

**Amnesty International USA Policy Briefing**



**Dealing with Arms  
Intermediaries:  
The Pentagon's Missing Controls on  
Contractors Engaged in Arms Transfers**

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## Acronyms

**AECA**- Arms Export Control Act

**ITAR**- International Traffic in Arms Regulations

**AIUSA**- Amnesty International USA

**MSP**- Military, Security, or Police

**ATL**- Office of Acquisition, Technology, and Logistics

**NDAA**- National Defense Authorization Act

**CPA**- Coalition Provisional Authority

**OFAC**- Office of Foreign Assets Control

**DCMA**- Defense Contract Management System

**SAMM**- Security Assistance Management Manual

**DCS**- Direct Commercial Sales

**SDN**- Specially Designated Nationals

**DDTC**- Directorate of Defense Trade Controls

**UN**- United Nations

**DFARS**- Defense Federal Acquisition Regulation Supplement

**ZDI**- Zimbabwe Defence Industries

**DISAM**- Defense Institute of Security Assistance Management

**DoD**- U.S. Department of Defense

**DoS**- U.S. Department of State

**DTSA**- Defense Technology Security Administration

**EPLS**- Excluded Parties List System

**EU**- European Union

**FAA**- Foreign Assistance Act

**FAR**- Federal Acquisition Regulations

**FMS**- Foreign Military Sales

**GAO**- Government Accountability Office

**IRRF**- Iraq Relief and Reconstruction Fund

**ISSF**- Iraq Security Forces Fund

## Definitions

<u>Term</u>	<u>Definition</u>
<b>Arms</b>	All conventional military and civilian weapons, ammunition, and military support services
<b>Arms Trafficking</b>	Transfers of military equipment and services of any nature that violate national, international, or agreements at the date of transfer
<b>Arms Transfers</b>	Transfers of military equipment and services from a country to another country, regardless of the legal or illegal nature of transfers
<b>Freight Forwarder</b>	An individual or company 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
<b>International Arms Brokering</b>	An 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, though 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, 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.
<b>Prime Contractor</b>	Principal contractor who has a contract with the U.S. Department of Defense and has the full responsibility for its completion <sup>1</sup>
<b>Subcontractor</b>	A secondary or tertiary contractor who contracts with a principle contractor to do some or all of the prime contractor's obligations under the contract <sup>2</sup>

<sup>1</sup> Business Dictionary, "Prime Contractor," <http://www.businessdictionary.com/definition/prime-contractor.html>

<sup>2</sup> Business Dictionary, "Subcontractor," <http://www.businessdictionary.com/definition/subcontractor.html>

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**Introduction**

Since the end of the Cold War, governments and international organizations have increasingly raised concerns about the role of arms intermediaries – brokers, logistics firms, and transport and finance companies – in problematic international arms transfers. While some intermediaries operate responsibly, others have played leading roles in organizing international arms transfers to fighting forces with egregious human rights records.<sup>3</sup> Spurred on by arms manufacturers' push to export, an increase in sources of arms supplies, and the privatization of the transport industry, arms intermediaries are increasingly engaged in the global arms trade, but their activities remain poorly regulated in many countries.<sup>4</sup> One arms broker, Victor Bout, captured significant media attention starting in the late 1990s as UN reports repeatedly found his air cargo planes supplying arms to fighting forces under UN arms embargoes, fueling conflict and mass atrocities.<sup>5</sup> Early last year, Victor Bout was finally arrested in Thailand as part of a U.S. government sting operation, but he has yet to be charged with any of the offences included in the UN's allegations.<sup>6</sup> In 1996, the United States was one of the first governments to regulate the actions of arms intermediaries; however, scores of governments do not have such controls. These patchy controls continue to hamper efforts to halt intermediaries engaged in arms transfers to serious human rights violators.<sup>7</sup>

While the U.S. government has some of the most comprehensive laws and regulations on arms intermediaries and arms exports, this briefing paper will show that the U.S. Department of Defense (DoD) is missing some key controls to prevent the use of intermediaries with problematic backgrounds, particularly when DoD employs one of its new congressionally approved authorities to train and equip foreign security forces.

In order to prevent U.S. government funds from being used to hire intermediaries with a previous record of irresponsible or illegal arms transactions, the U.S. government has established several regulations and administrative practices. Under the regulations governing U.S. government-to-government arms transfers, administered by DoD, DoD officials are required to prohibit individuals or companies on the U.S. government's Excluded Parties List System (EPLS) from participating in a contract with the Pentagon.<sup>8</sup> During negotiations with a foreign government on an arms transfer, in some cases DoD develops a detailed transportation plan, which includes obtaining security clearances of all personnel involved in the

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<sup>3</sup> Amnesty International and Transarms, "Dead on time: arms transportation, brokering and the threat to human rights," May 10, 2006, 10, <http://www.amnesty.org/en/library/info/ACT30/008/2006>.

<sup>4</sup> Ibid., 3-10.

<sup>5</sup> See mentions of Victor Bout in UN reports under "Irbis" in Appendix I of this Policy Briefing.

<sup>6</sup> Times Online, "Lord of War Arms Dealer Viktor Bout Arrested in Thailand," March 6, 2008, <http://www.timesonline.co.uk/tol/news/world/asia/article3498795.ece>.

<sup>7</sup> For details on why the U.S. government adopted the new law on arms brokering, see Loretta Bondi and Elise Keppler, "Casting the Net?," *The Fund for Peace*, 9-10, [http://www.iansa.org/issues/documents/casting\\_the\\_net.pdf](http://www.iansa.org/issues/documents/casting_the_net.pdf). Amnesty International and Transarms, "Dead on time," 58-73, 122-132.

<sup>8</sup> DFARS, "Prohibition on Persons Convicted of Fraud or Other Defense Contract-Related Felonies," 252.203-700, January 15, 2009.

transfer. DoD officials also consider the likely human rights impact of a proposed deal, among other factors, and seek approval from the U.S. Department of State (DoS). Under U.S. commercial arms transfers, DoS has developed an extensive internal Watch List of individuals and companies with a past record of irresponsible or illegal arms transactions, among other concerns, to help prevent the use of intermediaries with problematic backgrounds. According to related U.S. regulations, entities that have been indicted or convicted of violating U.S. arms control laws are automatically excluded from receiving an export license or a brokering approval.

Despite these controls, between 2003 and 2009, U.S. government funds were channeled to at least six arms intermediaries, which had been either connected to breaches of international arms embargoes, named in reliable UN reports as being involved in illegal arms trafficking, listed on the U.S. Department of State's Watch List, or whose agent had been indicted for breaches of U.S. arms control laws. These intermediaries, including an airline previously connected with Victor Bout, were contracted to help transfer arms to Iraq, Afghanistan, and the Republic of Georgia. Some of these individuals or companies had been listed in UN reports as helping transfer arms to armed forces and armed groups engaged in serious violations of human rights. Another had been indicted by U.S. authorities for smuggling weapons into the United States for use by organized crime. In all of these cases, there was a risk that U.S. government funds could have been used to inadvertently help transfer weapons to grave human rights violators, either by diversion of U.S.-approved arms transfers or by funding these intermediaries' future activities unrelated to U.S.-approved arms transfers.

In May 2006 and September 2008, Amnesty International published two detailed reports that exposed a couple of these cases. For example, DoD funds from one of its new authorities to ship arms to Iraq went to a Moldovan air cargo company, Aerocom, which had been named in a UN investigation as having transported weapons in 2002 to the fighting forces of Charles Taylor, former President of Liberia, then under a UN arms embargo.<sup>9</sup> A year after Aerocom was hired to ferry arms to Iraq, the U.S. military could not account for thousands of the AK-47s that Aerocom was expected to deliver.<sup>10</sup> These Amnesty International reports also expressed serious concern about gross human rights violations committed by all sides of the conflict in Iraq, including torture, extra-judicial killings, and indiscriminate attacks or disproportionate use of force.

As a result of these initial findings, Amnesty International USA (AIUSA) began research last year, funded by the Open Society Institute, to fully examine DoD's controls when contracting arms intermediaries to see if DoD had the needed controls in place to prevent the use of intermediaries previously involved in irresponsible or illegal arms transfers, particularly to serious human rights violators.<sup>11</sup> Specifically, AIUSA sought to answer these main questions: 1) what are the similarities or differences between the way DoD and DoS oversee entities involved in U.S.-approved arms transfers; 2) in what circumstances has DoD provided funds or contracts to arms intermediaries with a record of arms trafficking, arming human rights violators, or other problematic arms transactions; 3) what factors led to U.S. government funds being

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<sup>9</sup> Amnesty International and Transarms, "Dead on time: arms transportation, brokering and the threat to human rights," ACT 30/007/2006, May 10, 2006, 35-37, <http://www.amnesty.org/en/library/info/ACT30/008/2006>.

<sup>10</sup> Amnesty International, "Blood at the Crossroads: Making the Case for a global Arms Trade Treaty," ACT 30/011/2008, September 17, 2008, 46, <http://www.amnesty.org/en/library/info/ACT30/011/2008/en>.

<sup>11</sup> See for example Sections 1513, Afghanistan Security Forces Fund, and 1516, Limitations on Iraq Security Forces Fund, in H.R. 2647 (Engrossed as Agreed to or Passed by the House), the National Defense Authorization Act of 2010, <https://www.thomas.gov>.

allocated to these individuals or companies; 4) will new U.S. government attempts to address these failings be effective; and, 5) are there any critical controls missing?

**Figure 1: Amnesty International’s Position on the Arms and Security Trade**

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 believed 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 serious 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, and transport and finance companies – in delivering arms to those who use them for violations and abuses of human rights and international humanitarian law. As governments increasingly subcontract the delivery of arms, the use of arms intermediaries can enhance the intermediary’s power considerably under certain circumstances while blurring the primary responsibility of governments to strictly control the arms trade.

This Policy Briefing is divided into five sections. The first section provides background on the U.S. government’s traditional authorities for transferring arms and some of the differences in the systems for screening contractors engaged in arms transfers. The second section summarizes instances in which DoD has used arms intermediaries with problematic backgrounds related to arms to provide arms to Iraq, Afghanistan, and the Republic of Georgia. The third section highlights what the U.S. government has since done to help prevent the use of such intermediaries. The fourth section describes some of the key controls DoD is missing. Finally, the fifth section includes the conclusion and key recommendations.

**Background**

For the past thirty years, the U.S. government’s two main authorities (or legal mechanisms) for approving arms transfers to foreign countries have been the Foreign Military Sales (FMS) and the Direct Commercial Sales (DCS) systems, created by the U.S. Arms Export Control Act (AECA) of 1976.<sup>12</sup> DoS administers DCS, which authorizes commercial arms transactions between U.S. private individuals or companies and foreign entities.<sup>13</sup> When a U.S. private entity wants to export arms to a buyer overseas, it must obtain a license from DoS. Under brokering provisions of the AECA, any U.S. broker acting in the United States or abroad – and foreign brokers involved in certain U.S.-approved arms transfers – must also obtain DoS approval to broker arms to foreign entities. DoD administers the FMS program and several other

<sup>12</sup> Matthew Schroeder and Rachel Stohl, “Appendix 17A: U.S. Export Controls,” in *SIPRI Yearbook 2005: Armaments, Disarmament and International Security*, 1, <http://yearbook2005.sipri.org/ch17/app17A>.

<sup>13</sup> Amnesty International phone conversation with two senior former officials with DDTC in March 2009 and in May 2009. DISAM, Greenbook, 15-9.

traditional government-to-government arms transfer authorities such as leases of military equipment and the Excess Defense Articles program.<sup>14</sup>

The DCS and FMS authorities are governed by two key U.S. laws: the U.S. Foreign Assistance Act (FAA) of 1961 and the AECA, which describe the goals for U.S. arms transfers and instances in which the U.S. government may not approve arms transfers.<sup>15</sup> The AECA, for example, authorizes the U.S. government to sell arms to countries friendly to the United States and “in furtherance of the security objectives of the United States and in consonance with the principles of the United Nations Charter.”<sup>16</sup> Article 1 (3) of the UN Charter requires all member states to “achieve international cooperation in...promoting and encouraging respect for human rights and fundamental freedoms for all...”<sup>17</sup> According to the AECA or the FAA, the United States may only supply arms to foreign countries for “legitimate self defense” purposes and may not furnish arms to countries that have a “consistent record of gross human rights violations.”<sup>18</sup> Every year, the U.S. Congress also passes an annual foreign operations appropriations bill, which often imposes restrictions on U.S. arms transfers to specific countries.<sup>19</sup>

While the U.S. government has sometimes failed to prevent U.S.-approved arms transfers from reaching unauthorized users or known human rights violators, it has established regulations and administrative practices specifically intended to prevent the use of arms intermediaries with problematic backgrounds.<sup>20</sup> Figure 2 details a successful and potentially failed attempt by arms intermediaries to divert U.S. arms to unauthorized recipients. The International Traffic in Arms Regulations (ITAR), which lays out regulations for the DCS process, places limits on who can receive an approval from DoS to export, transport, or broker arms.<sup>21</sup> Individuals or companies undertaking these activities must first register with DoS’s Directorate for Defense Trade Controls (DDTC), which manages the DCS process.<sup>22</sup> Entities, for instance, that have been indicted or convicted of violating the AECA or other listed U.S. crimes or that have been debarred or suspended by the U.S. Department of State are automatically excluded from receiving a license or an approval.<sup>23</sup> To prevent the use of an individual or company with a previous record of irresponsible or illegal arms transactions, ITAR stipulates that any entity applying for a license or brokering approval must list all of the parties involved in the deal, which often includes a buyer, seller, broker, transporter, and

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<sup>14</sup> Schroeder and Stohl, 1.

<sup>15</sup> Defense Institute for Security Assistance Management (DISAM), “Security Assistance Legislation,” in *Green Book: The Management of Security Assistance*, 2-8, <http://www.disam.dsca.mil/DR/02%20Chapter.pdf>.

<sup>16</sup> DISAM, Greenbook, 2-8.

<sup>17</sup> Arms Trade Treaty Steering Committee, “Compilation of Global Principles for Arms Transfers,” Amnesty International, April 1, 2007, 20, <http://www.amnesty.org/en/library/info/POL34/003/2007>.

<sup>18</sup> Federation of American Scientists, United States Arms Transfers Eligibility Criteria, Index Page, <http://fas.org/asmp/campaigns/legislationindex.html>.

<sup>19</sup> For example, see Amnesty International, “Nepal: Military assistance contributing to grave human rights violations,” June 14, 2005, 8-9, <http://www.amnesty.org/en/library/info/ASA31/047/2005>.

<sup>20</sup> For example, in 2003, the U.S. government approved the delivery of 5,000 M-16s to the government of Nepal. Since 2001, the Nepalese security forces extra-judicially killed an estimated 2,000 civilians suspected of helping the abusive armed group, “CPN-Maoists”. Over 130 people had also been ‘disappeared’ in police custody and many others were tortured from 1996 to 2002. See Amnesty International, “Hazardous Ventures: U.S. Arms Transfers During “War on Terror.”

<sup>21</sup> Directorate of Defense Trade Controls, “International Traffic in Arms Regulations (ITAR),” *State Department* 120.1, [http://www.pmddtc.state.gov/regulations\\_laws/documents/official\\_itar/ITAR\\_Part\\_120.pdf](http://www.pmddtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_120.pdf).

<sup>22</sup> ITAR Parts 122 and 129.

<sup>23</sup> ITAR 120.1 and 120.27, 458, 459.



freight forwarder.<sup>24</sup> Once officials at DDTC receive a license or approval request, they check the names of all parties involved in the deal with an internal Watch List, which includes entities with a record of irresponsible or illegal arms transfers, or who are debarred, sanctioned, or otherwise of concern as potential recipients of arms.<sup>25</sup>

**Figure 2: Intermediaries Involved in Diverting U.S.-Approved Arms Transfers**

At least since 2001, the U.S. Department of State's DDTC has published an annual report, the "End-Use Report", which includes information on successful and potentially failed attempts by private entities to divert U.S.-approved arms transfers.<sup>26</sup> Although DoD publishes reports on diversions of FMS transfers, these reports are classified.<sup>27</sup> The following are two examples from DDTC's annual reports:

\* During fiscal year 2007, DDTC conducted a post-shipment check on an "Asian-Pacific company" because of general concerns about the export of night vision devices to China. The company was acting as an intermediary to deliver a night vision imaging system to "government and private entities in five countries." After a series of checks, DDTC found multiple diversions of items to China and other unauthorized end-users in third countries.<sup>28</sup>

\* In fiscal year 2006, DDTC did a pre-shipment check on a license request to transfer sensitive defense equipment to a South Asian end-user because the application did not list the name of the private, Middle Eastern intermediary involved in the deal. DDTC discovered that the Middle Eastern company was on their internal Watch List and denied the application request.<sup>29</sup>

DDTC also has several other critical abilities and employs other practices to prevent the diversion of U.S.-approved arms transfers. According to a DDTC report, when reviewing a license or approval, DDTC officials pay particular attention to "unfamiliar foreign parties, unusual routing, overseas destinations with

<sup>24</sup> See Figure 3 for an example in which it was critical that the State Department requested all of the parties involved in an arms deal. ITAR 126.13, 525, [http://www.pmdtdc.state.gov/regulations\\_laws/documents/official\\_itar/ITAR\\_Part\\_126.pdf](http://www.pmdtdc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_126.pdf). Amnesty International phone conversation with DDTC official in November 2008.

<sup>25</sup> Amnesty International phone conversation with DDTC official in November 2008.

<sup>26</sup> Directorate for Defense Trade Controls, U.S. Department of State, [http://www.pmdtdc.state.gov/reports/enduse\\_reports.html](http://www.pmdtdc.state.gov/reports/enduse_reports.html).

<sup>27</sup> According to a former senior DDTC official interviewed by Amnesty International in July 2009, these reports are sent to the U.S. Congress and often include cases in which foreign governments re-transfer U.S.-approved arms transfers to a third country without receiving the appropriate authorization from the U.S. government.

<sup>28</sup> The U.S. Department of State's DDTC puts out a report entitled "End-use Reports" that lists examples of private contractors failing to comply with U.S. law and regulation, including engaging in the unauthorized diversion of arms. See Case Study 3 for the example of arms diverted to a U.S. embargoed country referenced in Directorate of Defense Trade Controls, "End-use Monitoring of Defense Articles and Defense Services," 9, State Department, [http://www.pmdtdc.state.gov/reports/enduse\\_reports.html](http://www.pmdtdc.state.gov/reports/enduse_reports.html).

<sup>29</sup> See Case Study 4, Undeclared Consignee, for an example in which it was critical that the State Department requested all of the parties involved in an arms deal at [http://www.pmdtdc.state.gov/reports/documents/End\\_Use\\_FY2006.pdf](http://www.pmdtdc.state.gov/reports/documents/End_Use_FY2006.pdf)

a history of illicit activity or weak export/customs controls, commodities not known to be in the inventory of the host country's armed forces, and other indicators of concern."<sup>30</sup> If DDTC officials are notified about irregularities in an arms deal once it has been approved or if DDTC officials otherwise identify a problem, they can also initiate an in-transit or post-delivery check to ensure that the weapons reach the proper end-user.<sup>31</sup> To encourage entities to be responsible with the arms, ITAR also provides strict liability for any individual or company that is granted a license or approval and for any additional person or company a licensee may use for the arms deal.<sup>32</sup> ITAR also includes further prohibitions, restrictions, and requirements to help ensure U.S. persons are acting responsibly when involved in U.S.-approved arms transfers.<sup>33</sup>

With the original understanding that U.S. government-owned entities would be the ones arranging and delivering arms to foreign governments under the FMS program, the AECA set out different requirements and controls for the FMS program and other government-to-government arms transfer authorities.<sup>34</sup> For instance, U.S. companies involved in exporting and brokering arms under FMS do not need to obtain a license or approval from DDTC and as such are exempt from many regulations included in ITAR.<sup>35</sup> Instead, U.S. companies involved in the FMS program must comply with the U.S. government contract regulatory system, namely the Federal Acquisition Regulations (FAR) and the Defense Federal Acquisition Regulations Supplement (DFARS).<sup>36</sup> When one of the three military departments (Army, Navy, and Air Force) or another DoD agency contracts with a U.S. or foreign company to procure and/or transport arms to a foreign government, DoD must comply with FAR, DFARS, and the contract stipulations, among other requirements.<sup>37</sup> Unlike the DCS program, DoD does not review or approve every arms transfer; instead, DoD approves the package as a whole, which could include several arms transfers.<sup>38</sup>

DoD has established several requirements and practices under the FMS program to help prevent the contracting of arms intermediaries with problematic backgrounds and the diversion of arms. According to DFARS or FAR, a DoD contracting officer is required to make a responsibility assessment of a prospective contractor and check the contractor's business ethics.<sup>39</sup> Contractors that have been debarred, suspended, proposed for debarment, or declared ineligible for a DoD contract, or have been convicted, had a civil

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<sup>30</sup> "End-Use Monitoring of Defense Articles and Defense Services Commercial Exports FY 2006," 2.

<sup>31</sup> "End-Use Monitoring of Defense Articles and Defense Services Commercial Exports," 9. Amnesty International interview with DDTC official.

<sup>32</sup> ITAR 127.7, 544-545, [http://www.pmdtcc.state.gov/regulations\\_laws/documents/official\\_itar/ITAR\\_Part\\_127.pdf](http://www.pmdtcc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_127.pdf).

<sup>33</sup> For details on the other requirements, such as the requirement to list many of the senior individuals in the company, see [http://www.pmdtcc.state.gov/regulations\\_laws/itar\\_consolidated.html](http://www.pmdtcc.state.gov/regulations_laws/itar_consolidated.html).

<sup>34</sup> Amnesty International phone conversation with two senior former officials with DDTC in March 2009 and in May 2009.

<sup>35</sup> ITAR 126.6 (c), 533.

<sup>36</sup> DISAM, Greenbook, 9-1 to 9-22. Amnesty International email communication with official from the Defense Contract Management Agency in May 2009. Amnesty International conversation with senior official from the Directorate of Defense Trade Controls in November 2009.

<sup>37</sup> DISAM, Green book, 9-1 to 9-22. For information on these related requirements and regulations, see the Security Assistance Management Manual (SAMM), go to <http://www.dsca.mil/SAMM/>.

<sup>38</sup> DISAM, "A Comparison of Foreign Military Sales and Direct Commercial Sales," in *Green Book: The Management of Security Assistance*, 2, <http://www.disam.dsca.mil/DR/15%20Chapter.pdf>.

<sup>39</sup> Defense Federal Acquisition Regulation Supplement (DFARS), "Contractor Qualifications," 253-209-1, September 21, 1999, <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>. Amnesty International phone conversation with senior official from the U.S. Department of Defense's Office of Acquisition, Technology, and Logistics. Federal Acquisition Regulation (FAR), 9.104-1.

judgment rendered against it, or indicted for crimes such as theft, forgery, and embezzlement are prohibited from participating in a contract with DoD.<sup>40</sup> DoD officials also check the U.S. government's Excluded Parties List System (EPLS), which is a U.S. database of all of the entities restricted from receiving U.S. government contracts for various reasons. DoD officials have also said they check other public U.S. government lists of restricted parties developed and maintained by the U.S. Departments of State, Treasury, and Commerce, which excludes DoS's internal, unpublished Watch List.<sup>41</sup> Figure 3 lists the relevant U.S. government published lists. Although DDTC officials publish a list of some entities involved in U.S. prosecutions for AECA violations, they do not include a complete list, and they do not publish names of those suspended from participating in DCS.<sup>42</sup>

### Figure 3: U.S. Government Published Lists of Restricted Parties

#### U.S. General Services Administration

*Excluded Parties List System (EPLS):* This database lists information on "parties that are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and non-financial assistance and benefits."<sup>43</sup>

#### U.S. Department of State

*Statutory Debarment List:* A list of parties who are barred from participating directly or indirectly in the export of arms for which approval or a license is required by ITAR because they have been convicted of violating or conspiracy to violate the AECA.

*Administrative Debarment List:* Persons may be "administratively debarred" on a case-by-case basis resulting from the resolution of individual enforcement proceedings for violations of the AECA and ITAR.<sup>44</sup>

#### U.S. Department of Commerce

*Denied Persons List:* A list of individuals and entities that have been denied export privileges.

*Entity List:* A list of parties whose presence in a transaction can trigger a license requirement under the Export Administration Regulations.

*Unverified List:* A list of parties where the U.S. Department of Commerce has been unable to verify the end-user in prior transactions. The presence of a party on this list in a transaction is a "Red Flag" that should be resolved before proceeding with the transaction.

<sup>40</sup> For examples, see these three DoD solicitations, W52P1J-09-R-0003 (issued November 21, 2008), W52P1J-08-R-0121 (issued July 17, 2008), and W52P1J-06-R-0129 (issued July 28, 2006) at [www.fedsources.com](http://www.fedsources.com). For other similar prohibitions, see DFARS, "Prohibition on Persons Convicted of Fraud or Other Defense Contract-Related Felonies," 252.203-700, January 15, 2009, <http://www.acq.osd.mil/dpap/dars/dfars/html/current/252203.htm#252.203-7001>.

<sup>41</sup> Amnesty International phone conversation with official from the Defense Technology Security Administration (DTSA) in March 2008.

<sup>42</sup> Amnesty International interview with former senior DDTC official in June 2009. <sup>□</sup> U.S. Department of Justice, "Fact Sheet: Major U.S. Export Enforcement Actions in the Past Year," Press Release, October 11, 2007, [http://www.usdoj.gov/opa/pr/2007/October/07\\_nsd\\_807.html](http://www.usdoj.gov/opa/pr/2007/October/07_nsd_807.html).

<sup>43</sup> Excluded Parties List System, "Frequently Asked Questions," <https://www.epls.gov/epls/jsp/FAQ.jsp>.

<sup>44</sup> Directorate of Defense Trade Controls, "Lists of Parties Debarred for AECA Convictions," *State Department* March 25, 2009, [http://www.pmdtcc.state.gov/compliance/debar\\_intro.html](http://www.pmdtcc.state.gov/compliance/debar_intro.html).

### **U.S. Department of Treasury**

*Specially Designated Nationals (SDN) List:* The U.S. Department of Treasury may prohibit a transaction if a party on this list is involved.

During the U.S. government's negotiation with a foreign government regarding a FMS transfer, the parties also agree to a detailed transportation plan, which includes security clearances of all personnel involved in the transfer.<sup>45</sup> DoD personnel also conduct a "country team assessment" and check 14 items, including the human rights considerations of the deal and the foreign government's justification for the particular type and quantity of weapons, to help ensure the transfer meets U.S. law and interests and will not be diverted to unauthorized users.<sup>46</sup> DoD also requires approval from DoS to make most if not all international arms transfers.<sup>47</sup> Once the contract has been agreed, in some cases, U.S. security assistance officers based in U.S. embassies abroad are required to verify the arms were delivered as planned.<sup>48</sup>

### ***DoD's Use of Arms Intermediaries with Problematic Backgrounds***

Despite these controls, between 2003 and 2009, hundreds of millions of dollars of U.S. government funds were channeled to at least six arms intermediaries, which had been either connected to breaches of international arms embargoes, named in reliable UN reports as being involved in illegal arms trafficking, listed on the U.S. Department of State's internal Watch List, or whose agent had been indicted for breaches of U.S. arms control laws. These intermediaries were involved in U.S.-funded arms transfers to Iraq, Afghanistan, and the Republic of Georgia. Figure 4 below lists these intermediaries; a more detailed summary of their activities can be found in Appendix I. In total, more than 140 million dollars of U.S. government money was spent on these associated contracts.<sup>49</sup> In all six cases, DoD led and managed the contracts, including using funds from its new congressionally-approved authorities to train and equip foreign security forces. Some of these intermediaries had been reliably connected to successful or failed attempts to arm egregious human rights violators, raising the risk that U.S. funds could be used to help fuel future grave human rights violations. In at least four of these instances, the names of the entities or persons associated with them were already on the U.S. Department of State's internal Watch List before DoD approved the contract.<sup>50</sup>

<sup>45</sup> DISAM, Greenbook, 11-5, 11-7.

<sup>46</sup> U.S. Defense Security Cooperation Agency, Security Assistance Management Manual (SAMM), Chapter 5, Foreign Military Sale Case Development, 124, <http://www.dsca.mil/samm/Chapter%2005%20-%20FMS%20Case%20Development.pdf>.

<sup>47</sup> DISAM, Greenbook, 11-6.

<sup>48</sup> According to the DISAM, Green Book, 11-11, this only happens when the arms are delivered through the Defense Transportation System at a delivery code 7 or 9.

<sup>49</sup> See Appendix I for details on the value of the contracts connected with these instances. While it is clear that Tomislav Damjanovic received DoD funds, it's unclear how much. As such, funds associated with Damjanovic are not included in this calculation.

<sup>50</sup> These four are Aerocom, Bernatik, Thomet, and Poly Technologies. Amnesty International interview on March 18, 2009 with officials from the U.S. Department of State's Directorate for Defense Trade Controls (DDTC). Douglas Farah and Stephen Braun, *Merchant of Death: Money, Guns, Planes, and the Man Who Makes War Possible* (Hoboken: John Wiley and Sons Inc, 2007), 216 -230. U.S. House of Representatives Committee on Government Oversight and Reform, "The AEY Investigation," *Majority Staff Analysis*, June 24, 2008, 2, <http://oversight.house.gov/documents/20080624102358.pdf>.

<sup>50</sup> "The AEY Investigation," 221.

**Figure 4: Short Summary of Arms Intermediaries with Problematic Backgrounds**

<b>Entity</b>	<b>DoD Funded Activity</b>	<b>Previous Record</b>
Aerocom, Moldovan charter air cargo firm	Transported AK-47 type arms to Iraq from 2004-5	Named in a 2003 UN report as having flown arms to Liberian government forces in 2002 while Liberia was under a UN arms embargo
Petr Bernatik, Czech arms broker	Helped procure and export foreign-sourced ammunition to Iraq	Listed in the U.S. Department of State's Watch List as an "arms trafficker", and accused by Czech media of illegally transferring arms to the Democratic Republic of the Congo
Irbis, Kazakhstani charter air cargo firm	Transported war supplies to Iraq	Reported by the United Nations as a company controlled by arms trafficker Victor Bout, and subsequently sanctioned by the U.S. Department of Treasury
Heinrich Thomet, Swiss arms broker	Assisted with the procurement of foreign-sourced ammunition to Afghanistan	Included in the U.S. Department of State's Watch List
Poly Technologies, Chinese arms broker and manufacturer	Procured and shipped foreign- and American-made arms to Iraq	U.S. representative of the company indicted by U.S. federal grand jury for shipping AK-47 type assault rifles unlawfully into the United States for use by organized crime
Tomislav Damnjanovic, Serbian arms broker	Assisted with the transportation of arms to Iraq and the Republic of Georgia	Involved in an attempt to fly arms to Libya in 1996 in violation of a UN arms embargo according to U.S. and foreign newspapers, and reportedly participated in an arms transfer to Liberian government forces in 2002 in breach of the UN arms embargo

*Source: See Appendix I for more details*

Although there are some differences worth noting among these cases, most of the instances involved U.S. Army contracts to U.S.-based companies that then subcontracted – at the second or third tier level – foreign intermediaries to broker or transport arms to Iraq. In one illustrative case, a U.S.-based contractor, Taos Industries Inc., which had received a contract from the U.S. Army, hired a European freight forwarding company, Speedex, to arrange the transport of thousands of AK-47 type assault rifles from Bosnia to Iraq.<sup>51</sup> Speedex then hired Aerocom, a Moldovan charter cargo airline company run from Ukraine and the United Arab Emirates and which had been cited in a 2003 UN report as having transported arms to Liberia in violation of the UN arms embargo, to fly the arms to Iraq.<sup>52</sup> According to Taos, Speedex's decision to subcontract Aerocom was their decision alone.<sup>53</sup> In another instance, that of Poly Technologies, it was clear the Pentagon directly approved the arms intermediary to ship arms to

<sup>51</sup> Amnesty International and Transarms, "Dead on time" 104-111.

<sup>52</sup> Ibid., 104-111.

<sup>53</sup> Ibid., 111.

Iraq.<sup>54</sup> In almost all of the cases, DoD funds went for the procurement and/or transfer of foreign-sourced or non-standard arms or ammunition, which DoD has traditionally not had as much experience in overseeing as DoS's DDTC.<sup>55</sup>

In two of the cases, Aerocom and Irbis, DoD funds went to a charter air cargo firm. Since the 1990s, charter cargo airlines, which offer the use of their planes for a pre-determined period or for a specific trip, have often been named in UN reports on arms embargo violations.<sup>56</sup> After the collapse of the Soviet Union, many small air charter firms were created in the early 1990s and operated in Africa, Asia, the Middle East, and Eastern Europe using ex-military transport planes from former Warsaw Pact countries. A high percentage of these companies have been based in airports where cargoes and aircraft receive less scrutiny than elsewhere, such as in Sharjah (United Arab Emirates) and formerly Ostend (Belgium).<sup>57</sup>

DoD led and managed the contracts for all of these six cases. While it is clear that funds from one of DoD's new authorities to train and equip foreign security forces were used to contract Aerocom, the evidence suggests that funds from these new authorities were used in a majority of the cases.<sup>58</sup> Figure 5 gives a short history of DoD's new authorities since September 11, 2001, which exempt the Pentagon from many U.S. arms control regulations and laws. Matching up the contract number and a DoD Inspector General report, for instance, one can see that Aerocom was funded through DoD's new authority to transfer arms to Iraq: the Iraq Relief and Reconstruction Fund (IRRF).<sup>59</sup> In 2004, the U.S. Congress renamed this authority; it is now known as the Iraq Security Forces Fund (ISFF).<sup>60</sup> Another DoD Inspector General report also mentions that IRRF/ISFF was the primary authority employed to fund arms transfers to Iraqi security forces from 2003 to 2007.<sup>61</sup> Although DoD is reportedly using an additional, new authority for most arms transfers to Afghanistan (Afghan Security Forces Fund), it appears DoD used the FMS program for the contract in which Heinrich Thomet was hired.<sup>62</sup> It is unknown as to which DoD authority was used to fund

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<sup>54</sup> Jonathan S. Landay, "Chinese firm linked to smuggled AK-47s picked to supply Iraqi army," *Knight Ridder Washington Bureau*, April 28, 2005.

<sup>55</sup> DISAM, Greenbook, 15-9.

<sup>56</sup> Amnesty International and Transarms, "Dead on time," 35-37.

<sup>57</sup> Amnesty International and Transarms, "Dead on Time," 36.

<sup>58</sup> See the case of Aerocom in Appendix 1.

<sup>59</sup> Contract number for Taos / Aerocom is W914NS-04-D-0115. See Amnesty International, "Blood at the Crossroads," 44,61. To match up with IRRF, see Office of the Special Inspector General for Iraq Reconstruction, "Iraqi Security Forces: Weapons Provided By the U.S. Department of Defense Using The Iraq Relief and Reconstruction Fund (IRRF)," SIGIR-06-033, October 28, 2006, 2, <http://www.sigir.mil/reports/pdf/audits/06-033.pdf>.

<sup>60</sup> Ibid.

<sup>61</sup> Inspector General, "Report on the Assessment of Arms, Ammunition, and Explosives Accountability and Control; Security Assistance; and Logistics Sustainment for the Iraq Security Forces," U.S. Department of Defense, No. SPO-2009-002, December 19, 2008, 47, <http://www.dodig.mil/SPO/Reports/AssessAAEAccountandControlSecurityAssistanceandLogSustainmentfortheISF.pdf>.

<sup>62</sup> <sup>□</sup> GAO, "Afghanistan Security: Lack of Systematic Tracking Raises Significant Accountability Concerns about Weapons Provided to Afghan National Security Forces," 8,9. See AEY Incorporated in U.S. Department of Defense, "Department of Defense Sales of Significant Military Equipment to Foreign Entities, Fiscal Year 2008," March 2009, [http://www.sipri.org/research/armaments/transfers/transparency/national\\_reports/usa/US\\_1231\\_Report\\_08.pdf](http://www.sipri.org/research/armaments/transfers/transparency/national_reports/usa/US_1231_Report_08.pdf).

the contract that hired Tomislav Damnjanovic to organize a shipment of military equipment to the Republic of Georgia in March 2006.<sup>63</sup>

### Figure 5: DoD's New Authorities to Train and Equip Foreign Security Forces

Since 2001, DoD has sought and obtained several new authorities to more quickly and flexibly transfer arms to foreign countries. Claiming DoD needed new legal authorities to quickly respond to unforeseen contingencies, Secretary of Defense Rumsfeld sought new, permanent authorities to train and equip foreign security forces around the world as part of the so called "War on Terror".<sup>64</sup> In 2003, the U.S. Congress responded by granting DoD two specific, temporary authorities for DoD to train and equip foreign security forces in Iraq and Afghanistan: 1) the Iraq Relief and Reconstruction Fund (IRRF), which provided funds for transfers of arms and other goods (in 2004 Congress renamed this authority to the Iraq Security Forces Fund, which provided funds for just arms and training); and, 2) the Afghan Security Forces Fund (ASFF).<sup>65</sup> Significantly, both of these authorities have exempted DoD from complying with any other provision of U.S. law, including those related to human rights.<sup>66</sup> By 2006, the U.S. Congress also granted DoD several other new, temporary authorities to transfer arms to foreign countries, such as Section 1206 of the National Defense Authorization Act of 2006 and the Pakistan Security Forces Fund, which also exempt DoD from some arms controls.<sup>67</sup> Arms transfers connected with these new authorities are also excluded from the U.S. government's annual reports to the public on U.S. arms exports, withholding important transparency.<sup>68</sup>

Before these intermediaries received DoD funds, various types of credible information was available on their past records, some stronger than others in terms of concerns about them engaging in future arms

<sup>63</sup> Danssaert, Cappelle, and Thomas, "Recent arms deliveries from the successor States of the former Yugoslavia, International Peace Information Service (IPIS), March 19, 2007, 47, <http://www.ipisresearch.be/download.php?id=165>.

<sup>64</sup> Stewart Patrick, James Schear, and Mark Wong, "Integrating 21<sup>st</sup> Century Development and Security Assistance," *Center for Strategic and International Studies* January 2008, 7, <http://www.csis.org/media/csis/pubs/080118-andrews-integrating21stcentury.pdf>.

<sup>65</sup> U.S. Government Accountability Office, "Stabilizing Iraq: DoD Cannot Ensure That U.S.-Funded Equipment Has Reached Iraqi Security Forces, GAO-07-711, July 2007, 3, <http://www.gao.gov/new.items/d07711.pdf>.

<sup>66</sup> Section 1107 of the Emergency Supplemental Appropriations Act for Defense and for Reconstruction of Iraq and Afghanistan for FY2004, Public Law 108-106, NOV. 6, 2003, says "Notwithstanding any other provision of law, from funds made available in this Act to the Department of Defense under 'Operation and Maintenance, Defense-Wide', not to exceed \$150,000,000 may be used by the Secretary of Defense, with the concurrence of the Secretary of State, to provide assistance only to the New Iraqi Army and the Afghan National Army to enhance their capability to combat terrorism and to support U.S. military operations in Iraq and Afghanistan...." The U.S. Congress has since approved similar language.

<sup>67</sup> For a listing of many of these new authorities, see Report to Congress: Section 1206(f) of the 2006 National Defense Authorization Act, <http://www.fas.org/asmp/resources/110th/1206report.htm>. For more details on the missing controls on Section 1206, see Amnesty International USA, "U.S. Department of Defense's 'Global Train and Equip Program' Lacks Critical Safeguards," Issue Brief, <http://www.amnestyusa.org/arms-trade/page.do?id=1011003>. Patrick, Schear, and Wong, 7. For information on the Pakistan security forces fund, see Pakistan Counterinsurgency Fund, Supplemental Appropriations for Fiscal Year 2009, Public Law 111-32, June 24, 2009, [www.thomas.gov](http://www.thomas.gov).

<sup>68</sup> Amnesty International phone and e-mail conversation with a staff member from the Federation of American Scientists.

transfers to human rights violators.<sup>69</sup> In two cases, Aerocom and Irbis, the United Nations had listed these companies as being involved in flying arms, or as being connected to individuals transferring arms, to a country or entity under a UN arms embargo.<sup>70</sup> In the case of Poly Technologies, a U.S. federal grand jury had indicted the main U.S. representative of Poly Technologies in 1996 for participating in an effort to bring 2,000 AK-47s into the United States for use by organized crime.<sup>71</sup> U.S. and foreign media can also provide helpful leads about possible irresponsible or illegal activities of arms intermediaries. For instance, in 2005 a Czech Republic news service reported that Petr Bernatik transferred arms to the Democratic Republic of the Congo in violation of a European Union (EU) arms embargo.<sup>72</sup> Again, in at least four of the instances, the intermediaries were already on the U.S. Department of State's internal Watch List, which lists individuals and companies suspected of involvement in irresponsible or illegal arms transfers, among other concerns.<sup>73</sup>

Four of the six intermediaries had reportedly engaged in efforts to supply arms to fighting forces with records of serious human rights violations, sometimes fueling grave violations of international human rights and humanitarian law.<sup>74</sup> For example, a UN report on arms embargo violations in Liberia stated in 2003 that an Aerocom aircraft was one of two air cargo planes known to have transported a large shipment of arms from June to August 2002 to the forces of the former Liberian President Charles Taylor in violation of the UN arms embargo.<sup>75</sup> Those arranging the deal reportedly used a forged end-user certificate, claiming the weapons were going to Nigeria instead of Liberia.<sup>76</sup> As a result, thousands of automatic rifles, hundreds of missile launchers, and hundreds of thousands of rounds of ammunition were delivered to a force that had been accused of unlawful killing, torture, and widespread rape.<sup>77</sup> During the time that these weapons reached Liberian forces, Amnesty International received many reports of civilians who had been targets of unlawful killings, torture, rape, forced recruitment, and arbitrary arrest, or who had been caught in cross-fire as they tried to flee fighting between government and rebel fighting forces in

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<sup>69</sup> For additional information on sources to check, see: Amnesty International, "How to apply human rights standards to arms transfer decisions," ACT 30/008/2008, October 1, 2008, <http://www.amnesty.org/en/library/info/ACT30/008/2008/en>.

<sup>70</sup> United Nations Security Council, "Report of the Panel of Experts appointed pursuant to paragraph of Security Council resolution 1458 (2003) concerning Liberia," S/2003/498, April 24, 2003, 21. United Nations, "Final Report of the Monitoring Mechanism on Angola Sanctions," December 21, 2001, <http://www.globalpolicy.org/security/sanction/angola/0012rprt.htm>.

<sup>71</sup> U.S. Department of Justice, "Massive Seizure of New Automatic Weapons Illegally Smuggled by PRC Weapons Producers," U.S. Attorney Northern District of California, May 23, 1996, 1-2, (previously at <https://www.court tv.com/archive/legaldocs/misc/smuggle.html>). Jonathan S. Landay, "Chinese firm linked to smuggled AK-47s picked to supply Iraqi army,".

<sup>72</sup> CTK National News Wire, "Ostrava-based Firm Sold Weapons to Congo Despite Embargo," February 9, 2005. BBC Monitoring Europe, "Czech arms producer rejects allegations of arms export to DR Congo," February 9, 2005. Chivers, "Supplier Under Scrutiny on Arms for Afghans."; Amnesty International, "Blood at the Crossroads," 61.

<sup>73</sup> See footnote 51.

<sup>74</sup> <sup>□</sup> "The AEY Investigation," 221.

<sup>74</sup> See Aerocom, Petr Bernatik, Irbis, and Tomislav Damnjanovic, in Appendix I for details on the cases in which these intermediaries helped in efforts to supply arms to areas where grave human rights violations existed.

<sup>75</sup> United Nations Security Council, "Report of the Panel of Experts appointed pursuant to paragraph of Security Council resolution 1458 (2003) concerning Liberia," S/2003/498, April 24, 2003, 19-22.

<sup>76</sup> Ibid., 19-22.

<sup>77</sup> Ibid., 19-22. Amnesty International, "Liberia: Killings, torture and rape continue in Lofa County", July 31, 2001, <http://www.amnesty.org/en/library/info/AFR34/008/2001/en>.



Liberia.<sup>78</sup> See Appendix I for information on the human rights concerns associated with the other intermediaries' past arms transfers.

After receiving DoD funds, there have been several further problems or questions connected with these intermediaries or associated prime contractors. For instance, the U.S. company AEY Inc., which had hired Thomet, shipped millions of rounds of old ammunition manufactured in China but re-packaged as Albanian to Afghanistan.<sup>79</sup> As a result, AEY Inc. is now the subject of a U.S. government criminal investigation for fraud.<sup>80</sup> The New York Times also reported that U.S. Department of State and NATO officials determined that the ammunition was "unreliable and obsolete", a problem not included in the U.S. government's criminal case against AEY Inc.<sup>81</sup> According to research by the International Peace Information Service (IPIS), Thomet has since been working with the U.S.-based company Ohio Ordnance to ship machine gun parts to the United States purchased from Zimbabwe, despite U.S. sanctions on transactions with the Zimbabwean supplier, Zimbabwe Defence Industries (ZDI), and those that support ZDI.<sup>82</sup> In another case, the U.S. military in Iraq has been unable to provide evidence to Amnesty International that thousands of AK-47 type assault rifles Aerocom was expected to ferry from Bosnia to Iraq as part of a Taos contract were actually delivered to Iraq; although, Aerocom's or Tao's culpability for the weapon's lack of accountability has not been established.<sup>83</sup> Similarly, Taos was connected with a contract to transfer to Iraq in July 2004 thousands of 92S Beretta pistols, some of which were later discovered with Al-Qaeda operatives accused of killing civilians in Iraq.<sup>84</sup>

### ***U.S. Government Actions***

In response to reports about Pentagon funds reaching arms intermediaries previously involved in breaking UN arms embargoes or in other irresponsible or illegal activities, the U.S. government has taken several actions to help prevent the use of such intermediaries and to mitigate the diversion of weapons. On July 22, 2004, for example, the Office of Foreign Assets Control (OFAC) froze Victor Bout's assets in the United States and placed him on the U.S. Department of Treasury's Specially Designated Nations list, preventing

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<sup>78</sup> Amnesty International, "Liberia: Civilians face human rights abuses at home and across the borders," September 30, 2002, <http://www.amnesty.org/en/library/info/AFR34/020/2002/en>.

<sup>79</sup> C. J. Chivers, "Supplier Under Scrutiny on Arms for Afghans," *New York Times* March 27, 2008, [http://www.nytimes.com/2008/03/27/world/asia/27ammo.html?\\_r=1&pagewanted=print](http://www.nytimes.com/2008/03/27/world/asia/27ammo.html?_r=1&pagewanted=print). U.S. Attorney's Office Southern District of Florida, "Munitions Supplier, His Company, and Others Indicted for Lying to Army on Government Munitions Contract," Press Release, June 20, 2008, <http://www.usdoj.gov/usao/fls/PressReleases/080620-02.html>. National Defense Authorization Act of 2006, "Prohibition on Procurements from Communist Chinese Military Companies," Section 1211 Public Law 109-163, January 6, 2006.

<sup>80</sup> U.S. Attorney's Office Southern District of Florida, "Munitions Supplier." Donna Miles, "Army Suspends Ammo Contract for Afghan Security Forces," American Forces Press Service, <http://www.defenselink.mil/news/newsarticle.aspx?id=49395>.

<sup>81</sup> C.J. Chivers, "Supplier Under Scrutiny on Arms for Afghans".

<sup>82</sup> Peter Danssaert and Brian Johnson-Thomas, "Zimbabwe – Arms and Corruption: Fueling Human Rights Abuse," International Peace Information Service (IPIS), July 2009, 4-5, <http://www.ipisresearch.be/arms-trade.php>.

<sup>83</sup> Amnesty International, "Blood at the Crossroads," 46. Taos was also associated with another contract in which the weapons are still missing as of November 2007, see: Inspector General, "Management of the Iraq Security Forces Fund in Southwest Asia – Phase III," *U.S. Department of Defense Report No. D-2008-026*, November 30, 2007, 9, <http://www.dodig.mil/audit/reports/fy09/09-075.pdf>. Amnesty International and Transarms, "Dead on Time," 111.

<sup>84</sup> Amnesty International, "Blood at the Crossroads," 47-49.

any U.S. entity from doing business with him.<sup>85</sup> OFAC's action against Bout was in connection with U.S. efforts to freeze the assets of family members and associates of the former Liberian President Charles Taylor.<sup>86</sup> Nearly a year later, OFAC also imposed sanctions on 30 companies and four individuals linked to Victor Bout, including one charter air cargo company mentioned above, Irbis.<sup>87</sup> OFAC, however, does not have a wider mandate to investigate and sanction arms intermediaries beyond specific mandates such as those related to Charles Taylor and the Democratic Republic of the Congo.<sup>88</sup>

In response to growing publicity exposing problems with DoD's procurement system for obtaining foreign-sourced weapons, DoD has introduced, and has begun to implement, new regulations to increase checks on DoD procurement of foreign-sourced arms and ammunition.<sup>89</sup> On September 3, 2008, for example, DoD issued a regulatory change that requires the Defense Technology Security Administration (DTSA) to conduct extra reviews on the procurement of foreign-sourced arms and ammunition.<sup>90</sup> DTSA officials have told Amnesty International that this review will include cross-checking the subcontractors listed in the DoD contract against all of the published U.S. government lists of restricted parties, the U.S. Department of State's internal Watch List, and with U.S. government intelligence agencies.<sup>91</sup> In connection with U.S. congressional hearings in late 2008 regarding the contracting of AEY Inc., the U.S. Army Picatinny Arsenal Command has also implemented new procedures to screen all shippers and freight forwarding companies involved in contracts with foreign-sourced ammunition.<sup>92</sup>

After congressional action in 2007 and 2008 related to contractor abuse, the Federal Regulation Acquisition Council also issued a final rule on November 12, 2008 adding strict requirements on subcontracting carried out by U.S. contractors.<sup>93</sup> The new rule requires prime contractors to disclose to the U.S. government any evidence of their involvement or their subcontractor's involvement in fraud, conflict of interest, bribery, gratuity violations, or a violation of the False Claims Act.<sup>94</sup> If the prime contractor fails to report such evidence in a timely manner, they may be debarred or suspended from contracts with the U.S. government.<sup>95</sup> In a change from the past, this requirement applies to subcontracts and subcontractors abroad as well as in the United States.<sup>96</sup>

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<sup>85</sup> Farah and Braun, 234. See the U.S. Department of Treasury's Specially Designated Nationals List at <http://www.treas.gov/offices/enforcement/ofac/sdn/>.

<sup>86</sup> Farah and Braun, 234.

<sup>87</sup> Office of Public Affairs, "Treasury Designates Victor Bout's International Arms Trafficking Network," *U.S. Department of Treasury, Office of Foreign Assets Control*, April 26, 2005, <http://www.treas.gov/press/releases/js2406.htm>.

<sup>88</sup> Amnesty International phone conversation with OFAC officials in June 2009.

<sup>89</sup> For an example of other problems, see Sharon Weinberger, "Army Gave No-Bid Copter Contract to Slovak Ambulance Firm," *Wired* May 5, 2009, <http://www.wired.com/dangerroom/2009/05/army-gave-no-bid-copter-contract-to-slovak-ambulance-firm/>.

<sup>90</sup> Defense Security Cooperation Agency, 3.

<sup>91</sup> Amnesty International phone conversation with senior DTSA official in February 2009.

<sup>92</sup> Amnesty International interview with DDTC official in May 2009. For an example of a solicitation with this new requirement, see Contract Solicitation W52P1J-09-R-0003 (issued November 21, 2008), [www.fedsources.com](http://www.fedsources.com).

<sup>93</sup> Michael Payne and Craig Schroeder, "Department of Justice Adds Teeth to Current Contractor Ethics Rules," *Contractor Headlines* November 14, 2008, [http://www.contractorheadlines.com/2009/04/departement\\_of\\_justice\\_adds\\_tee.html](http://www.contractorheadlines.com/2009/04/departement_of_justice_adds_tee.html). Federal Acquisitions Regulations (FAR), "Federal Construction Contracting," 52.203-13 (b).

<sup>94</sup> FAR, "Federal Construction Contracting," 52.203-13.

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

In January 2008, the U.S. Congress also included language in the passed National Defense Authorization Act of 2008, which requires DoD to take several steps to ensure U.S.-approved arms transfers to Iraq are not diverted to unauthorized end-users. For instance, DoD is now required to track individual arms from their origin to Iraq by their individual serial number and to provide a detailed record of the origin, shipping, and distribution of all arms and ammunition transferred to the Iraqi security forces.<sup>97</sup> As of October 2008, DoD has certified that it is in compliance with this congressional requirement.<sup>98</sup> As such, DoD has indicated that it is requiring contractors to provide serial number lists to U.S. military officials in Iraq prior to the weapons reaching Iraq.<sup>99</sup> Contractors or subcontractors are required to post the individual serial numbers of weapons on the inside and outside of their shipping containers and to provide DoD with “en-route visibility” of the shipment of arms, including the dates and times of arrival.<sup>100</sup> DoD has also reported that they are conducting checks on all “lethal defense articles” once the arms actually reach the Iraqi security forces.<sup>101</sup> As of May 2009, the U.S. Army was in the process of implementing the same measures for arms transfers to Afghanistan.<sup>102</sup>

### ***DoD’s Missing Controls to Prevent the Use of Arms Intermediaries with Problematic Backgrounds***

Although the U.S. government has taken steps to prevent the use of arms intermediaries with problematic backgrounds and mitigate the diversion of weapons in the last several years, the Pentagon is still missing key controls, many of which the U.S. Department of State’s DDTC has employed for years in administering the DCS process. Outside of DoD contracts for the procurement of foreign-sourced ammunition, in some cases DoD officials are not aware of or do not screen all of the subcontractors involved in a contract to procure or transfer arms. Even when DoD officials do check the past records of subcontractors, their tools and powers to curtail the use of arms intermediaries with problematic backgrounds are limited. These powers are further weakened when the Pentagon uses its new authorities to train and equip foreign security forces. For the most part, the Pentagon relies on prime contractors to do the screening of subcontractors. However, there are no contract clauses that specifically prohibit prime contractors from subcontracting with entities that have been accused of transferring arms in contravention of national or international laws or to serious human rights violators.

According to DoD’s Office of Acquisition, Technology, and Logistics, which oversees the Pentagon’s policy for awarding DoD contracts, one of the major reasons why DoD funded Aerocom for weapons transfers to Iraq is that the Pentagon does not require prime contractors to inform them of all of the subcontractors

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<sup>97</sup> National Defense Authorization Act for Fiscal Year 2008, Section 1128, Public Law 110-181, [www.thomas.gov](http://www.thomas.gov).

<sup>98</sup> Joseph A. Benkert, Presidential Certification of Compliance with Section 1228 of the National Defense Authorization Act for Fiscal Year 2008 (FY08 NDAA), September 26, 2008. This memo was obtained by the Federation of American Scientists by a Freedom of Information Act request.

<sup>99</sup> Defense Security Cooperation Agency (DSCA), “Memorandum for the Record, Foreign Military Sales (FMS) Program Compliance with Section 1228 of the FY08 National Defense Authorization Act (NDAA),” August 27, 2008. This memo was obtained by the Federation of American Scientists by a Freedom of Information Act request.

<sup>100</sup> DSCA, “Memorandum for the Record, Foreign Military Sales (FMS) Program Compliance with Section 1228 of the FY08 National Defense Authorization Act (NDAA).” This memo was obtained by the Federation of American Scientists by a Freedom of Information Act request.

<sup>101</sup> Ibid.

<sup>102</sup> Amnesty International phone conversation with U.S. Army Assistance Command in May 2009.

involved in an arms transfer related contract.<sup>103</sup> Without knowing who all the subcontractors are, DoD cannot prevent the use of arms intermediaries with problematic backgrounds. According to U.S. government acquisition regulations, for example, prime contractors do not have to seek consent from DoD contracting officers to subcontract when the subcontractor's part of the overall contract is 5 percent or less of the estimated total cost of the contract.<sup>104</sup> In some cases in practice, it can be 25 percent or less.<sup>105</sup> Although the U.S. Army is now reviewing all subcontractors involved in foreign-sourced ammunition transfers and DoD is scrutinizing subcontractors they are aware of involved in foreign-sourced arms transfers, as a general rule, DoD contracting officers do not screen subcontractors at the second tier level and beyond.<sup>106</sup> By comparison, DoS's DDTC requires individuals or companies applying for a license to export arms or an approval to broker weapons to list all parties involved in the deal prior to approval, and DDTC checks all parties involved before awarding the license or approval.<sup>107</sup>

When DoD officials do check the past records of subcontractors, their tools and powers to curtail the use of individuals or companies with a background in irresponsible or illegal arms transactions are limited. For instance, one of the main tools DoD has said they use to screen prime contractors and subcontractors in arms transfer contracts is the EPLS, which unlike the U.S. Department of State's Watch List, is not designed specifically to highlight arms transfer concerns.<sup>108</sup> According to congressional testimony by DoD, "after its review of AEY, Inc., DCMA [Defense Contract Management Agency] recommended a complete award.... The survey included a check of the Excluded Parties List System, which did not show AEY, Inc., or any related affiliates or any company official as being debarred."<sup>109</sup> After conducting a search in May 2009 to determine if any of the six arms intermediaries referenced above appeared in the EPLS prior to DoD awarding their contracts, Amnesty International could not find a single one in the EPLS or in any of the U.S. government's published lists of restricted parties.<sup>110</sup> See Figure 3 for the U.S. government's published lists, which excludes DoS's Watch List.

Pentagon officials have also indicated they do not have the same broad powers as the DoS's DDTC does when overseeing DCS to deny the use of prime contractors or subcontractors with problematic

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<sup>103</sup> Amnesty International phone conversation with Anthony Cicala, former DoD contracting official, working with the Office of Secretary of Defense and DoD's Office of Acquisition, Technology and Logistics, on May 18, 2008.

<sup>104</sup> Federal Acquisition Regulation, "Subcontracts June 2007," 52-244-2, [http://www.acquisition.gov/FAR/current/html/52\\_241\\_244.html](http://www.acquisition.gov/FAR/current/html/52_241_244.html).

<sup>105</sup> Amnesty International interview with proposal analyst from a large, top-tier U.S. defense contractor on March 10, 2009.

<sup>106</sup> Amnesty International phone conversation with two senior officials from DoD's Office of Acquisition, Technology and Logistics on February 5, 2009.

<sup>107</sup> ITAR 126.13, 525, [http://www.pmdtdc.state.gov/regulations\\_laws/documents/official\\_itar/ITAR\\_Part\\_126.pdf](http://www.pmdtdc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_126.pdf). Amnesty International phone conversation with DDTC official in November 2008.

<sup>108</sup> For example, the EPLS does not include entities debarred or suspended by the U.S. Departments of State and Commerce for AECA violations.

<sup>109</sup> Brigadier General William Phillips and Mr. Jeffery Parsons, "Statement on Weapons, Ammunition and Munitions Sales to Iraq and Afghanistan," June 24, 2008, 4, <http://oversight.house.gov/documents/20080624101539.pdf>.

<sup>110</sup> Amnesty International check of the six names with all of the related lists on May 26, 2009. For additional concerns about DoD's use of the EPLS to prevent the hiring of entities with problematic backgrounds, see the U.S. Government Accountability Office's report on the EPLS in February 2009. United States Government Accountability Office, "Excluded Parties List System: Suspended and Debarred Businesses Improperly Receive Federal Funds," GAO-09-174, February 2009, <http://www.gao.gov/new.items/d09174.pdf>.

backgrounds.<sup>111</sup> According to regulations governing the DCS process, DDTC has the ability to suspend or stop the use of individuals or companies from participating in the DCS process when DDTC finds it is necessary to “protect world peace or the security or foreign policy of the United States,” which includes human rights concerns.<sup>112</sup> Senior DDTC and DTSA officials have indicated that DoD does not have similar powers.<sup>113</sup> Unlike DDTC, DoD also does not have a specific requirement to prohibit a prime contractor or subcontractor from participating in a DoD arms transfer contract if the entity has been indicted for violating the AECA.<sup>114</sup>

When DoD uses one of its new congressionally approved authorities to train and equip foreign security forces, it appears the Pentagon’s powers are weakened even further to restrict the use of arms intermediaries with problematic backgrounds. As stated earlier, the U.S. government is required to follow the FAA and AECA when transferring arms through FMS and DCS. Under the FAA, DoD must take into consideration whether a particular U.S. arms transfer will increase the possibility of an outbreak or escalation of a conflict.<sup>115</sup> The FAA and the AECA also require DoD to promote the respect of human rights when transferring arms abroad.<sup>116</sup> When using ISFF, ASFF, and Section 1206 of the National Defense Authorization Act of 2006, however, the Pentagon is exempt from having to follow the above provisions within U.S. law, which imply a duty on the U.S. government to ensure that it does not use intermediaries with a record of arms transfers to conflict zones and gross human rights violators.<sup>117</sup> Figure 6 includes the congressional language associated with appropriations for ISFF. It also appears that DoD officials are not required to conduct a “country team assessment” or to develop a detailed transportation plan (outside of transfers of arms to Iraq and transfers of foreign-sourced ammunition) when using one of these authorities, as would be required under the FMS program.<sup>118</sup>

**Figure 6: Congressional Language for ISFF**

<sup>111</sup> Amnesty International phone conversation with senior official from the Defense Technology Security Administration (DTSA) on February 10, 2009.

<sup>112</sup> ITAR Section 127.8, 545, [http://www.pmddtc.state.gov/regulations\\_laws/documents/official\\_itar/ITAR\\_Part\\_127.pdf](http://www.pmddtc.state.gov/regulations_laws/documents/official_itar/ITAR_Part_127.pdf). Amnesty International phone and email conversation with two former senior officials of DDTC in April and May 2009.

<sup>113</sup> Amnesty International phone conversation with senior official from the Defense Technology Security Administration (DTSA) on February 10, 2009. Amnesty International phone and email conversation with two former senior officials of DDTC in April and May 2009.

<sup>114</sup> ITAR 120.1 and 120.27, 458, 459.

<sup>115</sup> Federation of American Scientists, “United States Arms Transfer Eligibility Criteria Index Page,” Section 511 of the Foreign Assistance Act (FAA), <http://fas.org/asmp/campaigns/legislationindex.html>.

<sup>116</sup> Ibid., Section 502B of the Foreign Assistance Act (FAA), DISAM, Greenbook, 2-8.

<sup>117</sup> It appears DoD does not have to comply with these legal provisions when using ISFF and ASFF because these authorities have a specific provision in them that says they are exempt from other provisions of law. It also appears DoD doesn’t have to comply with these legal provisions when using Section 1206 because this authority only applies to other U.S. laws when there is a specific prohibition in them related to the type of defense article or the foreign country. See Section 1206 of the National Defense Authorization Act of 2006.

<sup>118</sup> According to a representative of the Defense Security Cooperation Agency (DSCA) DoD does not have to conduct a country assessment when using one of its new authorities because the contract is between the U.S. government and the private contractor, not a foreign government as is the case for Foreign Military Sale contracts. Amnesty International phone conversation with DSCA official on February 26, 2009. See also U.S. Defense Security Cooperation Agency, Security Assistance Management Manual (SAMM), Chapter 5, Foreign Military Sale Case Development, 124, <http://www.dsca.mil/SAMM/>.

“For an additional amount for the ‘Iraq Security Forces Fund’, \$1,500,000,000, to remain available until September 30, 2009: Provided, That such funds shall be available to the Secretary of Defense, **notwithstanding any other provision of law**, for the purpose of allowing the Commander, Multi-National Security Transition Command—Iraq, or the Secretary's designee, to provide assistance, with the concurrence of the Secretary of State, to the security forces of Iraq, including the provision of equipment, supplies, services, training, facility and infrastructure repair, renovation, and construction, and funding: Provided further, That none of the assistance provided under this heading in the form of funds may be utilized for the provision of salaries, wages, or bonuses to personnel of the Iraqi Security Forces: Provided further, That the authority to provide assistance under this heading is in addition to any other authority to provide assistance to foreign nations....”<sup>119</sup>

For the most part, DoD has given prime contractors the responsibility for screening subcontractors.<sup>120</sup> DoD, however, has not added important requirements in the contracts to help ensure prime contractors do not hire arms intermediaries with problematic backgrounds related to arms transfers. After searching through several DoD solicitations for the procurement and transfer of ammunition to Iraq or Afghanistan, for instance, Amnesty International could not find any contract clauses that specifically prohibit prime contractors from subcontracting with entities that have been accused of transferring arms in contravention of national or international laws or to serious human rights violators.<sup>121</sup> Also, no clauses exist that specifically prohibit the hiring of contractors that have been convicted of violating arms control laws in foreign courts. Figure 7 summarizes some of DoD’s missing controls compared to DDTC’s controls for DCS.

**Figure 7: Comparing DoD’s and DDTC’s Controls**

<u>Authority or weapon type</u>	<u>Lists and vets all parties to an arms deal</u>	<u>Prohibits using entities indicted for violating AECA</u>	<u>Must comply with FAA and AECA provisions promoting respect for human rights in arms transfers</u>
Direct Commercial Sales (DCS)	Yes	Yes	Yes
Foreign Military Sales (FMS)	No	No	Yes
ISFF, ASFF, Section 1206	No	No	No
Transfers of foreign-sourced ammunition through DoD	Yes	No	Depends on authority used for transfer

<sup>119</sup> See Iraq Security Forces Fund in Public Law 110-252, June 30, 2008, [www.thomas.gov](http://www.thomas.gov). Emphases added.

<sup>120</sup> According to regulations governing U.S. government contracting, “prospective prime contractors are responsible for determining the responsibility of their prospective subcontractors. FAR, “Responsible Prospective Contractors,” 9.104-4, <http://www.acquisition.gov/far/current/html/FARTOCP09.html>.

<sup>121</sup> For example, see these three DoD solicitations, W52P1J-09-R-0003 (issued November 21, 2008), W52P1J-08-R-0121 (issued July 17, 2008), and W52P1J-06-R-0129 (issued July 28, 2006), [www.fedsources.com](http://www.fedsources.com).

DoD is also missing a few other controls, which are important to help prevent the diversion of arms to unauthorized end-users, that DDTC uses for the DCS process. When reviewing an export license request, for example, DDTC officials have reported that they check the proposed transfer for factors such as unfamiliar foreign parties and unusual routing.<sup>122</sup> When DoD conducts a “country team assessment”, they are required to review factors such as the justification for the particular type and quantity of weapon, but they are not required to look at issues such as unfamiliar foreign parties and unusual routing.<sup>123</sup> While DoD has a record for holding its contractors accountable for contract violations, it appears this is not the case for violations of U.S. arms export control laws.<sup>124</sup> For instance, a senior DDTC official told Amnesty International there has been only one case in which a DoD contractor was prosecuted for AECA violations in the past 20 years.<sup>125</sup> In contrast, entities that receive a license or approval through DCS are regularly prosecuted when they violate the AECA.<sup>126</sup>

### ***Conclusion and Recommendations***

Over the last three decades, the U.S. government has developed some of the most comprehensive arms export control laws and policies of any country in the world to meet the current challenges of the international security environment and to protect U.S. foreign policy interests. For example, the U.S. government started regulating U.S. persons involved in training foreign security forces after former Central Intelligence Agency officer Edmund Wilson trained Libyan military and intelligence forces in the 1970s.<sup>127</sup> Previously, the U.S. government had little ability to regulate Wilson’s activities because he was not exporting U.S. arms from the United States, and he was providing the training abroad.<sup>128</sup> With the end of the Cold War and private arms intermediaries’ increasing role in arms transfers, U.S. government officials became increasingly concerned about another gap in U.S. regulations: a lack of regulations on U.S. and foreign arms intermediaries participating in U.S.-approved arms transfers.<sup>129</sup> In response, they adopted regulations in 1996 to regulate the activities of U.S. citizens and residents, and in certain cases foreign entities, engaged in arms brokering both within and outside the United States for commercial arms transactions.<sup>130</sup>

Pentagon contracting rules, however, have not kept up with critical U.S. regulatory advances or controls for regulating arms intermediaries, especially with DoD’s new authorities to train and equip foreign

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<sup>122</sup> Directorate of Defense Trade Controls, “End-use Monitoring of Defense Articles and Defense Services,” 2, State Department, [http://www.pmdtcc.state.gov/reports/enduse\\_reports.html](http://www.pmdtcc.state.gov/reports/enduse_reports.html).

<sup>123</sup> U.S. Defense Security Cooperation Agency, Security Assistance Management Manual (SAMM), Chapter 5, Foreign Military Sale Case Development, 124, <http://www.dsca.mil/SAMM/>.

<sup>124</sup> For information on DoD prosecutions related to contract fraud, see Government Accountability Office, “Contract Management: DoD Vulnerabilities to Contracting Fraud, Waste, and Abuse,” July 7, 2006, 5.

<sup>125</sup> Amnesty International phone conversation with former senior DDTC official in April 2009.

<sup>126</sup> U.S. Department of Justice, “Fact Sheet: Major U.S. Export Enforcement Actions in the Past Year,” Press Release, October 11, 2007, [http://www.usdoj.gov/opa/pr/2007/October/07\\_nsd\\_807.html](http://www.usdoj.gov/opa/pr/2007/October/07_nsd_807.html).

<sup>127</sup> John P. Barker, Brokering Under International Traffic in Arms Regulations, 5, [http://www.arnoldporter.com/resources/documents/JBarker\\_Brokering\\_Article\\_PLI.pdf](http://www.arnoldporter.com/resources/documents/JBarker_Brokering_Article_PLI.pdf).

<sup>128</sup> *Ibid.*, 3.

<sup>129</sup> Loretta Bondi, Casting the Net, [http://www.iansa.org/issues/documents/casting\\_the\\_net.pdf](http://www.iansa.org/issues/documents/casting_the_net.pdf), preface and introduction.

<sup>130</sup> Barker, “Brokering Under International Traffic in Arms Regulations,” 3. Loretta Bondi, Casting the Net, preface and introduction.

security forces. This is in part because DoD's regulatory system was not originally established to oversee as many private entities engaged in arms transfers as it now does. As shown above, these missing controls played a role in why DoD funds were channeled to at least six entities, who had been either connected to breaches of international arms embargoes; named in reliable UN reports as being involved in illegal arms trafficking; listed on the U.S. Department of State's Watch List; or whose agent had been indicted for breaches of U.S. arms control laws, to transfer arms or ammunition to Iraq, Afghanistan, and the Republic of Georgia. In total, more than 140 million dollars of U.S. government money was spent on these associated contracts.<sup>131</sup> Many of these intermediaries had been involved in attempts to arm egregious human rights violators, raising the risk that U.S. funds could have helped fuel efforts to supply arms to grave human rights violators. At least in one associated DoD contract, Pentagon funds were also used to purchase old ammunition from a restricted supplier, potentially putting military and transport personnel at risk.

In order to more effectively prevent the use of such arms intermediaries in DoD arms transfer contracts, the Pentagon should consider adding additional controls for all government-to-government arms transfer authorities it administers. First, DoD should require prime contractors to list all of the parties involved in an arms transfer contract. Second, while screening all of these parties, the Pentagon, including U.S. Transportation Command, should specifically prohibit entities where there is credible evidence of their involvement in one of these activities: 1) violating U.S. or foreign national laws related to arms control; 2) breaking regional or global arms embargoes established by the UN, EU, or other multilateral bodies; or, 3) helping transfer arms to entities that have engaged in gross violations of international human rights or humanitarian law. The last activity is critical as some governments, unlike the United States, do not have laws that specifically prohibit arms transfers to fighting forces with a consistent record of gross human rights violations. Third, based on the U.S. Department of State's internal Watch List, the Pentagon could establish and maintain a similar list or check the DoS Watch List itself. To reinforce DoD's screening process, prime contractors could also be required to certify that none of its subcontractors have previously engaged in the above three activities. Regular publication by DDTC of a full list of entities included in U.S. prosecutions for AECA violations or otherwise suspended from participating in DCS would also help DoD and prime contractors screen contractors.

As DDTC has had more experience overseeing foreign-sourced arms transfers and DoD's controls associated with its new authorities are still weaker than FMS controls in many cases, DoD could require prime contractors to additionally obtain a license or approval from DDTC for arms transfers under DoD's new authorities. Doing so would take advantage of DDTC's greater experience in screening foreign arms intermediaries. DDTC has also established systems for checking unfamiliar foreign parties and irregular routing when approving an arms transfer to help prevent arms diversions. Requiring prime contractors to obtain a license or approval from DDTC could also increase the possibility of prosecutions for AECA violations under DoD's new authorities, which are exempt from many other laws. Regulations connected to DCS also require strict liability for the possession, transportation, handling, and use of the arms.<sup>132</sup>

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<sup>131</sup> See Appendix I for details on the value of the contracts connected with these instances. While it is clear that Tomislav Damjanovic received DoD funds, it's unclear how much. As such, funds associated with Damjanovic are not included in this calculation.

<sup>132</sup> See ITAR, 127.1 Violations, (b), [http://www.pmdtdc.state.gov/regulations\\_laws/itar\\_consolidated.html](http://www.pmdtdc.state.gov/regulations_laws/itar_consolidated.html). Amnesty International phone conversations with two former senior DDTC officials in April and May 2009.



With the adoption of the above controls, the Pentagon would have some of the key tools DDTC uses to oversee U.S. and foreign arms intermediaries. It would also be able to more effectively prevent the use of arms intermediaries with a record of irresponsible or illegal arms transactions in DoD arms transfer contracts and mitigate the serious risks of doing business with such actors. By adding the above controls and supporting global efforts for tougher national controls over arms intermediaries through the proposed Arms Trade Treaty, DoD would also help curb arms intermediaries from breaking international arms embargoes, engaging in unlawful arms transfers, and fueling serious human rights violations around the world.

## Appendix I

### Arms Intermediaries with Problematic Backgrounds that Received DoD Contracts for Arms Transfers

#### ***Aerocom – Moldovan air cargo firm***

In May 2006 and September 2008, Amnesty International reported that U.S. Army funds, drawn from the Iraq Relief and Reconstruction Fund, were used to contract a Moldovan-based air cargo firm, Aerocom, to fly some 25,000 AK-47 type assault rifles from Bosnia to Iraq during 2004-5 in two round trip flights.<sup>133</sup> At the time, Aerocom was already on a UN list of entities involved in breaching the UN arms embargo on Liberia for transporting weapons there in 2002.<sup>134</sup> Some of the arms that the UN reported Aerocom helped deliver to Liberia found their way into the hands of government forces and rebel armed groups in Liberia that were involved in torture, rape, and unlawful killings.<sup>135</sup> Aerocom was also operating without a valid Moldovan air operating certificate.<sup>136</sup> In addition, military air traffic controllers in Iraq reported to Amnesty International that no landing slots were requested by Aerocom for flights matching the aircraft used from Bosnia to touch down in Iraq during the time period it was supposed to land in Iraq, raising concerns about the possible diversion of arms to unauthorized end-users; however, no such diversion has been confirmed.<sup>137</sup> Aerocom received DoD funds through the prime contractor Taos Industries Inc.<sup>138</sup> Taos Industries Inc. in turn subcontracted a European freight forwarder, Speedex. Speedex then subcontracted Aerocom, which according to Taos was Speedex's decision alone.<sup>139</sup>

#### ***Petr Bernatik – Czech arms broker***

In March 2008, the New York Times published a detailed investigation centered on a U.S. based contractor, AEY Inc., that had subcontracted several arms dealers listed on the U.S. Department of State's Watch List in efforts to fill DoD contracts to ship foreign-sourced ammunition to Iraq and Afghanistan.<sup>140</sup> The contract was subsequently investigated by the U.S. House of Representatives Committee on Oversight and Government Reform.<sup>141</sup> In one instance the Czech government reportedly contacted the U.S. embassy in Prague to ask whether or not they should approve a license for one intermediary, Petr Bernatik, to export ammunition to Iraq for AEY Inc., since Bernatik had been accused of trafficking arms to the Democratic Republic of the Congo.<sup>142</sup> In 2005 a Czech

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<sup>133</sup> Amnesty International, "Blood at the Crossroads," 44,46. Amnesty International and Transarms, "Dead on time," 104-111.

<sup>134</sup> United Nations Security Council, "Report of the Panel of Experts appointed pursuant to paragraph of Security Council resolution 1458 (2003) concerning Liberia," S/2003/498, April 24, 2003, 21.

<sup>135</sup> Ibid., 19-22. Amnesty International, "Liberia: Killings, torture and rape continue in Lofa County", July 31, 2001, <http://www.amnesty.org/en/library/info/AFR34/008/2001/en>. Amnesty International, "Liberia: Civilians face human rights abuses at home and across the borders," September 30, 2002, <http://www.amnesty.org/en/library/info/AFR34/020/2002/en>.

<sup>136</sup> Amnesty International, "Blood at the Crossroads," 46.

<sup>137</sup> Amnesty International, "Blood at the Crossroads," 46.

<sup>138</sup> Amnesty International and Transarms, "Dead on Time," 104-111.

<sup>139</sup> Amnesty International and Transarms, "Dead on Time," 104-111.

<sup>140</sup> Chivers, "Supplier Under Scrutiny on Arms for Afghans."

<sup>141</sup> "The AEY Investigation," <http://oversight.house.gov/documents/20080624102358.pdf>.

<sup>142</sup> Chivers, "Supplier Under Scrutiny on Arms for Afghans.;"Amnesty International, "Blood at the Crossroads," 61. BBC Monitoring Europe, "Czech arms producer rejects allegations of arms export to DR Congo," Czech TV, February 9, 2005. CTK National News Wire, "Ostrava-based Firm Sold Weapons to Congo Despite Embargo," February 9, 2005.

Republic news service reported that Bernatik transferred arms to the Democratic Republic of the Congo in violation of an EU arms embargo.<sup>143</sup> The U.S. Embassy reportedly stated that Bernatik had only been accused and not convicted of arms trafficking, and they allowed the deal to go through.<sup>144</sup> This was despite the fact that the message about Bernatik on the U.S. Department of State's Watch List read "identified arms trafficker in Czech Republic – should be denied".<sup>145</sup>

### ***Irbis – Kazakhstan air cargo firm***

The U.S. military's centralized air command operation in Qatar reportedly approved at least one air cargo firm, Irbis, named by the United Nations in 2000 as run by the infamous arms trafficker Victor Bout, to fly various war supplies, such as tents, frozen food, mail, or military equipment, to Iraq starting in 2003.<sup>146</sup> Irbis had been hired as subcontractor and third-tier subcontractor by several prime contractors that had received contracts from the U.S. Army, Marines, and U.S. Air Mobility Command, and reportedly received an estimated \$5.5 million from the U.S. government in the first five months of 2003.<sup>147</sup> Before Irbis received these contracts, a UN report published in 2000 had indicated that Irbis, based out of Kazakhstan, "formed the Eastern European office of Victor Bout" and was exclusively chartering Air Cess planes during that period.<sup>148</sup> The same UN report stated that Air Cess planes were flying arms to the rebel armed group in Angola, the National Union for the Total Independence of Angola (UNITA), in violation of the UN arms embargo.<sup>149</sup> Around the time the arms were shipped, UNITA were reportedly involved in serious human rights violations, including arbitrary killings, forced conscription, and forced sexual services.<sup>150</sup> By 2003, Victor Bout has been named in several UN investigative reports for his involvement in the violation of UN arms embargoes on Angola, Democratic Republic of the Congo, Liberia, and Sierra Leone.<sup>151</sup> In 2005, the U.S. Department of Treasury also put sanctions on Irbis because of its connections with Victor Bout.<sup>152</sup>

### ***Henrich Thomet– Swiss arms broker***

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<sup>143</sup> CTK National News Wire, "Ostrava-based Firm Sold Weapons to Congo Despite Embargo," February 9, 2005. BBC Monitoring Europe, "Czech arms producer rejects allegations of arms export to DR Congo," February 9, 2005.

<sup>144</sup> Amnesty International, "Blood at the Crossroads," 61.

<sup>145</sup> "The AEY Investigation," 9.

<sup>146</sup> Farah and Braun, 216 -230, 244.

<sup>147</sup> Farah and Braun, 221, 226.

<sup>148</sup> United Nations, "Final Report of the Monitoring Mechanism on Angola Sanctions," December 21, 2001, <http://www.globalpolicy.org/security/sanction/angola/0012rprt.htm>.

<sup>149</sup> Ibid.

<sup>150</sup> Human Rights Watch, "Angola Unravels: The Rise and Fall of Lusaka Peace Process," 1999, <http://www.hrw.org/legacy/reports/1999/angola/>.

<sup>151</sup> Amnesty International, "Democratic Republic of Congo: Arming the East," 38. For information on Victor Bout in UN reports see, Report of the U.N. Panel of Experts on Liberia; Report of the Panel of Experts pursuant to paragraph 4 of Security Council resolution 1458 (2003), concerning Liberia (New York: United Nations, April 24, 2003), U.N. document S/2003/498. United Nations, Report of the Panel of Experts on Violations of Security Council Sanctions Against UNITA, U.N. document S/2000/203 (New York: United Nations, March 10, 2000); United Nations, Report of the Panel of Experts appointed pursuant to Security Council resolution 1306 (2000), paragraph 19, in relation to Sierra Leone (New York: United Nations, December 20, 2000), U.N. document S/2000/1195).

<sup>152</sup> Office of Public Affairs, "Treasury Designates Victor Bout's International Arms Trafficking Network," U.S. Department of Treasury, Office of Foreign Assets Control, April 26, 2005, <http://www.treas.gov/press/releases/js2406.htm>.

In another AEY Inc. contract that is now the subject of a U.S. government criminal fraud investigation, the U.S. Army Joint Munitions Command awarded AEY Inc. \$300 million in January 2007 to procure and transfer millions of rounds of foreign-sourced ammunition to Afghan security forces. However, the U.S. Army only provided \$60 million before the contract was cancelled.<sup>153</sup> While fulfilling this contract, AEY Inc. had employed a Swiss-based arms broker, Heinrich Thomet, and the head of the Albanian state-owned Military Export Import Company (MEICO), Ylli Pinari, both of whom were on the U.S. Department of State's Watch List.<sup>154</sup> According to a U.S. congressional investigation, Thomet and Pinari were put on the Watch List based upon classified documents.<sup>155</sup> In April 2002, Thomet also reportedly helped a journalist from the United Kingdom television station, Channel 4, to determine methods to avoid European arms export laws in order to transfer arms to Zimbabwe.<sup>156</sup> Regarding MEICO, Amnesty International in 2005 had also raised concerns about 400 tons of munitions sent from Albania to Rwanda, which coincided with the reported dissemination of arms to rebel groups in eastern Democratic Republic of the Congo.<sup>157</sup>

### ***Poly Technologies – Chinese arms broker and manufacturing company***

In 2005, a Chinese-controlled company, Poly Technologies, reportedly received funds from a U.S. Army Tank-Automotive and Armaments Command contract worth \$29 million to supply thousands of light and heavy machine guns, AK-47 assault rifles, and 72 million rounds of ammunition to the Iraqi security forces.<sup>158</sup> Poly Technologies had been contracted by the International Trading Establishment (a Jordan consortium), which had received a DoD contract in early 2005 to deliver foreign- and American-made weapons to Iraqi security forces.<sup>159</sup> According to the U.S. Attorney's office, the main U.S. representative of Poly Technologies, Bao Ping (Robert) Ma, among other individuals, had been indicted in the United States in 1996 by a federal grand jury for participating in an effort to bring 2,000 AK-47s into the United States for use by organized crime.<sup>160</sup> In 2005, at the time of the deal between DoD and Poly Technologies, the U.S. court case against Ma was still open.

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<sup>153</sup> U.S. Attorney's Office Southern District of Florida, "Munitions Supplier, His Company, and Others Indicted for Lying to Army on Government Munitions Contract," Press Release, June 20, 2008, <http://www.usdoj.gov/usao/fls/PressReleases/080620-02.html>. Henry A. Waxman, "Opening Statement of Rep. Henry A. Waxman Chairman, Committee on Oversight and Government Reform Examination of AEY Contracts with the U.S. Government," U.S. House of Representatives Committee on Oversight and Government Reform, June 24, 2008, <http://oversight.house.gov/documents/20080624100935.pdf>.

<sup>154</sup> Amnesty International, "Blood at the Crossroads," 61. U.S. House of Representatives Committee on Government Oversight and Reform, "The AEY Investigation," 2. U.S. Attorney's Office Southern District of Florida, "Munitions Supplier, His Company, and Others Indicted for Lying to Army on Government Munitions Contract," Press Release, June 20, 2008, <http://www.usdoj.gov/usao/fls/PressReleases/080620-02.html>.

<sup>155</sup> "The AEY Investigation", 9.

<sup>156</sup> Mark Thomas, "Arms Dealing: The Finnish Connection," Channel 4, [http://www.channel4.com/news/microsites/M/mark\\_thomas/6/3.html](http://www.channel4.com/news/microsites/M/mark_thomas/6/3.html).

<sup>157</sup> Amnesty International, "Democratic Republic of Congo: Arming the East," 25.

<sup>158</sup> Landay, "Chinese firm linked to smuggled AK-47s picked to supply Iraqi Army."

<sup>159</sup> "Contracts," *U.S. Department of Defense*, No. 160-05 February 15, 2005, <http://www.defenselink.mil/contracts/contract.aspx?contractid=2947>.

<sup>160</sup> "U.S. Department of Justice, "Massive Seizure of New Automatic Weapons Illegally Smuggled by PRC Weapons Producers," U.S. Attorney Northern District of California, May 23, 1996, 1-2, (previously at <https://www.courtvtv.com/archive/legaldocs/misc/smuggle.html>).

By 2007, however, the U.S. attorney's office had dismissed the case. Ma was also the president of Dynasty Holding Company of Atlanta, which was a U.S. subsidiary of Poly Technologies.<sup>161</sup>

***Tomislav Damnjanovic – Serbian arms broker and freight forwarder***

According to aviation sources and Taos Industries Inc., Taos hired Kosmas Air for a number of cargo flights to Baghdad, including carrying arms, in support of “U.S. nation-building” in December 2004 and into 2005.<sup>162</sup> Kosmas Air stated that they had flown over 70 flights of weapons and ammunition to Iraq from Tirana (Albania), Tallin (Estonia), Plodiv (Bulgaria), Bosnia and Herzegovina, and Serbia and Montenegro.<sup>163</sup> In May 2004, Tomislav Damnjanovic became the managing director of Kosmas Air.<sup>164</sup> Damnjanovic also reportedly arranged the delivery of military equipment to the Republic of Georgia in connection with a DoD contract to Kellogg, Brown, and Root.<sup>165</sup> Prior to 2004, Damnjanovic had a dubious track record. On one occasion in August 1996 an aircraft owned by Damnjanovic and Misko Djordjevic reportedly crashed in Belgrade carrying military equipment and jet aircraft parts bound for Libya, which was under a UN arms embargo at the time.<sup>166</sup> Through the company called Mensus Trade, Damnjanovic had also reportedly helped organize the Aerocom flights of arms to Liberia in 2002 (see Aerocom case above).<sup>167</sup> After 2006, the United Nations and non-governmental organizations have also raised concerns about Damnjanovic-linked planes landing in Somalia and Rwanda.<sup>168</sup>

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<sup>161</sup> For more information on Poly Technologies Ltd. and the U.S. subsidiary Dynasty Holding Company of Atlanta, see “Chinese Military Commerce and US National Security”, by James Mulvenon, RAND Corporation, July 1997: p. 13-16.

<sup>162</sup> Amnesty International and Transarms, “Dead on Time,” 119-120.

<sup>163</sup> Amnesty International and Transarms, “Dead on Time,” 120.

<sup>164</sup> Danssaert, Cappelle, and Thomas, “Recent arms deliveries from the successor States of the former Yugoslavia, International Peace Information Service (IPIS), March 19, 2007, 46, <http://www.ipisresearch.be/download.php?id=165>.

<sup>165</sup> Ibid., 47.

<sup>166</sup> Ibid., 44. Vreme News Digest Agency, “The Plane Crash – Last Flight over Belgrade,” August 24, 1996, <http://forum.airserbia.com/viewtopic.php?f=21&t=2611>.

<sup>167</sup> Danssaert, Cappelle, and Thomas, “Recent arms deliveries from the successor States of the former Yugoslavia,” 45-46, <http://www.ipisresearch.be/arms-trade.php>.

<sup>168</sup> Ibid., 48.