GGE called on Member States to establish national systems of control for brokering and related activities occurring within their territorial jurisdiction, in order to deal effectively with illicit or undesirable arms transfers. The GGE found that most states did not have control systems for the registration of arms brokers, the licensing of arms brokering activities or for record keeping and information sharing on arms brokering. The report noted that:

*“arms brokering, which is a largely unregulated activity, can also **take place in grey areas between legal and illegal dealings**. Some brokers deliberately exploit inconsistencies and gaps in national laws and administrative procedures to circumvent controls, and arrange transfers involving States where export control procedures and enforcement are weak.”*  
[emphasis added]

The GGE concluded that there was a need for all states to “*consider ways to avoid gaps and inconsistencies in national approaches that may undermine the effectiveness of controls*”. The Group considered the practicality of negotiating a legally binding international instrument on brokering. However, it was felt that this would be hindered by a lack of experience of regulating brokering, lack of agreed criteria, and differing national approaches. Instead, the GGE report recommended that states should:

- implement national legislation;
- seek consensus and document best practices;
- focus upon regional level instruments; and
- provide assistance (where necessary) in meeting these goals.

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<sup>531</sup> Report of the Group of Governmental Experts established pursuant to General Assembly resolution 54/54 V of December 15, 1999, issued in March 2001, op cit.

Since this GGE report in 2001, governments have followed these recommendations. There has been progress by a few states in establishing and enforcing new control systems, but from a global perspective the results have been disappointing. As part of the UN-sponsored Programme of Action (UNPOA) on small arms and light weapons<sup>532</sup>, participating states agreed in July 2001 to develop national legislation or administrative practices regulating those who broker the transfer of such weapons, including: registration of brokers, licensing or authorization of brokering transactions, penalties for illegal brokering and enhanced international cooperation.<sup>533</sup> In resolution 58/241 of December 23, 2003, the UN General Assembly had mandated the Secretary-General to hold broad-based consultations “*on further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons*”. Five informal consultation sessions were held in New York and Geneva showing that a considerable measure of convergence has emerged on essential standards to prevent illicit arms brokering, especially of small arms and light weapons, but that there are still some points of disagreement.

However, by 2006 less than 20 more states had introduced laws and regulations on arms brokering, and many of these laws and regulations are weak and inconsistent. Although regional standards contain important new commitments to control the brokering of arms, especially small arms and light weapons, most standards contain fairly vague clauses and are not yet implemented by participating states.

Nevertheless, efforts by groups of states have added to an emerging consensus. The Netherlands-Norway initiative to develop common approaches to regulate the brokering of small arms and light weapons, was launched in April 2003 following a previous initiative by Norway in 1999.<sup>534</sup> This was followed by a series of international and regional meetings of states and non-state experts. Proposals for model regulations and best practice guidelines to strictly regulate the brokering of transfers of small arms and light weapons have been developed and agreed not only by the EU, but also by the OSCE, the Wassenaar Arrangement, the OAS, the Nairobi group and SADC.<sup>535</sup>

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<sup>532</sup> Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. UN Doc. A/CONF.192/15, July 20, 2001.

<sup>533</sup> Ibid, Section II para. 14.

<sup>534</sup> The Oslo Group of Like-Minded States, prompted by the publication of *The Arms Fixers* in November 1999, *op cit*

<sup>535</sup> The main agreements covering arms brokering are as follows: Organisation for Security and Cooperation in Europe, *Document on Small Arms and Light Weapons*, Vienna, 2000 (OSCE Document FSC.DOC/1/00) 2004, and *Principles on the Control of Brokering in Small Arms and Light Weapons*. Vienna, FSC Decision No. 8/04 of November 4, 2004; Wassenaar Arrangement, *Statement of Understanding on Arms Brokering*, Vienna, 2002, and *Elements for Effective Legislation on Arms brokering*, Vienna, 2003; Organisation of American States, Inter-American Drug Abuse Commission, *Draft Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition*, Organisation of American States, Washington, (OAS document 1271/03), November 2003; *The Nairobi Protocol for the prevention, control and reduction of small arms and light weapons in the Great Lakes Region and the Horn of Africa*, Nairobi Secretariat, 21 April 2004; Southern African Development Community, *Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community Region*, Gaborone, 2001. Other agreements by regional and multi-lateral groupings do also mention brokering.

The UN Secretary-General's High Level Panel on threats to security called in 2004 for the development of a legally binding agreement on arms brokering in its report,<sup>536</sup> and the UN Secretary General in his response in 2005, 'In Larger Freedom', endorsed this call.<sup>537</sup>

However, progress was slow in the UN. During 2004 some governments opposed proposals for the UN General Assembly to establish a mechanism for negotiations to establish an international instrument on controlling arms brokers. Three and a half years after the report of the first Group of Experts issued their report, the General Assembly in Resolution 59/86 of December 2004, merely requested the establishment after 2006 of a second UN Group of Experts to consider 'further steps towards international co-operation' on this issue. A more robust informal proposal to establish an UN open-ended working group to examine the feasibility of negotiating an international instrument to prevent illicit arms brokering, was blocked. This mechanism would have allowed all states to participate and to focus on establishing universal standards for what is essentially becoming a global activity, as arms brokers operate in networks, moving from country to country using mobile technologies and the internet.

Pending the outcome of the new GGE on brokering in late 2007, states should be encouraged to adopt national laws, regulations and administrative procedures to control the brokering that are consistent with best practice and the highest international standards, as set out in the recommendations at the end of this report. To be effective, such national laws, regulations and procedures should cover the brokered transfer not only of small arms and light weapons, but of all conventional military and related security equipment, *wherever such brokering takes place*, carried out by their citizens; persons normally resident; and companies that are permanently based and managed from premises in their territory.

### ***UN discussion of arms transportation***

The GGE report in March 2001 also contained some discussion of arms transportation. For example, the GGE reported that "*The emergence of free ports worldwide poses particular challenges for the international control of arms movements. Port operators are at great pains to offer international shippers and transporters speedy clearance in order to attract trade and sometimes regard trans-shipments of goods as not their prime responsibility to control. Ports with ineffective control run the risk of being targeted by arms brokers and dealers to divert arms shipments from their intended destination. Free ports can provide opportunities for falsification or amendment of end-user certificates and manipulation of bills of lading. Most ships used in illegal arms shipments operate under flags of convenience. Adequate marine*

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<sup>536</sup> *A more secure world: Our shared responsibility*. Report of the High-level Panel on Threats, Challenges and Change, United Nations, 2004, available at <http://www.un.org/secureworld/report3.pdf>, see pp. 36 and 100.

<sup>537</sup> *In larger freedom: towards development, security and human rights for all*. Report of the Secretary-General, UN Doc. A/59/2005, March 21, 2005, available at: <http://daccessdds.un.org/doc/UNDOC/GEN/N05/270/78/PDF/N0527078.pdf?OpenElement>, paras. 12-1 and Annex, para. 6(c).

*laws and regulated and strict supervision in free ports is required to address these problems.*<sup>538</sup>

It is worth clarifying this statement in order to explore the nature of the challenges to control arms transportation. First, authorities managing ports are not normally in charge of customs or law enforcement and consequently do not usually consider it their responsibility to monitor cargoes, except for environmental purposes and a few other regulations. Second, “free ports” are not only maritime ports. There are about 1,100 free trade zones in the world today and most of them are connected with, or are inside of, ports and airports. Africa has 68 main free trade zones, about 95% of which are connected with seaports and/or airports. The USA has 233 free trade zones and China has 132, mostly related to seaports and/or airports. Often, ports and airports are themselves free trade zone.<sup>539</sup> Third, such free trade zone laws are designed to regulate an array of issues, as well as relations among maritime nations, and are not designed to regulate ports as such. The latter is usually addressed in laws and procedures to regulate the powers of port authorities as set out in national port legislation. There are interfaces, of course, such as the new mechanisms introduced by the US government connected with port security after the 9/11 attacks (see the chapter above). However, the effective regulation of arms traffic through ports depends mostly upon the capacity, diligence, commitment, training and accountability of customs and other law enforcement agencies and the cooperation of port authorities and others with those agencies.

Fourth, “speedy clearance” certainly poses a problem for customs authorities to monitor arms cargo, especially of infantry weaponry and civilian firearms, but customs checks are supposed to be carried out when cargoes leave free seaports and airports and enter customs territories. All free seaports and airport are enclosed in a customs territory and therefore the responsibility for what enters or exits a free port/airport is on customs and law enforcement authorities. Moreover, there is barely a free port/airport where customs, immigration and police officers cannot enter to inspect cargoes and carry out other legal duties. The main generic problem relates to lax customs control. Sadly this laxity is found at many ports, whether in free trade zones or not, and provides opportunities for traffickers to falsify or amend end-user certificates and manipulate of bills of lading. The use of falsified documentation is usually the responsibility of the shipper, the broker, the freight forwarder, and the transport company. Customs authorities should check such documentation whenever cargo exits or enters the customs territory. Customs officials usually fail to monitor arms cargoes because they are either managed ineptly and poorly trained or are corrupted and under orders not to control certain cargoes, and not because they are connected with a free port/airport. Moreover, a lack of law enforcement in free ports is not directly related to the fiscal status of those ports, but to the lack of political will and institutional capacity to control its activities. More likely, the opposite is true because, for economic and fiscal reasons, free ports are normally more controlled than many other ports.

Fifth, it should be noted that the problem of operating carriers under “flags of convenience” is not peculiar to free trade zones. A flag of convenience is a registry of a country whose

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<sup>538</sup> Paragraph 29, Un Group of Government Experts report, 2001, op cit

<sup>539</sup> See Finardi, S., E. Moroni “States of exception. Free trade zones and ports in the World Economy Milan, Franco Angeli, 2001.

authorities do not apply the strict rules that other countries apply for ships or aircraft registration, safety standards, and related control. Most ships and aircraft under “flags of convenience” are not registered in free trade zones. Ships and aircraft registered under flags of convenience - for example in Cyprus for ships and in Equatorial Guinea for aircraft - are based or operate in free seaports or airports - for example Hamburg for ships and Sharjah for aircraft - but these seaports and airports are not “flags of convenience” and most of them are not in countries where states operate open-registers.

The risks of illegitimate clandestine operations and diversion that are posed by the trans-shipment of arms cargoes through free seaports and airports are more likely to be higher. Trans-shipment shortens the time in which a large ship/aircraft remains in a port and allows for fast multiple consignments along regional or world routes by the same vessel. Feeder vessels will take unloaded cargoes at certain trans-shipment points and deliver them to local points of destination. Cargoes in free seaports and airports can be unloaded without being subject to customs formalities and then placed in bonded warehouses or loaded onto other ships or aircraft. At this point, it is easier for a trafficker to divert a cargo especially with the complicity of customs and also of the port authority at the real point of destination. At the point of origin there is usually no viable means to check where the feeder ship or aircraft has eventually taken the cargo.

One way to overcome these risks is for each container of arms to include a satellite signal that transmits its location in transit so that the sending and ordering authorities can monitor whether the arms cargo reaches its official destination according to the bill of lading and track any diversion of the cargo or part of the cargo. The sending authorities could then easily conduct random checks to match maritime or aviation containers of arms with the seaports and airports in which they are supposed to be trans-shipped and unloaded.

The GGE did in its 2001 report mention the importance of law enforcement and of controlling trans-shipment in another part of its report related specifically to transportation, as follows:

*“Related activities associated with brokering include arranging the transport of arms and the involvement in actual transport (ownership, leasing or operation of planes/ships, etc.). Of those States that already have controls on brokering, most do not currently go so far as to control these activities unless the provider of one or more of these services is also the principal in the brokering deal (as opposed to a service provider to the broker). However, the non-regulation of these activities can lead to the transfer of arms into regions of conflict. Controls on the transport of arms could be integrated into controls on arms brokering. Alternatively, distinct controls could apply to transport. Effective customs control of entry/exit checkpoints of States acquires particular importance in this context.”<sup>540</sup>*

However, the GGE report placed far more emphasis on the risks associated with air cargo rather than sea freight. Actually, on a world scale most arms, including small arms and light weapons, are transported by sea.<sup>541</sup> It is true that emergency cargoes tend to be carried by air and thus air cargo companies are used for the “grey” and illicit market trade, but both means

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<sup>540</sup> Paragraph 69, GGE report, 2001, op cit

<sup>541</sup> Paragraphs 69 to 77 of the GGE report, op cit, mostly address aviation and only the last paragraph mentions the maritime transport of arms.

of transport deserve equal consideration in their relationship to international arms brokering, as does the issue of road transport and porous land border posts.

The GGE also considered that “*one approach could be to impose a licensing obligation on the shipment of arms by air. States might decide to control shipments originating in or passing through their territory. Alternatively, or in addition, they might decide to target the transport of arms by legal persons under their jurisdiction between destinations in third States. Such a procedure would necessitate the imposition of extraterritorial controls but might prove to be useful in detection or in enabling a State to prosecute those who had undertaken acts in contravention of its laws.*”<sup>542</sup> These useful recommendations should be seriously explored, but the next comment by the GGE should not be regarded as an excuse for inaction: “*Targeting shipments made from or via their own territory would require an additional set of controls to supplement normal export licensing procedures. Such dual licensing would add to the bureaucratic burden but might not necessarily do much to improve the detection of illicit shipments.*” Yet most states already issue different types of licenses for arms transfers.<sup>543</sup> Relevant state authorities could require that the named arms transporters and routes, as well as other contracted parties, be included in the final authorization and issuance of an arms export licence. Without such requirements, customs officials and other law enforcers cannot make proper assessments of legitimate international cargoes of arms.

Interestingly, the GGE did go on to more or less concede the point about the necessity of licensing transport agents and carriers, but then raised the problem of sub-contracting and the short deadlines sometimes needed to contract ad hoc air charters as a possible excuse to avoid such licensing. “*Ideally, the company or individual ultimately involved in the physical shipment of the arms would be responsible for applying for a licence, although the level of subcontracting in this area could perhaps provide the cover for evasion of responsibility by airfreight companies. To prevent instances of multiple licensing the requirement to apply for a transport licence might be imposed only in instances where the shipment had not already been approved by a State through the granting of a brokerage licence. However, it should be noted that the airfreight industry works to very short deadlines. It is not uncommon for details of ad hoc charters (the mode most likely to be used for larger arms shipments) to be sent to aviation authorities for approval with less than two days’ notice. Most export licensing authorities do not have the procedures in place to be able to work to such short deadlines. If a State imposed such a requirement on its shipping agents and airlines without first addressing the question of the time taken to make licensing decisions, it would effectively be ruling them out of participation in the transport of arms.*”<sup>544</sup>

Arms are not perishable goods and do not need to follow the fast track used for other goods. Responsible arms transfers should be carefully carried out with standards procedures and time to reduce risks of diversion, abuse and illegality to the minimum. A sensible solution to the dangers of “fast licensing” for arms shipments is to prohibit this method and for states

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<sup>542</sup> GGE, op cit, paragraph 71.

<sup>543</sup> For instance, South African arms control legislation requires the licensing of extra-territorial arms brokering and arms transportation, as well as the trans-shipment of arms through South African territory, by private or foreign actors.

<sup>544</sup> GGE report, 2001, paragraph 72.

to require at least one month's notice of the shipping and routing details as well as the transport company whose carrier will be used. Allowing arms shippers using charter flights to require a "less than two days" notice for international arms shipments massively increases the risk that cargoes will bypass due control.

In addition, the problem of multiple licensing for each subcontractor of an arms shipment can be avoided if states simply require the principal contractors of the transfer to submit the necessary details of all the sub-contractors involved in the transfer – hence, include providers of brokering, transport, finance and insurance services, before a licence is issued. This would considerably lower the risk of clandestine illegal and "grey" market deliveries. Indeed the GGE makes this point: "*An alternative approach, which would provide some information on participation in the transport of arms, would be to impose a requirement on a broker to disclose details of agents, airlines and routes to be used. At the licence application stage a broker would, in many cases, be unlikely to be able to provide such detailed information. However, a State might adopt a procedure for indicating approval in principle for a particular deal, with a licence not being issued until all relevant information had been provided...*"<sup>545</sup> One necessary procedure for such indicative approval of a brokered deal pending the receipt of all the sub-contracting and routing details, is to require that only *bona fide* brokers or dealers who had met strict registration qualifications be eligible to apply for an international arms transfer licence.<sup>546</sup>

Two important proposals by the GGE may seem contradictory at first sight, but could be designed as complimentary measures and even form some of the strongest elements of a system to control brokering and shipping agents. The first is to encourage the adoption of a code of conduct on arms shipment by the freight transport industry. "*A code could set out undertakings to provide comprehensive and accurate information on the cargo and flight plans in the relevant documentation that accompanied shipments of arms. It could also include an undertaking not to ship arms to destinations where there was a risk that they could be used in conflict, etc.*"<sup>547</sup> Voluntary agreements and self-policing are already in force among members of the most important transport and logistics organizations such as FIATA, the international association of freight forwarders, in which many giant companies are enrolled. Some companies whose owners have been repeatedly involved in illicit arms trafficking may not be members of such associations, as the GGE recognized,<sup>548</sup> but governments could still apply enormous pressure against such traffickers by soliciting the support of the associations for ethical conduct. For example, the authorities could communicate and regularly update a list of embargoed destinations to all the associations of transport/logistics firms as well as arms manufacturers and dealers, requesting that associations pass the list to their members so that no one can say "I did not know". Although a Code of Conduct would be a voluntary

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<sup>545</sup> Ibid, paragraph 73.

<sup>546</sup> Such a domestic legal registration requirement for brokers and dealers would solve the other problem raised in paragraph 73 of the GGE report, namely that: "... a condition could be added to the licence requiring a broker to provide such information prior to the shipment taking place. If the information was not received by the licensing authority, the broker would have committed an offence. This disclosure exercise would of course not bring to light those deals where a State's shipping agents/airlines participated but a broker under their jurisdiction did not."

<sup>547</sup> Ibid, paragraph 74.

<sup>548</sup> "The other problem with this approach is that such a voluntary agreement would have a limited impact on those routinely engaged in the illicit shipment of arms by air."

commitment to “self police”, competition among most transport and logistics companies could help reinforce respect for such a the Code if associations adopted clear ethical standards and regular communications about arms trafficking issues.

A complementary approach would be to refine the international legal framework for freight transporters to organize and carry international shipments of arms. As the GGE tentatively recommended: “...in addition to, or instead of, the licensing of transportation agents (as part of brokering activities), an internationally agreed transportation regulation, similar to transportation agreements for the shipping of toxic waste and hazardous products, might help to prevent the diversion of small arms and light weapons while in transit.”<sup>549</sup> Amnesty International believes that such a regulation is absolutely essential and should be one of the main priorities of the forthcoming GGE to develop further in cooperation with relevant bodies such as ICAO, IATA and the IMO. The first step would be “to scrutinize closely international agreements and domestic legislation already available to control the airline industry... there is a need for authorities in the exporting State, or at stops en route, to verify flight plans, in particular those of cargo aircraft on ad hoc charters. The authorities in the exporting State should be able to request a copy of the landing permit or certificate from the authorities in the importing State indicated in end-user documentation...”<sup>550</sup>

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. This was recognized by the GGE if only in relation to aviation.<sup>551</sup> The brief mention of maritime regulations needs to be thoroughly revisited.<sup>552</sup> As outlined earlier in this report, after the 9/11 attacks on the USA, the US government has been developing a series of anti-terrorist security measures in partnership with its allies. These measures are already in force and could be expanded to include procedures for all states to monitor the movement of arms so as to prevent diversion and arms shipments that would violate UN embargoes or contribute to grave or persistent human rights violations.

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<sup>549</sup> Ibid paragraph 76.

<sup>550</sup> Ibid, paragraph 75.

<sup>551</sup> Ibid, paragraph 76: “Consideration could be given to encouraging, and in some instances assisting, national administrations in enforcing current civil aviation regulations more effectively. For instance, States could ensure that procedures for issuing certificates of airworthiness for individual aircraft on civil aircraft registers, procedures for issuing air operator certificates to airlines, regulations on carriage of dangerous goods and requirements for insurance were all stringently enforced.”

<sup>552</sup> In paragraph 77, the GGE wrote: “Shipment of arms by sea raises a different set of problems. The industry has traditionally been less closely regulated than the air transport industry. The measure discussed in paragraph 76 could be adopted or the feasibility of introducing regulations under the auspices of IMO could be explored to control illicit brokering through free ports and by those ships using flags of convenience.” See previous comments in this chapter.

### *The forthcoming Group of Governmental Experts*

Thus, for reasons outlined above, the current UN agreement to reconvene another Group of Government Experts in late 2006 to consider action to prevent illicit brokering in relation to transport, logistics and other subcontractors and service providers. It will need to develop and propose measures that include international standards for an adequate legal framework and build upon those positive suggestions made in the GGE report of 2001. Some issues that were not dealt with by the 2001 GGE report will need to be considered if it is to make proposals to UN Member States to ensure effective monitoring, control and oversight of the core elements of arms brokering. For example, one major issue that was not fully addressed in the 2001 report essential for the control of international arms brokering is the regulation of financial transactions for international arms deals, including standards for the responsible involvement of banking, insurance and auditing firms as well as those of company registration and anti-corruption authorities.<sup>553</sup>

Laws, regulations and administrative procedures need to be updated to take account of the modern role of intermediaries - transporters, brokers, dealers and other sub-contractors whose work in fluid networks has become more central in arms procurement and distribution processes. It is a mistake to view this “out-sourcing” trend as one that does not usually involve government actors as well. Apart from *the core arms broker* who brings the buyer and seller together to negotiate an international arms deal, one of the most significant players in both the freight and brokerage networks is *the primary commercial contractor* chosen by a government, or *the independent dealer*, who holds the arms contract and is responsible for purchasing or selling the arms, usually on behalf of a government. To ensure the timely delivery of the arms, as well as report to government officials who have the financial and executive power to exercise overall control of the deal, the primary commercial contractor or dealer will often engage a broker to overcome technical, commercial, cultural and political barriers. They will disburse funds to sub-contractors involved in the physical delivery and commercial transactions to complete the deal. All these actors select – companies, individuals and government agents - form a pyramid of power relations, usually hidden from public accountability.

Depending on the nature of the written and verbal contracts between the commercial contractor, dealer and broker, and between them and other sub-contractors in the pyramid, some participants may seemingly operate independently of the core broker and primary contractor, thus reducing their responsibility should anything go wrong. Roles can be fluid: a commercial contractor or dealer may sometimes also act as a broker for other dealers, while an arms broker could be directly contracted to a government. The actual arms delivery arrangements depend more on a third type of significant player – *the logistics and transport agent*. When it comes to supplying arms to illegal or illegitimate end users, agents who

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<sup>553</sup> GGE report, 2001, paragraph 29 includes a short mention - “In addition to these illegal activities there are the financial transactions associated with the diversion of arms. Often the proceeds from such deals, facilitated by lack of control in free ports, are laundered through accounts in offshore tax havens where controls are equally lax.”

arrange logistics and transport can become the most important players, directing the brokering, commercial and financial arrangements while covering their tracks.

## **10. Conclusions and Recommendations**

Arms markets have become increasingly global and differentiated. 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 logistical, transport, brokerage, and financial arrangements. Private companies and business networks that provide these services are encouraged by states to participate in such international arms markets, as well as to directly service foreign military operations. Despite the increased risks to human security presented by the state-sponsored out-sourcing of international arms distribution and procurement, current government efforts to improve the monitoring and regulation of such activities according to global standards are weak and faltering. Moreover, no sanctions have been either considered or applied to transport and logistics companies that support foreign military interventions carried out in contravention of the U.N. Charter and other international laws.

There is now a growing consensus amongst governments about the need to control arms brokering. However, this consensus is not yet reflected in many national laws or international standards. Nor is there a coherent international approach to the control of military logistics and arms transportation. Existing legal controls on arms brokering, even where they have a degree of extra-territorial application, are sometimes weakened by:

- limited definitions of the arms covered (e.g. by excluding larger conventional arms, “dual use” equipment or potentially lethal security equipment from control lists);
- the exclusion of some types of brokers (e.g. government agents, or nationals who are citizens but permanently reside abroad, hence enabling highly mobile agents to escape control by setting up residence in states lacking a legal framework);
- only designating limited circumstances in the law under which such third country brokering may be a criminal offence (e.g. applying the controls only when the destination of the arms is prohibited by an embargo, hence allowing brokers to arrange foreign arms transfers to non-embargoed destinations even where gross human rights violations are taking place).

Too few states have established national controls on arms brokering and transporting. And where national controls are in place, the measures often lack consistency and therefore

effectiveness. 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.

Numerous case studies show how arms brokering and transport networks and agents exploit such structural weaknesses and how this contributes to arms proliferation, violations of international law and massive human suffering.<sup>554</sup> The greatest danger is where states have weak arms export and import controls, vague legal frameworks inconsistent with international law, poor licensing procedures, endemic public and corporate corruption, and a lack of institutional capacity to enforce customs and other controls. These are fertile conditions for unscrupulous arms brokering and transportation agents, whether state or non-state, to easily move arms along clandestine supply routes to recipients that abuse such arms.

This report focuses on the linkages between international arms brokering, military logistics, and the global networks for transport of all types of arms. It is critical of the slow pace the UN process to address the lack of effective control of such activities and the limited UN framework to address this. The UN First Committee has agreed to set up a Group of Government Experts later in 2006 to "consider further steps to enhance international cooperation" to prevent illicit arms brokering of small arms and light weapons.<sup>555</sup> Even if this results in concerted measures by many governments to prevent illicit arms brokering of small arms and light weapons, it will not solve the deeper problem posed by the easy availability of large volumes of conventional arms and security equipment in countries involved in conflicts and experiencing severe human rights violations. Most of this equipment has been delivered

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<sup>554</sup> See for example, Amnesty International, "Democratic Republic of the Congo: arming the east", July 2005.

<sup>555</sup> United Nations General Assembly resolution 59/86, December 3, 2004.

to those countries through direct “government-authorized” shipments or has started its journey as legal transfers but proceeded through “grey markets.”<sup>556</sup>

### *National legal reform*

Only about 35 states out of 191 have some sort of law that allows for the control of arms brokering and many such laws are weak because, for instance, the legal definitions of “arms brokering” activities are too narrow and the extra-territorial scope of laws does not regulate “off-shore” arms brokering. The USA in the mid 1990s and now some European states have introduced some quite strong laws, but these usually exempt government agents who broker arms deals and allow for “open licenses” that require fewer checks on deals.

In order to reduce the administrative burden of brokering controls, governments sometimes make a distinction between ‘core’ brokering activities and ‘broker-related’ activities such as the transport and financing of arms deals. But the range of activities covered by the term ‘arms brokering’ should include the facilitation of arms deals by providing help or advice with finance or transportation - this should be included within the scope of arms brokering activities.

The ability of governments to prosecute arms trade offences by their citizens and permanent residents that took place outside their national territory is either absent or limited in most existing national laws. If governments do not regulate arms brokering, logistics and transporting by their nationals, residents or registered companies when they operate from outside their home state’s territory, such actors can easily evade national legislation, for example through fixing an arms deal by simply conducting meetings or telephone calls in a neighbouring country. Extra-territorial legislation has been introduced by a number of states to control illegal activities occurring outside their territory, such as war crimes, torture or sex tourism – and sometimes arms dealing and brokering. Far too few states have enacted such laws making it easy to trade, traffic, transport and broker in weapons and ammunition.

Arms brokers and transportation agents engaged in dubious supply operations try not to contravene national laws directly, at least where they know law enforcement agencies have the capacity to bring relevant legislation to bear. They are able to use constantly changing carriers on foreign “flags of convenience”, shell companies and sub-contracting chains to obscure transport routes, the nature of cargoes and the flow of money. If necessary, they can easily launder the proceeds from their arms dealings in offshore tax-haven accounts and other commercial deals.

The standards for the national regulation of arms brokering activities recommended so far by regional, sub-regional and other inter-governmental organisations have addressed a number of

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<sup>556</sup> See the articles of M. Klare, M. Renner, L. Lumpe, K. Austin, and J. Vegar, in Bulletin of the Atomic Scientists “*Small arms, Big Problem*,” January/February 1999; and Boutwell, J. M. Klare, L. W. Reed (eds.) “*Lethal commerce: the Global Trade in Small Arms and Light Weapons*,” Cambridge, MA, 1995; Dyer, S.L., O’Callaghan, G. “*Combating Illicit Light Weapons Trafficking: Developments and Opportunities*,” Calgary, AL, BASIC Research Report, January 1998.

crucial system requirements, including the fact that arms brokers and transport agents sometimes themselves take possession of arms when acting as intermediaries i.e. engage directly in dealing, buying and selling. Governments should analyse and review best practices by all states in controlling arms brokering as well as defence logistics and arms transportation so as to seek to apply the best standards and procedures and promote them with partner states, as outlined in the recommendations below.

### ***Global Standards***

International concern about arms brokers and transporters is likely to increase, especially when they are exposed for violating UN arms embargoes and fuelling gross human rights violations. Several international standards have been agreed in the last few years that focus on the control of arms brokering (the Wassenaar Arrangement, OSCE, EU and OAS standards) or which include some reference to arms brokering (the UN Firearms Protocol, the UN Programme of Action, the Nairobi Protocol and the SADC Protocol on small arms and light weapons).

Moreover, current regional and multilateral agreements outlining common standards for the authorization of international arms transfers, including transfers that are brokered, have now been agreed by 106 states. The OAS, OSCE, EU and Nairobi Protocol agreements include reference to a set of common principles or criteria to govern decisions about the granting of arms brokering licenses. However, there remain critical weaknesses in these standards: (i) the application of the most comprehensive standards is not legally binding; (ii) the standards are not universally incorporated into national laws and implemented; (iii) the formulation of the principles or criteria for authorising brokered transfers and deliveries of arms does not fully reflect states' existing obligations under international law; (iv) some of the standards are limited to small arms and light weapons; and (v) the clauses allow governments to exclude the activities of government employees.

In addition, without a strong political commitment to a common set of ethical standards for the control of international arms transfers, the development of effective legal frameworks and accountable enforcement capacity will be thwarted. Such ethical standards should at least reflect the existing obligations of states under relevant principles of international law, including international human rights and humanitarian law – as summarised in the “Global Principles” outlined in Appendix 1.

According to the UN Disarmament Commission Guidelines on International Arms Transfers of 1996, “*Limitations on arms transfers can be found in international treaties, binding decisions adopted by the Security Council under Chapter VII of the Charter of the United Nations and the principles and purposes of the Charter.*”[paragraph 8] Moreover, “*Illicit arms trafficking is understood to cover that international trade in conventional arms, which is contrary to the laws of States and/or international law.*” [paragraph 7]<sup>557</sup> However, the

General Assembly has not yet agreed on a set of explicit standards that provide clear and fair criteria for decisions on the international transfer of conventional arms. Such standards should at least reflect existing international obligations of States as agreed in paragraphs 8 and 9 of the Guidelines, and provide for the right of self-defence as well as limit the freedom of States to authorise the transfer of weapons and munitions, including:

- Rules of **State responsibility** prohibiting States from aiding and assisting other States in the commission of an internationally wrongful act, rules which are now codified in the International Law Commission's Articles on State Responsibility.<sup>558</sup>
- Rules of **international criminal law** prohibiting persons from aiding and abetting in the commission of an international crime. The "aiding and abetting" provision of the International Criminal Court Statute establishes criminal responsibility if a person aids, abets or otherwise assists in the commission or the attempted commission of a crime, including by *providing the means* for its commission.<sup>559</sup>
- **Positive obligations of States** to ensure respect for international humanitarian law and to cooperate in the protection and fulfilment of human rights beyond their borders. For example, the imposition of arms embargoes is another way in which the international community seeks to prevent breaches of the peace while also giving effect to its common Article 1 obligation under the Geneva Conventions, Article 1 of the UN Charter and the International Covenants on human rights.<sup>560</sup>

In this regard, many of the guidelines for international transfers of conventional arms agreed by the Disarmament Commission in 1996 are abstract and do not provide Member States with specific common criteria to ensure respect for existing agreed international norms. These guidelines have since been surpassed in providing such specificity by many regional agreements on international arms transfers and, given the gravity of the problem, are in need of urgent review. The 2001 UN Programme of Action on Small Arms and Light Weapons (UN PoA)<sup>561</sup> also acknowledges that there is an established body of international legal rules that will be relevant to the assessment of applications for export authorizations covering small

<sup>557</sup> Guidelines for international arms transfers in the context of General Assembly resolution 46/36 H of 6 December 1991', UN Disarmament Commission, May 1996, Official Records of the General Assembly, Fifty-first Session, Supplement No. 42 (A/51/42), May 22, 1996.

<sup>558</sup> Articles 16 and 41(2). The Articles were commended by the General Assembly and annexed to resolution 56/83, *Responsibility of States for Internationally Wrongful Acts*, UN Doc. A/RES/56/83, December 12, 2001.

<sup>559</sup> Rome Statute, Article 25(3)(c) [emphasis added].

<sup>560</sup> The Question of the Trade, Carrying and Use of Small Arms and Light Weapons in the Context of Human Rights and Humanitarian Norms, Working paper submitted by Barbara Frey in accordance with Sub-Commission decision 2001/120, Economic and Social Council, UN Doc. E/CN.4/Sub.2/2002/39, 30 May 2002.; also Prevention of human rights violations committed with small arms and light weapons, Preliminary report submitted by Barbara Frey, Special Rapporteur, in accordance with Sub-Commission decision 2002/25, Economic and Social Council, UN Doc. E/CN.4/Sub.2/2003/29, June 25, 2003.

<sup>561</sup> "Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All of Its Aspects", in *Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, New York, July 9-20, 2001, UN Doc. A/CONF.192/15.

arms and light weapons.<sup>562</sup> A growing number of States have expressed their support for elaborating common criteria based on such rules.<sup>563</sup>

Government officials from developing countries with little or no brokering or other controls on intermediaries dealing in arms have indicated that their governments require technical and training assistance from the UN and donor aid countries to establish appropriate common standards and capacity to enforce controls on arms brokering. Some states have already been active in helping each other, but the shortcomings evident in most national regulations and procedures to control arms brokering and transportation indicates that such assistance programs require improvement. Where there is the political will, more powerful governments could direct their financial and technical assistance to enable states with few resources to develop effective national regulations on arms brokering, defence logistics and arms transportation, taking into account the points raised above. Donor agencies should help facilitate the development of detailed operational guidance for officials.

The most immediate international initiative required to meet the challenge is for governments to speed up the establishment of an Open Ended Working Group to develop an international treaty to regulate international arms brokering and transport agents, and propose essential standards and capacity-building required for the effective national controls on such activity. This should include controls on defence logistics and financial services related to arms brokering and transportation.

### ***Key recommendations:***

#### ***To all states***

1. National laws, regulations and administrative procedures should be established 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.
2. The definition and scope of the term 'arms brokering activity' in both domestic legislation and international agreements should explicitly 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. These activities are all too often intertwined. Best practices should be adopted for each of these system requirements, as follows:

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<sup>562</sup> UN PoA, section 2, Article 11.

<sup>563</sup> Around 50 States have expressed support for the idea of an International Arms Trade Treaty based upon international norms, and many more States have called for international binding instruments for arms transfers.

- Items covered by definitions of “arms” – every state should include in its laws and regulations the full list of munitions, and cover all military and security equipment, technologies and operational training.
- Applicability – extra-territorial reach – 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. Several national laws already ban such “third country” and extra-territorial arms brokering activity where it is not authorised by the home state of the broker. Such laws already exist for piracy, war crimes, genocide, crimes against humanity, torture, and trafficking in human beings, among others.<sup>564</sup>
- Licensing criteria and procedures – 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 (see appendix 1), and should use rigorous risk assessment and monitoring procedures to make such judgements.
- Registration and screening – 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.
- Record keeping – registered brokers, transport agents and dealers should be required by states to keep their commercial, banking and personnel records for at least ten years in the event that the relevant state authorities wish to inspect them, and state records should also be comprehensive and available for at least ten years.
- Monitoring compliance and verification – state authorities should routinely inspect the records, activities and deliveries of those registered to engage in arms brokering, transportation and dealing using such methods as “watch lists”, company management reporting and comprehensive delivery verification certificates.
- Penalties for violators – states should provide for a range of criminal and administrative sanctions for violations and infringements of their laws and regulations on arms brokering, transportation and dealing, ensuring that penalties are sufficient to deter unlawful activities.
- International cooperation – states should establish information exchange procedures to monitor and investigate arms brokering, transportation and

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<sup>564</sup> Note that the UN Group of Government Experts report in 2001 on arms dealing stated that: “The recent reports to the Security Council on violations of the UNITA and Sierra Leone sanctions highlighted the role that air transport can play in the circumvention of arms embargoes. The simplest approach to this problem would be for States to prohibit and penalize those under their jurisdiction that take part in the transport of arms to destinations and entities subject to Security Council arms embargoes. It would add no burden to the licensing process.”

dealing activities, in cooperation with such bodies as Interpol and the World Customs Organisation, as well as mutual legal assistance agreements to deal with the extra-territorial application of their laws.

3. National laws and regulations covering arms brokering, logistics and transport activities should also include mechanisms and provisions that allow for public monitoring of their actual implementation as follows:

- A detailed annual report should be presented by the government to its parliament and should include - on the model of Italy's law 185/1990<sup>565</sup> - reports by the ministries of Foreign Affairs, Defence, Home Affairs, Finance and/or Treasury, and Foreign Trade detailing for each arms transaction detailing the brokering, logistics and transport agents and actors involved;
- This annual report should include the type of license and authorization granted; the country of destination; the type/s of military and non-military equipment; name/s of arms manufacturers or dealer; the name/s of banks and other financial institutions processing the Letter of Credit and other relevant documents. In addition, such 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.<sup>566</sup>

4. Comprehensive information that has been generated through national or international licensing and registration schemes regarding arms brokering, logistics, transportation and dealing activities should be used by especially trained law enforcement agencies to help prevent the illicit trafficking of arms, especially where such trafficking will contribute to serious human rights violations. Such data should be used to conduct information-exchanges with other relevant authorities, assist transparency and oversight mechanisms for monitoring arms transfers, and ensure compliance by arms dealers, contractors, brokers, transport agents, carriers and financers of international arms transfers with national and international obligations.

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<sup>565</sup> Law July 9 1990, n. 1985, published in the Official Gazzette, July 14, 1990, n. 163): "Regulations on the control of export, import, and transit of armament."

<sup>566</sup> This measure would result in more accurate and comprehensive documentation being made available for law enforcement purposes.

5. Anti-corruption laws, regulations and procedures of all states should be consistent with the UN Convention against Corruption and include provisions to cross-check the registration, licensing and record keeping on arms brokering, arms transport and related activities.

6. International donor aid should be provided to integrate arms control expertise and data into programs of assistance to licensing authorities and law enforcement agencies in developing countries, including the maintenance of databases on arms brokering and transport activities, licenses granted and denied, delivery logs, financial reports etc.

### ***To the International Community***

7. Governments with a track record of regulating brokers, transporters and other actors involved in the arms trade should be encouraged to develop further their cooperation with United Nations and regional/sub-regional inter-governmental bodies to promote best practice to prevent illicit arms transfers, especially transfers that contribute to grave human rights violations and war crimes, through:

- Active diplomacy in the meetings and conferences on arms control
- Assisting UN teams investigating violations of UN mandatory arms embargoes
- Supporting better information gathering and sharing systems for Interpol and the World Customs Organization and contributing to the enforcement of controls on arms brokers and/or brokering activities
- Strengthening state controls over critical financial and transport infrastructure that is exploited by international arms brokering and logistics networks, such as improving financial and company accountability in tax havens and increasing the ability of the international aviation and shipping bodies, the ICAO and IMO, to enforce their regulations and report violations.

8. 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:

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

9. 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. There is already universal jurisdiction on torture, on grave breaches of the Geneva Convention and on genocide. To establish such universal jurisdiction, the Security Council **must** add provisions to ensure the human rights of suspects are respected, including sufficient time and proper judicial procedures to oppose extradition where such suspects would risk torture, ill-treatment, unfair trials or the death penalty.

***The transport industry:***

10. Transport companies that provide logistics support to foreign military interventions carried out in violation of the United Nations Charter and Resolutions and other international laws should be internationally sanctioned and excluded from bidding for government and UN contracts.

11. Codes of Conduct on the freight forwarding, handling, 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.

12. 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”.

13. Other transport industry initiatives related to the safety of transport - such as the International Transport Workers’ Federation “*Flags of Convenience Campaign*” for the maritime sector - should be supported and encouraged to extend their reach to all means of transport and to take into consideration arms and ammunition transportation to areas at high risk of conflict and severe human rights violations as a safety risk.

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## Appendix 1

### Global Principles for International Arms Transfers

#### *Principle 1: Responsibilities of states*

All international transfers of arms shall be authorized by a recognized state and carried out in accordance with national laws and procedures that reflect, as a minimum, states' obligations under international law.

*Comment:* Principle 1 clearly states the responsibility of states in regulating international arms transfers. It requires the establishment of mechanisms of national law as are necessary to ensure that the Global Principles will be effectively applied. This obligation is already an element in the national arms control procedures of most if not all States.

#### *Principle 2: Express limitations*

States shall not authorize international transfers of arms that violate their expressed obligations under international law.

These obligations include:

##### **A. Obligations under the Charter of the United Nations – including:**

- I. binding resolutions of the Security Council, such as those imposing arms embargoes;
- II. the prohibition on the use or threat of force;
- III. the prohibition on intervention in the internal affairs of another state.

##### **B. Any other treaty or decision by which that state is bound, including:**

- I. Binding decisions, including embargoes, adopted by relevant international, multilateral, regional, and sub-regional organizations to which a state is party;
- II. Prohibitions on arms transfers that arise in particular treaties which a state is party to, such as the 1980 UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects and its three protocols, and the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personal Mines and on Their Destruction.

##### **C. Universally accepted principles of international humanitarian law – including:**

- I. The Prohibition on the use of arms that are of a nature to cause superfluous injury or unnecessary suffering;

- II. The Prohibition on weapons that are incapable of distinguishing between combatants and civilians.

States shall not authorize transfers which are likely to undermine any of the above obligations.

*Comment:* Principle 2 encapsulates existing express limitations under international law on states' freedom to transfer and to authorize transfers of arms. It focuses on circumstances in which a state is already bound not to transfer arms, as set out in expressed limitations in international law. The language is clear: "states shall not ...".

When new binding international instruments are agreed, new criteria should be added to the above principles, for example, if there is a new binding instrument on marking and tracing or illicit brokering.

***Principle 3: Limitations based on use or likely use***

**States shall not authorize international transfers of arms where they will be used or are likely to be used for violations of international law, including:**

- A. breaches of the UN Charter and customary law rules relating to the use of force;
- B. gross violations of international human rights law;
- C. serious violations of international humanitarian law;
- D. acts of genocide, and crimes against humanity;

**States shall not authorize transfers which are likely to be diverted and used for any of A, B or C above.**

*Comment:* In Principle 3, the limitations are based on the use or likely use of the weapons to be transferred. The responsibility of exporting States to prohibit arms transfers under this heading flows from the obligation not to participate in the internationally wrongful acts of another State. The principle is stated in Article 16 of the International Law Commission's **Articles on Responsibility of States for Internationally Wrongful Acts**, adopted in 2001 (see General Assembly Resolution 56/83 of December 12, 2001, UN Doc. A/RES/56/83), in terms which reflect customary international law, binding on all States, as follows: "A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State."

***Principle 4: Factors to be taken into account***

**States shall take into account other factors, including the likely use of the arms, before authorizing an arms transfer,** including the recipient's record of compliance with commitments and transparency in the field of non-proliferation, arms control, and disarmament.

- A. States should not authorize the transfer if it is likely to:
- B. be used for or to facilitate the commission of violent crimes;
- C. adversely affect regional security or stability;
- D. adversely affect sustainable development;
- E. be used to carry out terrorist acts
- F. involve corrupt practices;
- G. contravene other international, regional, or sub-regional commitments or decisions made, or agreements on non- proliferation, arms control, and disarmament to which the exporting, importing, or transit states are party;
- H. or be diverted for any of the above.

*Comment:* Principle 4 identifies possible consequences that states are required to take into account before authorizing an arms transfer; it imposes a positive duty on states to address these issues, and establishes a presumption against authorization where these consequences are deemed likely.

***Principle 5: Transparency***

**States shall submit comprehensive national annual reports on international arms transfers to an international registry, which shall publish a compiled, comprehensive, international annual report.**

*Comment:* Principle 5 is a minimum requirement to increase transparency so as to help ensure compliance with Principles 1-4 above. States should report each international arms transfer from or through their territory or subject to their authorization. Reporting should be standardized and tied to the implementation of the normative standards set out in the Principles. These reports should be sent to an independent and impartial Registry of International Arms Transfers, which should issue a comprehensive annual report.

***Principle 6: Comprehensive Controls***

**States shall establish common standards for specific mechanisms to control:**

- A. all import and export of arms;
- B. arms brokering activities;
- C. transfers of licensed arms production; and
- D. transit and trans-shipment of arms.

**States shall establish operative provisions to monitor enforcement and review procedures to strengthen the full implementation of the Principles.**

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| Comment: Principle 6 will help ensure that states enact national laws and regulations according to common standards, and ensure that the principles are implemented consistently. |
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