



Zimbabwe - Arms and Corruption: Fuelling Human Rights Abuses

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The following examples of irresponsible arms transfers involving Zimbabwe and other actors should be of great concern to the international community. The examples cited below are intended to illustrate further the need to ensure that the proposed international Arms Trade Treaty is as comprehensive as possible, and fully reflects the obligations of States to prevent arms transfers which pose a substantial risk of being used in serious violations of international human rights law. It is perhaps not a coincidence that these examples involve, amongst others, China and the U.S.A. – both of whose governments have been amongst the ‘doubters’ in the ongoing United Nations General Assembly deliberations on the ATT since 2006. Hopefully, as the new Obama Administration reviews the U.S. approach to the control of conventional arms, the U.S. position will become more constructive.

Example 1: Ammunition from DR Congo to Zimbabwe

In December 2008 the United Nations Security Council’s Group of Experts on the Democratic Republic of Congo (DRC) reported on several ammunition deliveries from the DRC to Zimbabwe. These deliveries took place between 20 and 22 August 2008. A Boeing-707-3B4C (registration number 9Q-CRM) - and registered in DRC as belonging to Enterprise World Airways - performed four flights delivering a total of 53 tons of ammunition to the Zimbabwean regime.¹

Flight details 9Q-CRM²

Date	Cargo	Departure	Arrival
20/08/08	32 tons 7.62x54mm	Kinshasa	Harare
21/08/08		Harare	Lubumbashi
22/08/08	20 tons 7.62x39mm	Lubumbashi	Harare
22/08/08		Harare	Kinshasa

Who initially supplied the ammunition to the D.R. Congo, and whether that supplier intended to use the D.R. Congo merely as a transit route to Zimbabwe, has not been verified. However, the U.N. Group of Experts undertook a review of the safeguards that have been put in place inside the Congo to prevent the loss of arms and ammunition and in December 2008 reported that: “The Group focused on stockpile security, maintenance, marking, record-keeping and the accountability of small arms and light weapons and ammunition. According to foreign military advisers and sources within FARDC, stockpile management is almost non-existent. The Government does not know how many of its arms are stored at which depots and with which units. There are accordingly few safeguards in place to prevent the illegal sale of weapons and ammunition.”³

¹ Report of the UN Group of Experts on the DR Congo, 12 December 2008, S/2008/773: paragraphs 146 and 160.

² *Rapport de Mission au Chef EMPP*, de la Cellule Matériel Ordonnance, Département Administration & Logistique, Etat-Major Particulier, 4 September 2008.

³ S/2008/773: paragraph 138.

Amnesty International and IPIS have previously reported on the close relationship between the governments of the DR Congo and Zimbabwe for the procurement of military equipment.⁴ For instance in 2001 the Zimbabwe Defence Industries (ZDI) entered into a joint venture with a DRC company, Strategic Reserves, to form the Congo-Duka company to facilitate the shipping of arms and foodstuffs. Moreover a document dated 3 February 2000 speaks of a meeting between a Czech company, Arms Moravia, and a Congolese general about the sale of 6 RM70/122mm rocket launchers, 1,000 RPG-7s (rocket propelled grenades), and 500 machine guns for a total value of US\$1,128,500. Arms Moravia submitted two documents dated 19 January 2000 to the Czech Ministry of Industry and Trade. One handwritten document lists the Zimbabwe National Army as client, while the other typed document lists the Ministère de la Défense de la République du Congo, but both refer to the sale of 1,000 RPG-7s.⁵ This discrepancy regarding the destination of the arms may reflect an attempt to circumvent controls on the transfers of arms and ammunition to state forces with a perceived record of serious human rights violations, by presenting licensing authorities with an alternative destination.

Local and international human rights organisations, as physicians and lawyers, have documented a pattern of serious human rights violations carried out by Zimbabwe government security forces against suspected opponents of the ruling ZANU-PF party, including torture, rape, excessive use of force by the security forces, extra judicial killings and enforced displacement. For example, Amnesty International documented unlawful killings, torture and other ill-treatment, including beatings, as well as harassment and intimidation of mainly Movement for Democratic Change (MDC) supporters and human rights defenders in Zimbabwe following elections on 29 March 2008.⁶ There are also widespread allegations of the existence of torture camps.⁷ Last year's elections were characterized by excessive violence from the security forces and ZANU-PF supporters against the opposition. On 21 July 2008 Robert Mugabe and the leader of the opposition Morgan Tsvangirai finally agreed to discuss a power-sharing deal. But on August 12 the talks halted when Mugabe refused to cede power. Negotiations restarted in September 2008 and the resulting fragile power-sharing arrangement has not prevented the security forces under Mugabe's control from committing further serious violations. In early December 2008 police and security forces opened fire, including from military helicopters, on thousands of illegal diggers in the diamond fields of Chiadzwa in eastern Zimbabwe, resulting in at least 50 civilians dead and hundreds more wounded.⁸

Under an effective ATT – a treaty consistent with principle of international law and current best practice on arms control - irresponsible transfers of ammunition such as this from DRC to Zimbabwe would be prohibited: the ATT would require all parties to prohibit international transfers of conventional arms and ammunition in circumstances where there is a substantial risk that such transfers would be used to facilitate serious violations of international human rights law.

The applicable arms control law in the Democratic Republic of the Congo dates from 1985⁹. This law has numerous flaws and its provisions are very ambiguous about the export of weapons of war or their ammunition. According to Article 5 the following acts are prohibited with regard to weapons of war without a proper authorisation from the President: to possess, manufacture, repair, abandon, distribute, transport, import, hold in depot, to cede or to put on sale.¹⁰ Only Article 18 refers directly to the export of firearms, being hunting rifles, sporting weapons or weapons for individual self-protection. No definitions are given. Such a national law would have to be completely overhauled if the D.R. Congo was a party to an effective ATT.

⁴ Amnesty International, *DR Congo: arming the east*, AI Report, AI index: AFR 62/006/2005, July 2005.

⁵ Amnesty International, *DR Congo: arming the east*, AI Report, AI index: AFR 62/006/2005, July 2005.

⁶ Amnesty International, *Zimbabwe: A trail of violence after the ballot*, AI report, AI Index: AFR 46/014/2008, 3 June 2008; Amnesty International, *Zimbabwe, time for accountability*, AI report, AI Index: AFR 46/028/2008, 31 October 2008; Amnesty International, *Zimbabwe: Abduction/Torture*, Urgent Action, AI Index: AFR 46/024/2008, 8 July 2008; Amnesty International, *Zimbabwe: Further Information on Abduction/Torture*, Urgent Action, AI Index: AFR 46/026/2008, 15 July 2008; Amnesty International, *Zimbabwe: Enforced disappearance/Fear for Safety: Jestina Mukoko*, Urgent Action, AI Index: AFR 46/039/2008, 5 December 2008.

⁷ Human Rights Watch "Bullets for each of you – State sponsored violence since Zimbabwe's March 29 elections", 9 June 2008.

⁸ <http://www.sokwanele.com/thisiszimbabwe/archives/2600/>; "Bodies unclaimed after police raid Chiadzwa", *Zimbabwe Times*, 21 November 2008; "Zimbabwe: Chiadzwa - Army Sent in to Quell Gun Battles", *Financial Gazette*, 11 November 2008.

⁹ *Ordonnance-Loi n. 85-035 du 3 septembre 1985 portant régime des Armes et Munitions; Ordonnance n. 85-212 du 3 septembre portant mesures d'exécution de l'Ordonnance-Loi n. 85-035 du 3 septembre 1985 portant régime des Armes et Munitions.*

¹⁰ *Ordonnance-Loi n. 85-035, Art. 5: "Nul ne peut détenir, fabriquer, réparer, abandonner, exposer en vente, céder, distribuer, transporter, importer ou tenir en dépôt des armes de guerre ou leurs accessoires ainsi que des munitions conçues pour ces armes".*

Example 2: Weapons from China to Zimbabwe

An attempt by the Republic of Zimbabwe to purchase large quantities of ammunition from China was, apparently, thwarted in April 2008 after large civil society protests in the Republic of South Africa and other southern African countries, where trade unionists refused to unload this cargo in the Port of Durban and lawyers and human rights groups threatened legal actions in solidarity with victims of state sponsored violence in Zimbabwe. On 10 April 2008 the arms shipment arrived aboard a Chinese cargo ship – the MV “An Yue Jiang” - in Durban, South Africa.¹¹ The ship’s owner was the Chinese parastatal Chinese Ocean Shipping Company.¹² The shipper of the arms was Poly Technologies Inc of Beijing China, the delivery address on the shipping documents was the Zimbabwe Defence Force, Harare, and the point of origin on the cargo manifest is Beijing, China.¹³ The cargo in question consisted of 3,080 cases of arms contained in six large containers.¹⁴

An interim ruling was issued by the Durban High Court on 18 April 2008 to confine these arms to Durban harbour pending a final court hearing¹⁵ but the ship sailed away¹⁶. The application was brought on the grounds of South African national law, which prohibits arms transfers that may contribute “to internal repression or suppression of human rights and fundamental freedoms” or “to governments that systematically violate or suppress human rights and fundamental freedoms”.¹⁷ Attempts to track the “ship of shame”, as it came to be known, were made by international civil society organisations. By late April the ship was reported to have called at the Angolan port of Luanda where the authorities denied it has discharged its arms cargo.¹⁸ However, because a suitable Zimbabwean owned aircraft was in Luanda at that time and because the operators could not later account for all aspects of its’ subsequent flights¹⁹, a serious question mark still remained over the assertion that the cargo had not been discharged in Luanda.

As there remained, therefore, some prospect that the cargo had nonetheless been delivered by another route, relevant experts of the U.N. decided that the Arms Consultant of the U.N. Security Council’s Group of Experts on the DR Congo should make further enquiries.²⁰ The Consultant made inquiries in Zimbabwe between 18 and 20 June 2008. Amongst others he visited Zimbabwe Defence Industries. He was forced to return empty-handed in the sense that documentary proof was not forthcoming. He was able, however, to ascertain verbally from an employee of ZDI supporting information to the previous statement of the Zimbabwean Information Minister, Brighton Matonga to the effect that the consignment had, indeed, arrived in Harare.

The authorisation of this large arms transfer to Zimbabwe was made by the authorities in Zimbabwe, China and South Africa contrary to principles of international law that should be part of an effective ATT. The arms export law in South Africa where the transport of the Zimbabwean ammunition was to transit, contains criteria on respect for human rights similar to those required in an ATT and that should have invoked a refusal of the authorisation. However, the decision was made by the South African officials to override those stated criteria on human rights.²¹ Officials dismissed without being held to account the mounting detailed evidence showing that the threat and actual use of armed force was being deployed to facilitate a wide range of serious human rights violations. An effective ATT would have to require such evidence to be properly assessed in order to judge the level of risk, which in this case was judged to be substantial by most States.

¹¹ “Chinese vessel bearing arms stopped in Durban”, *Mail and Guardian*, 16 April 2008.

¹² Email from Transarms, 16 April 2008.

¹³ Arrival Notification, 10 April 2008 (documents supplied by Noseweek).

¹⁴ The Arrival Notification described the contents as follows:

- 7.62 x 54mm Ball - 1000 cases containing 1 million rounds
- 7.62 x 39mm Ball - 1331 cases containing 2 million rounds
- RPC7, 40mm Rockets - 250 cases containing 1500 rounds
- 60 mm mortar bombs - 227 cases containing 2703 rounds
- 31mm mortar bombs - 176 cases containing 581 rounds
- 31mm mortar tubes - 93 cases containing 31 items

¹⁵ “Bishop stops Zim arms shipment”, *Independent Online*, 18 April 2008.

¹⁶ IANSA newsrelease 19 April 2008.

¹⁷ “Urgent Application Brought to Halt Offloading and Transport of Arms Bound for Zimbabwe”, Southern African Litigation Centre, 18 April 2008.

¹⁸ Press release, Governo de Unidade e Reconciliação Nacional, 25 April 2008.

¹⁹ Various meetings and email exchanges with the operator in question between June and October 2008.

²⁰ Report sent by Brian Johnson-Thomas on 22 June 2008 to coordinator of UN Group of Experts on the DRC.

²¹ Founding Affidavit Southern African Litigation Centre, in the High Court of South Africa Durban and Coast Local Division.

Example 3: Weapons and weapon parts from Zimbabwe to Montenegro and USA

European arms manufacturers and arms brokers also maintain business relationships with Zimbabwe's own arms industry, now subject to EU-wide financial sanctions since February 2009 due to its close links to the Government of Zimbabwe and those who bear prime responsibility for [serious human rights] violations.²² The case below illustrates how Zimbabwe's defence industry remains interlinked with European and US arms dealers, engaging in transactions which not only benefit Zimbabwe's state arms manufacturer, but which exemplify the inadequacy of European and US measures to stop European and US arms companies engaging in arms deals with sanctioned companies and regimes, mediated by individuals listed on government arms trafficking watch-lists. An Arms Trade Treaty would ensure that all States were required to undertake a rigorous risk assessment that an arms transfer in which they were involved was not likely to be diverted to undesirable end-users: a key route by which arms are supplied to groups and governments using them for serious human rights violations and violations of international humanitarian law.

On the morning of 4 February 2008, after a delay of several days, an Ilyushin 76 transport aircraft arrived from Harare (Zimbabwe) at Podgorica airport in Montenegro.²³ According to the packing list the cargo consisted of 1,349 stripped MAG58 bodies, 2,051 barrels, and various other machine gun parts.²⁴ The MAG58 machine gun is a 7.62mm general-purpose machine gun originally manufactured by Fabrique Nationale of Belgium (although there is no indication that Fabrique Nationale were involved in this particular transfer).

The consignor (sender) of the shipment was Shumba International Limited c/o Zimbabwe Defence Industries.²⁵ The airway bill only lists Zimbabwe Defence Industries.²⁶ The consignee (recipient) was the Montenegrin defence company previously known as Yugoimport Mont (currently Montenegro Defence Industry). The documents identify the Swiss based company BT International, one of the several arms brokering companies run by the Swiss arms broker Heinrich Thomet, as having brokered the deal.²⁷

During a visit to Montenegro Defence Industry, between 19 January and 22 January 2009, the authors of this report were informed that the machine guns supplied from Zimbabwe had been bought for refurbishment. This was confirmed by a temporary import permit issued by Montenegrin Customs that accompanied the shipment.²⁸

Further inquiries revealed that the overhauled machine gun parts, with the exception of the barrels and receivers, were imported in the United States.²⁹ The authors of this report also obtained documentation in Montenegro associated with the Zimbabwe import, indicating that Yugoimport Mont intended to export Belgian-origin "7.62mm" small arms parts to a US small arms dealer, Ohio Ordnance Works (the machine guns imported by Yugoimport Mont from Zimbabwe for refurbishment were Belgian-origin 7.62mm small arms).³⁰ The arms seller identified on the U.S. import licence for this transfer was, once again, the above-mentioned Swiss-based BT International.³¹ On Ohio's website various MAG 58 accessories and spare parts have been advertised for sale.³² In an email dated 9 June 2009 to IPIS the legal counsel of Ohio Ordnance did not deny nor confirm that the parts came from Zimbabwe. He said: "Ohio Ordnance is, and continues to be, fully compliant with the laws of the United States, and strongly rejects any implication that it would knowingly or wilfully participate in any transaction that would violate those laws. Additionally, while the company has no comment on your article, the company will state that its acquisition of any firearms parts from sources overseas is lawful and in full compliance with the laws of the United States".³³

If the arms imported from Zimbabwe Defence Industries to Montenegro were then re-shipped to a US dealer, then this may have been to evade US sanctions on Zimbabwean individuals and entities. Executive Order 13391 on 25 November 2005 added Zimbabwe Defence Industries to the U.S. sanctions list, prohibiting U.S. persons, wherever

²² COUNCIL REGULATION (EC) No 314/2004 of 19 February 2004, para. 2

²³ Confidential sources IPIS.

²⁴ Packing List Shipment 23-01-2008, BT International, Switzerland.

²⁵ Confidential source IPIS.

²⁶ Airway Bill, 23 January 2008.

²⁷ See airway bill, 23 January 2008; Confidential source IPIS.

²⁸ Dated 5 November 2007.

²⁹ Letter MDI 15 April 2009 to Peter Danssaert.

³⁰ A request by authors to the transporter for copy of import licence resulted in receiving a copy of the temporary import licence issued by Montenegrin Customs (dated 5 November 2007) and a US import licence 07-05881 (dated 30 July 2007). It is highly unlikely that there is no connection between the two transfers. A letter from BT International, dated 17 October 2007, specifies that prior to October 2007 an agreement had been reached between Yugoimport Mont and BTI in regard of "servicing and refurbishing used weapon parts in Factory 4th November". Ohio Ordnance was contacted on 24 April 2009 for comment and therefore received a copy of our draft.

³¹ US import permit 07-05881. Heinrich Thomet was contacted on 24 April 2009 for comment and therefore received a copy of our draft. He has to date not replied.

³² Op. Cit.

³³ Email Mark Barnes, legal counsel Ohio Ordnance Works, 9 June 2009.

located, from engaging in transactions with sanctioned individuals or entities. Prohibited transactions include direct and indirect imports from Zimbabwe into the U.S.A.³⁴

In addition, the owner of the brokering company involved in the US import, Heinrich Thomet, was listed by the US Department of State on their arms trafficker 'Watch List' in August 2006.³⁵ The authors are aware that Ohio Ordnance has been a supplier for the U.S. armed forces³⁶ and has previously supplied weapons and/or ammunition to allied forces in Iraq³⁷. The company also sells spare parts and weapon accessories to the domestic market in the U.S.³⁸

The provenance of these arms transfers is further occluded in Montenegro's arms licensing and reporting systems. In addition, the Zimbabwe shipment was granted a Transit licence, rather than an Import licence, despite the weapons being imported for 'refurbishment' (in fact for 'cannibalisation') and subsequent export, which ought to have required separate import and export licences. The failure to do so in this case amounts to a further obfuscation of the circumstances surrounding this arms deal. The Annual Report on Foreign Trade in Controlled Goods of Montenegro for 2007, confusingly, lists an import licence for second hand Belgian machine guns to be imported for refurbishment from Switzerland, not Zimbabwe. The end-use listing in the Annual Report identifies the guns as being for civilian use.³⁹

Import Destination	Number of Issued Licences	Category in National Control List	Value	Description	Quantity	Country of Origin	End User Country	Type of End User
Switzerland	1	1.1.	52	Second hand machine gun (refurbishing service)	1,180	Belgium	Montenegro	civilian

Source: Annual Report on Foreign Trade in Controlled Goods in 2007, Ministry of Economic Development, Montenegro, 2008: p. 22.

The Montenegrin Ministry for Economic Development (MED) says that it follows EU recommendations on the form and content of national reports, and furthermore the annual "Report was made on the basis of a database, compiled by the MED pursuant to Article 28, paragraph 1, which submits **detailed** [emphasis ours] information on the licences issued to [sic.] the Government of Montenegro"⁴⁰. It therefore appears that in this instance something went amiss when the MED registered this import as being from Switzerland - the country where the arms broker is located - instead of Zimbabwe. Ironically, the U.S. State Department supplied money and software for the MED database.⁴¹

Zimbabwe has no national legislation on the import, export or transit of arms and ammunition that conforms to international standards. Arms exports in Zimbabwe are covered by the Firearms Act - chapter 10:09, the Reserve Bank of Zimbabwe Act - chapter 22:15, and Customs and Excise Act - chapter 23:02. These regulations – which essentially date from the Colonial era – do not include any of the more recent 'best practice' guidelines of either the United Nations or of regional bodies such as the Southern African Development Community (SADC) or even SARPCCO (the Southern African Regional Police Chiefs' Co-ordinating Organisation).

Furthermore, Switzerland has no coherent regulations on international arms brokering, allowing brokers to operate effectively unsupervised provided their weapons are destined for export and they can then be fairly freely exported. This concern is intensified by subsequent information that Heinrich Thomet, the broker involved, is also connected to the Montenegrin companies involved in the transfer. Thomet reportedly owns a share in the recently privatised Montenegrin arms factory (Factory 4th November) contracted to undertake the refurbishment of these weapons, and is also a director of 4th Novembar alongside a director of Yugoimport Mont, the recipient of the weapons.⁴²

³⁴ <http://www.ustreas.gov/offices/enforcement/ofac/programs/zimbabwe/zimb.pdf> accessed 30 June 2009

³⁵ "The AEY Investigation", US House of Representatives, 24 June 2008: p.2, p.11.

³⁶ Contracts FA8307-08-M-0158, SPM7L0-08-M-4185.

³⁷ Contracts W914NS-04-C-0108, W52H09-06-P-0363, W52H09-06-C-0028. Contracts W52H09-06-P-0070 and W52H09-07-P-0455 have most likely also a foreign recipient being procurement of PKM machine gun accessories . A weapon not in use by US armed forces.

³⁸ See website <http://www.ohioordnanceworks.com/parts/accessories/accessory-parts.html>, <http://www.ohioordnanceworks.com/parts/misc/miscellaneous-parts.html>, <http://www.ohioordnanceworks.com/mounts/mounts.html>, <http://www.ohioordnanceworks.com/mounts/tripods.html> (accessed 21/04/2009).

³⁹ Annual Report on Foreign Trade in Controlled Goods in 2007, Ministry of Economic Development, Montenegro, 2008: p. 22. The various import licences were given in 2007. Shipping was scheduled for 23rd January 2008. (Letter BT International to Yugoimport Mont, 17 October 2007.)

⁴⁰ Annual Report on Foreign Trade in Controlled Goods in 2007, Ministry of Economic Development, Montenegro, 2008: p. 1.

⁴¹ Interview with MED, 20 January 2009; Presentation Document of the Montenegro-NATO Individual Partnership Action Plan, Government of Montenegro, 6 March 2008: p.38-39.

Concluding remarks

The inadequacy of international controls on arms transfers to Zimbabwe; the intimate involvement of Western arms manufacturers and brokers with Zimbabwe's state-run arms industry despite international sanctions; and the high risk that further arms transfers pose to the fundamental human rights of the people of Zimbabwe; all highlight the urgent need for a robust, legally-binding global Arms Trade Treaty, fully consistent with respect for international human rights law and other relevant international law. An effective ATT would have to contain best practice standards for States to strictly control exports, imports, transit and transshipment and transfers of conventional arms and ammunition, based on criteria consistent with international law. It would also have to require States to strictly regulate arms brokering, transport and finance.

State transparency and public scrutiny of arms transfers, whose current inadequacy is highlighted by the Montenegrin case in this report, would be improved by an ATT requiring States to publish a comprehensive national annual report on all international transfers of conventional weapons and ammunition.

A total of 153 Member States of the U.N. voted in the General Assembly in December 2006 for a process to begin work on such a treaty, and during 2007 over 100 states sent encouraging written submissions on such a treaty to the U.N. Secretary General, identifying respect for human rights and international humanitarian law as the strongest reason for such a treaty. Ironically, in October 2008 the result of voting by States in the U.N. General Assembly First Committee on a resolution to take the ATT process forward was 147 in favour, 18 abstentions and 2 against (the U.S.A. and Zimbabwe). Given that the transfer of weapons from Zimbabwe to a US company is, notionally at least, illegal under U.S. law and, arguably, undesirable on general humanitarian principles (since the ultimate destination of these weapons – which may, indeed, already have been used to facilitate severe violations of human rights – is unknown) then this transfer in particular ought to raise serious doubts in the minds of those – in the US at least – who continue to oppose an ATT.

Increasingly, international public opinion is becoming mobilised to demand from their governments much better protection from irresponsible transfers of conventional arms and ammunition.⁴³ On 23 December 2008 a large majority of States agreed a U.N. Resolution recognizing that 'the principles of the U.N. Charter and other existing obligations of States must be central' to the future Treaty, and agreed to set up an Open Ended Working Group to discuss the key elements for an ATT with up to six global sessions over 2009-2011. Hopefully, the negotiation of an effective ATT will begin in 2010 and be completed soon, as this will undoubtedly save hundreds of thousands of lives and prevent millions of people suffering injuries and the destruction of their livelihoods each year.

⁴² Confidential source IPIS. The Ministry of Economic Development informed the authors that the company had been privatized. In April 2008, the company 4 NOVEMBAR" Fabrika metalnih djelova AD Mojkovac changed its name to TARA-PRECISION WORKS"AD Mojkovac (Montenegro Stock Exchange, announcement, 15 April 2008). Montenegro's official company registry also lists Heinrich Thomet, passport number F 2163805, as a director of the company (www.crps.cg.yu, accessed 30 June 2009). Zoran Damjanović (ID number 2706956283016) is also a director of both Tara-Precision Works and Montenegro Defence Industry.

⁴³ See for example www.controlarms.org, and the reports of UNIDIR on an ATT.