

# STEMMING DESTABILIZING ARMS TRANSFERS: THE IMPACT OF EUROPEAN UNION AIR SAFETY BANS

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## I. Introduction

Numerous organizations and bodies, including the Organisation for Security and Co-operation in Europe (OSCE), the Wassenaar Arrangement, and the European Union (EU) have identified the central role played by air cargo operators in destabilizing arms transfers,<sup>2</sup> particularly of small arms and light weapons (SALW).<sup>3</sup> Such transfers have proved especially detrimental in Africa, where they have helped to fuel the continent's various conflicts and threatened fragile states and societies.<sup>4</sup> Most air cargo carriers involved in destabilizing arms transfers, including those accused of violating international United Nations arms embargoes, have remained largely free of effective restriction or sanctions prior to 2006<sup>5</sup> and no air cargo operator has been convicted in court for transporting small arms to an embargoed destination.<sup>6</sup>

<sup>1</sup> Lukas Jeuck and Johnny Janssen assisted in compiling data and performing background research for this paper.

<sup>2</sup> According to the Wassenaar Arrangement's 'Best practices to prevent destabilising transfers of small arms and light weapons (SALW) through air transport', destabilizing arms transfers are those that result in a 'destabilising accumulation' or pose 'a potential threat to security and stability in the region of destination'. Destabilizing transfers also include illicit transfers and transfers to destinations 'subject to a UN arms embargo or located in a conflict zone'. Wassenaar Arrangement, 'Best practices to prevent destabilising transfers of small arms and light weapons (SALW) through air transport', Vienna, Dec. 2007, <<http://www.wassenaar.org/publicdocuments/index.html/>>.

<sup>3</sup> See OSCE, 'OSCE Chairman calls for strong move to tackle illicit trafficking via air', Press release, 4 Dec. 2006, <<http://www.osce.org/item/22425.html>>; Wassenaar Arrangement (note 2); and Council of the European Union, First progress report on the implementation of the EU strategy to combat illicit accumulation and trafficking of SALW and their ammunition, Brussels, 10538/06, 14 June 2006, p. 7. See also Griffiths, H. and Wilkinson, A., *Guns, Planes, Ships—Identification and Disruption of Clandestine Arms Transfers* (UNDP/SEESAC: Belgrade, Aug. 2007), p. 9.

<sup>4</sup> United Nations, General Assembly, Illicit small arms trade in Africa fuels conflict, contributes to poverty, stalls development, say speakers on second day of UN review conference, Press Release DC/3032, 27 June 2006.

<sup>5</sup> A number of UN asset freezes have been imposed on air cargo carriers identified in UN sanctions committee reports as involved in arms trafficking and other illicit activities. However, the effectiveness of these asset freezes is conditioned by African, Central Asian and Middle Eastern states' willingness or capacity to implement them. Similarly the United States Department of the Treasury Office of Foreign Assets Control (OFAC) has listed a number of air cargo carriers operating in the Democratic Republic of the Congo and Liberia. However, OFAC's special designations only apply to assets in the USA and financial transactions or business activities with US companies.

<sup>6</sup> One Russian national, Viktor Bout, alleged by the United Nations to be responsible for the operations of more than a dozen air cargo companies involved in sanctions-busting has been

## SUMMARY

● This paper examines the impact of EU air safety regulations on the activities of air cargo operators that are suspected of being involved in destabilizing arms transfers. Air safety regulations are an underutilized but potentially promising tool for stemming the flow of destabilizing arms transfers. Air cargo operators involved in destabilizing arms transfers habitually violate air safety standards, increasing the likelihood of their being targeted by EU controls.

Of the 172 air cargo carriers that have been listed in EC air safety regulations, barring them from entering EU airspace, or targeted as a result of EU technical inspection missions, 80 have been named in United Nations Security Council or other arms trafficking-related reports. Fifty-three of these companies have subsequently been reported as officially decertified while a further four have had their operations restricted. EU air safety regulations have disrupted the activities of these companies to an extent unseen since the emergence of a non-governmental arms transport sector at the end of the cold war.

This SIPRI Insight is part of an on-going study by the Countering Illicit Trafficking–Mechanism Assessment Project (CIT-MAP) at SIPRI. Further information, including details of the air cargo carriers covered by this study, is available at <<http://www.sipri.org/contents/armstrad/cit-map>>.



However, between 2006 and 2008, this sector of the clandestine non-governmental air cargo market has undergone a paradigm shift as a result of the implementation of EU air safety ban and associated European Community (EC) air safety regulations.<sup>7</sup> One government arms control expert has compared the effect that air safety enforcement has had on such carriers with a historical example of how relatively minor violations or offences may directly or indirectly lead to serious consequences for organized crime networks.<sup>8</sup> This (CIT-MAP) study is the first open-source study to document the impact of EU air safety mechanisms on companies suspected of involvement in destabilizing small arms transfers.<sup>9</sup>

Since 2006, 80 air cargo carriers named in UN Security Council and other arms trafficking-related reports have been listed in EC air safety regulations, barring them from entering EU airspace, or been targeted as a result of EU technical inspection missions.<sup>10</sup> Of these 80 air cargo carriers, 53 have been reported as formally decertified or liquidated. Four others have had their operations restricted. The underlying trends for the surviving 23 companies are generally negative. Only 4 of the 23 air carriers not subject to decertification, liquidation or restriction have recorded an operational capacity increase after appearing in EC air safety regulations. The remainder have seen aircraft fleets reduced or remain static. Furthermore, there are 29 air cargo operators with established links to the companies named in UN and other trafficking-related reports that have been listed in EC air safety regulations or been targeted as a result of EU technical inspection missions. Thirteen of these have been reported as formally decertified or liquidated.

Section II of this paper examines the EU's engagement in the coordination and enforcement of air safety standards, including the issuing of community-wide blacklists. The study also details the various international treaties, EC regulations and EU institutions that comprise the EU's new air safety

arrested in Thailand but at the time of writing had yet to be extradited to face criminal charges in the USA.

<sup>7</sup> The Community List of Air Carriers subject to an operating ban was established under Commission Regulation (EC) No. 2111/2005 of the European Parliament and of the Council of 14 December 2005 on the establishment of a Community list of air carriers subject to an operating ban within the Community and on informing air transport passengers of the identity of the operating air carrier, and repealing Article 9 of Directive 2004/36/EC (Text with EEA relevance), *Official Journal of the European Union*, L344, 27 Dec. 2005.

<sup>8</sup> 'Just as Al Capone was never prosecuted for extortion or murder in the 1930s, certain air cargo companies involved in arms trafficking have never faced criminal proceedings for UN embargo violations. However, just as tax evasion was identified by the FBI as Al Capone's intrinsic weakness, so it now appears that air safety issues are the Achilles Heel of air cargo companies involved in arms trafficking.' European foreign ministry official, Interview with the author, 1 Oct. 2008.

<sup>9</sup> The activities of arms brokers and shipping agents involved in illicit and clandestine SALW transfers are difficult to detect and control. In addition, a lack of institutionalized or inter-agency cooperation hampers existing national and international efforts in this area. CIT-MAP is aimed at analysing efforts to identify and control arms brokers and shipping agents engaged in illicit and clandestine SALW transfers. The project will also propose EU-level mechanisms to improve the coordination of these efforts and, where relevant, make the information generated available to stakeholders, such as licensing officials, customs authorities and other law enforcement agencies. This project is funded by a grant from the Swedish Ministry for Foreign Affairs for the period 2008–2009. For more information see <<http://www.sipri.org/contents/armstrad/cit-map>>.

<sup>10</sup> Information on 55 of these air cargo carriers is primarily derived from United Nations Security Council reports, 3 from UNDP/SEESAC reports, 4 from Human Rights Watch reports, 13 from Amnesty International reports, 2 from Small Arms Survey reports, 1 from an International Peace Research Institute, Oslo (PRIO) report, 1 from an Associated Press (AP) report and 1 from an Oxfam report. In most cases two or more sources are available.



architecture. More detailed information on the regulations and institutions can be found on the CIT-MAP associated pages of the SIPRI website.<sup>11</sup> Section III examines why EC air safety regulation enforcement has had such an impact on air cargo carriers named in UN and other arms trafficking-related reports. It documents the linkages between air cargo carriers suspected of involvement in destabilizing arms transfers and the violation of international air safety norms, making them more likely to be affected by EU action in this area. Section IV describes the methodology used in this study, before examining the number of air carriers that have been affected by EU action in the field of air safety and the impact this has had on their operations. A database on all air cargo carriers named in both EC regulations and UN and other trafficking-related reports can be found on the associated CIT-MAP Internet pages of SIPRI's website.<sup>12</sup> Section V presents a number of conclusions and recommendations.

*The impact of EC safety regulations is notable, particularly in light of the lack of other binding or enforceable instruments*

The intention is not to imply that all air carriers named in arms trafficking-related reports have been involved in destabilizing arms transfers. Nor is the intention to imply that EC air safety regulations have been deliberately utilized as a means to target the operations of such entities. Nevertheless, the relative achievements—however indirect—of EC safety regulations on such actors are worthy of acknowledgement particularly in light of the lack of other binding or enforceable instruments in this area.

## II. European air safety inspection, regulation and enforcement

The EU's air safety regulations and the criteria for community-wide bans are based on the Convention on International Civil Aviation, known as the Chicago Convention. Under the Chicago Convention, the civil aviation authorities (CAAs) are responsible for ensuring that aircraft registered within their jurisdiction adhere to certain safety standards. These standards and recommended practices (SARPs) are laid down by the International Civil Aviation Organisation (ICAO), a subsidiary body of the UN that administers the Chicago Convention.<sup>13</sup> SARPs are contained within the 18 annexes to the Chicago Convention and outline standards of aircraft operations, maintenance, equipment and training which carriers are required to maintain.<sup>14</sup> Once these criteria are judged to have been met, the CAA is responsible for issuing the basic document required for flight operations, the air operating certificate (AOC).

The EU's standards are thus based on those of the ICAO and interpreted in a manner consistent with those of its member states. Regarding the enforcement of air safety standards, the bluntest instrument at the disposal of the

<sup>11</sup> See <<http://www.sipri.org/contents/armstrad/cit-map>>.

<sup>12</sup> See <<http://www.sipri.org/contents/armstrad/cit-map>>. Additional case studies on suspect companies and air accident data are also presented on the CIT-MAP web pages. This independent air safety data has been used to ensure that any statistical anomalies within the EC regulations are not reflected in the CIT-MAP findings.

<sup>13</sup> The ICAO was established in 1944. It remains the global organization responsible for air safety standards. On ICAO see <<http://www.icao.int>>.

<sup>14</sup> These annexes are regularly updated to take account of new developments and technological advances. See <<http://www.icao.int>>.



European Commission is the Community List of Air Carriers subject to an operating ban barring entry into EU airspace—more commonly referred to as the ‘blacklist’.<sup>15</sup> In December 2005 the Commission was authorized to compile the blacklist and the implementing regulations and accompanying rules were published in March 2006.<sup>16</sup> The blacklist can be applied to an individual air carrier, part of an individual carrier’s fleet or to an entire state’s registry. In other cases, the carrier may be issued with a warning that may precede being entered in the blacklist at a later date. Carriers and civil aviation authorities may make representations prior to a ban being imposed. There is also an appeal process following a ban’s imposition although, contrary to some media reports, no air carrier has overturned a ban.<sup>17</sup>

The blacklist is compiled by the Directorate-General for Transport and Energy of the European Commission (DG Tren) in consultation with the Air Safety Committee (ASC) comprised of experts from EU member states.<sup>18</sup> In compiling the blacklist, DG Tren and the ASC rely on several different

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sources of information. One is the ICAO’s Universal Safety Oversight Audit Program (USOAP) which carries out mandatory safety audits of all its member states.<sup>19</sup> The USOAP assesses the oversight capabilities of its member states, providing a strong indication of whether a particular CAA is able to effectively monitor and oversee air carriers operating from their state or registry.<sup>20</sup> Another source of information is the so-called ‘Antonov blacklist’, which contains information on 436 aircraft no longer considered airworthy on the grounds

that no manufacturer inspection had been carried out within the stipulated time limit.<sup>21</sup>

However, the main source of information in the compiling of the blacklist comes from EU member states via the ASC.<sup>22</sup> The sources of this information are the ramp inspections carried out by the relevant authorities within each member state, reports of which are forwarded to the European Aviation Safety Agency (EASA).<sup>23</sup> The EASA is the EU agency charged with issues such as air safety analysis and research, monitoring and implementation, inspections, the authorization of third party operators, and technological

<sup>15</sup> European Parliament and the Council of the European Union (note 7).

<sup>16</sup> Commission Regulation (EC) No. 474/2006 of 22 March 2006 laying down implementing rules for the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No. 2111/2005 of the European Parliament and of the Council (Text with EEA relevance), *Official Journal of the European Union*, L84, 23 Mar. 2006.

<sup>17</sup> European Commission Directorate General for Transportation and Energy (DG Tren) official, Interview with the author, Brussels, 2 Sep. 2008.

<sup>18</sup> European Commission Directorate General for Transportation and Energy (DG Tren) official (note 17).

<sup>19</sup> The Universal Safety Oversight Program (USOP) is the responsibility of the ICAO Safety and Security Audits (SAA) branch. See <[http://www.icao.int/cgi/goto\\_anb.pl?soa](http://www.icao.int/cgi/goto_anb.pl?soa)>.

<sup>20</sup> ICAO official, Interview with the author, Paris, 29 Aug. 2008.

<sup>21</sup> Lacagnina, M., ‘Antonov blacklist’, *Aviation Safety World* (Flight Safety Foundation: Alexandria, VA, Dec. 2006), p. 18–23.

<sup>22</sup> EASA official, Interview with the author, Cologne, 1 Sep. 2008.

<sup>23</sup> A ramp inspection is the inspection of an aircraft in the course of its normal operations and is undertaken between time of arrival at a particular airport and time of departure. Irish Aviation Authority. See SAFA ramp inspection selection criteria, <<http://www.iaa.ie/index.jsp?p=147&n=225>>.



standardization.<sup>24</sup> Its membership consists of EU member states while it has also signed Working Arrangements with an additional 16 non-EU member states.<sup>25</sup>

The other major organization involved in the EC banning process is the European Organisation for the Safety of Air Navigation (Eurocontrol). Eurocontrol is a civil and military organization of 38 member states and plays a central role in air traffic management between member states and over European airspace.<sup>26</sup> Eurocontrol's Central Flow Management Unit (CFMU) is responsible for collecting and re-dispatching all flight plans for flights entering, overflying or departing from Europe. The CFMU has established an alerting system that allows for the immediate detection of flight plans registered by companies covered by the EU blacklist. Currently, such an alert system is dependent on the level of data filed in flight plans.

### III. Profile linkages: why air cargo companies engaged in destabilizing arms transfers typically violate air safety regulations

Available evidence indicates that air carriers involved in destabilizing arms transfers consistently operate in violation of international air safety regulations. These air carriers belong to an identifiable subset of a wider group of entities that typically operate in violation of the Chicago Convention and other air safety regulations. This link between air cargo carriers involved in destabilizing arms transfers and the violation of international air safety regulations has been noted in a number of UN and media reports.<sup>27</sup> The first mention of an explicit link between air safety regulations and arms embargo violations appeared in the March 2000 report of the Panel of Experts focusing on the sanctions on UNITA in Angola. The panel viewed the strict enforcement of air safety regulations as potentially the most effective tool in the face of the sustained violations of the arms embargo on Angola, noting: 'In the broader context of the use of air cargo aircraft for sanctions busting purposes, the panel recommends that member states pay special attention to the strict application and enforcement of air safety regulations. Countries without an adequate regime should develop one.'<sup>28</sup>

The Panel of Experts on Sierra Leone, which studied the role of Liberian-registered aircraft in arms trafficking, also noted the correlation between these carriers and those failing to meet ICAO standards. They also saw the

<sup>24</sup> See <<http://www.easa.eu.int>>.

<sup>25</sup> These states are Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Iceland, the Former Yugoslav Republic of Macedonia, Moldova, Monaco, Montenegro, Norway, Serbia, Switzerland, Turkey and Ukraine.

<sup>26</sup> Member states include Albania, Armenia, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, the Former Yugoslav Republic of Macedonia, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine and the United Kingdom.

<sup>27</sup> United Nations, Security Council, Letter dated 18 July 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council, S/2006/525, 18 July 2006, p. 22; and Michaels D. and Cullison A., 'Fly by night', *Wall Street Journal*, 17 Mar. 2007.

<sup>28</sup> United Nations, Security Council, Report of the Panel of Experts on violations of Security Council sanctions against UNITA, S/2000/203, 10 Ma. 2000, para. 74.



enforcement of air safety violations as a mechanism by which suspect air cargo carriers could be controlled, noting 'Aircraft that do not meet ICAO standards should be grounded permanently.'<sup>29</sup> The Panel of Experts focusing on the UN Sanctions on the Democratic Republic of the Congo (DRC) has also highlighted how weak enforcement of air safety regulations facilitates UN arms embargo violations.<sup>30</sup> In particular, the panel noted that air carriers that violate the Chicago Convention work with militia groups that issue invalid or fake air operating certificates and are engaged in other forms of illegal trafficking.<sup>31</sup>

These concerns led to the UN Group of Expert's invitation to the 2005 ICAO conference in Montreal to forge a global strategy for air safety that led to the publication of the Antonov blacklist.<sup>32</sup> The Antonov blacklist revealed that many of the companies operating unsafe Antonovs were registered in Moldova but operated by companies headquartered in the United Arab Emirates, the DRC and other conflict zones contrary to the provisions of Annex 6 of the Chicago Convention.<sup>33</sup> Many of the known operators of the Antonovs have been named in trafficking-related reports.<sup>34</sup>

The UN reports show how companies involved in destabilizing arms transfers routinely violate international air safety standards in several ways. These include the falsification of plane registration,<sup>35</sup> cargo manifests or flight plans, the shipping of munitions or explosives without the required dangerous goods licence, specific authorization, or failing to obtain a certified insurance policy.<sup>36</sup> The reports have also documented the use of unsafe flying techniques by companies engaged in trafficking.<sup>37</sup>

<sup>29</sup> United Nations, Security Council, Report of the Panel of Experts appointed pursuant to Security Council resolution 1306 (2000), paragraph 19, in relation to Sierra Leone, S/2000/1195, 20 Dec. 2000, para. 33.

<sup>30</sup> 'The lack of civil aviation oversight made it impossible to identify specific flights that might be transporting weapons.' United Nations, Security Council, Letter dated 26 January 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council, S/2006/53, 27 Jan. 2006, Annex, p. 29.

<sup>31</sup> United Nations (note 30), pp. 32–33.

<sup>32</sup> Lacagnina (note 21).

<sup>33</sup> 'Although holders of an Air Operator's Certificate (AOC) issued by the Republic of Moldova do not have their principal place of business in the Republic of Moldova, contrary to the requirements of Annex 6 to the Chicago Convention.' Commission Regulation (EC) No. 787/2007 of 4 July 2007 amending Commission Regulation (EC) No. 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community (Text with EEA relevance), *Official Journal of the European Union*, L175, 5 July 2007, p. 10.

<sup>34</sup> Known operators include Aerocom (6 Antonovs), Azza Transport, Badr Air, Malu Aviation Airlines, Pecotox, Renan, Tiramavia and Trans Air Congo. Lacagnina (note 21).

<sup>35</sup> 'Another common practice is the falsification of aircraft registration or the entry of one aircraft in various registers so that the operators may change its identity. . . these techniques allow transport operators to fake an aircraft's history and identity, as a result of which it is extremely difficult in the case of any such aircraft to recreate its journey or trace it back to the original owner.' United Nations (note 27), pp. 20–21.

<sup>36</sup> Griffiths and Wilkinson (note 3), pp. 34–39, 76–77, 88–90.

<sup>37</sup> 'In order to avoid detection by State-run air traffic services or their equivalents (MONUC, for example), the pilots of suspect cargo planes use various flying techniques. Thus, they make landings on makeshift landing strips or drop their cargo over zones held by rebels and then continue their flight. . . Unlike lawful commercial flights, which are required to respect aircraft specific operating manuals to the letter, pilots specializing in arms trafficking often push the safety limits of their aircraft to breaking point. . . Pilots transporting arms shipments evade surveillance of their activity by deliberately making detours and changing their altitude. In high-risk zones, flights may even take place at night.' United Nations (note 27), para. 98–100.



Another major contributing factor to the correlation between arms traffickers and air safety violations is that most companies named in arms trafficking-related reports are either registered or operate in poor or underdeveloped countries that tend to have the worst air safety records.<sup>38</sup> A survey of air accident databases shows that 35 carriers named in arms trafficking-related reports or linked by asset operating history (AOH) to companies named in such reports have been involved in a serious safety incident, crash or hijacking during the period 1996–2008.<sup>39</sup> In some cases, the open-source asset operating histories of certain companies reveal that a number of aircraft which have operated under their call sign and others have crashed.<sup>40</sup>

In order to avoid the scrutiny of these unsafe practices, air carriers involved in destabilizing arms transfers require weak or compliant regulatory authorities. In recent years, UN Groups of Experts have identified such weak regulatory authorities to include states such as the DRC, Liberia, and Sao Tome and Principe.<sup>41</sup> In the DRC, the central government's control over part of the country is limited due to decades of conflict and state failure. In Sao Tome and Principe, there is a historical tradition of hosting companies involved in smuggling dating back to the Biafra conflict.<sup>42</sup> UN sanction committee panels have found consistent evidence of air carriers registered in the DRC and Liberia using false registration numbers.<sup>43</sup> In both countries government resources and the CAAs were unable to ensure the ICAO-mandated level of monitoring and supervision required. In addition, such companies often had their company head-

***Air carriers involved in destabilizing arms transfers require weak or compliant regulatory authorities***

<sup>38</sup> Visser, H. C., 'If I were a rich man..., ...my accident record wouldn't be so bad', ed H. M. Soekkha, *Aviation Safety: Human Factors, System Engineering, Flight Operations, Economics, Strategies, Management* (VSP: Rotterdam, 1997).

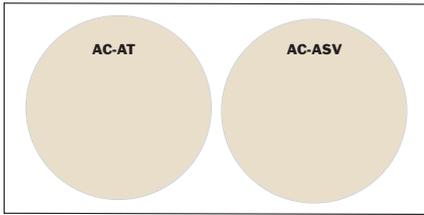
<sup>39</sup> See CIT-MAP air accident/hull loss table <<http://www.sipri.org/contents/armstrad/cit-map>>.

<sup>40</sup> E.g. on 30 June 2008, an Ilyushin 76 operated by Ababeel Aviation crashed shortly after take-off from Khartoum airport. This aircraft, manufacturer serial no. 1003499994 had previously been operated by companies or individuals named in UN reports on the Democratic Republic of the Congo, Somalia and Sudan, as well as the former Yugoslavia. In addition to Ababeel which the UN recommended should be banned for Darfur embargo violations, Aerolift, GST Aero, Kosmas Air and Tomislav Damnjanovic all operated this aircraft between 2001 and 2008.

<sup>41</sup> 'Several airfreight companies that transport arms and other potentially illicit shipments are registered in countries which act as "flags of convenience" owing to the lax application, or indeed inexistence, of laws regulating the licensing and registering of aircraft, as well as the activities of companies and the publishing of their accounts. The Group noted that the aircraft with registration numbers 9L, 3C and 9S fall into this category. [Authors' note: 9L, 3C and 9S are the aircraft registration prefixes for Sierra Leone, Equatorial Guinea and Sao Tome and Principe, respectively] While these companies and their aircraft are registered in these countries, their actual operational bases are located in one or more countries in the Great Lakes region.' United Nations, Security Council, Letter dated 18 July 2006 from the Chairman of the Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo addressed to the President of the Security Council, S/2006/525, 18 July 2006, p. 21.

<sup>42</sup> Draper, M., *Shadows: Airlift and Airwar in Biafra and Nigeria 1967–1970* (Howell Press: Charlottesville, VA, 2006).

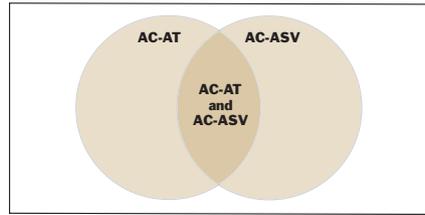
<sup>43</sup> United Nations, Security Council, Report of the Panel of Experts appointed pursuant to Security Council resolution 1408 (2002), paragraph 16, concerning Liberia, S/2002/1115, 25 Oct. 2002, p. 28; United Nations, Security Council, Report of the Panel of Experts appointed pursuant to Security Council resolution 1395 (2002), paragraph 4, in relation to Liberia, S/2002/470, 19 Apr. 2002, p. 21; United Nations, Security Council, Interim report of the Group of Experts on the Democratic Republic of the Congo, pursuant to Security Council resolution 1698 (2006), S/2007/40, 31 Jan. 2007 p. 20; and United Nations (note 27), p. 20.



**Figure 1.** Conceptual model one  
Posits air carriers involved in destabilizing arms transfers *and* air carriers which routinely violate air safety regulations and as two *separate* categories

Notes: AC-AT = air carriers-arms traffickers, AC-ASV = air carriers-air safety violators.

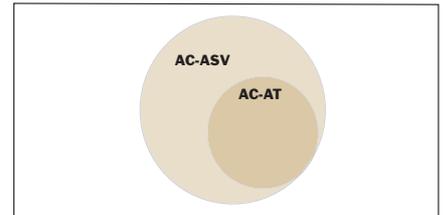
Source: CIT-MAP, <<http://www.sipri.org/contents/armstrad/cit-map>>.



**Figure 2.** Conceptual model two  
Posits, in some cases, air carriers involved in destabilizing arms transfers routinely violate air safety regulations and thus there is *overlap* between the categories

Notes: AC-AT = air carriers-arms traffickers, AC-ASV = air carriers-air safety violators.

Source: CIT-MAP, <<http://www.sipri.org/contents/armstrad/cit-map>>.



**Figure 3.** Conceptual model three  
Posits, in all *known* cases, air carriers involved in destabilizing arms transfers can be defined as an *identifiable subset* within a wider group of air carriers that routinely violate air safety regulations

Notes: AC-AT = air carriers-arms traffickers, AC-ASV = air carriers-air safety violators.

Source: CIT-MAP, <<http://www.sipri.org/contents/armstrad/cit-map>>.

quarters in neither the State of Registry nor the State of Operator, but in a third country, which is a violation of Annex 6 of the Chicago Convention.<sup>44</sup>

The use of and frequent change of ‘flags of convenience’<sup>45</sup> by arms traffickers has been well documented by sanctions committee investigations.<sup>46</sup> Flag of convenience registries are both a target for air safety inspectors<sup>47</sup> and a profile indicator for customs and arms trafficking investigators.<sup>48</sup> In many cases, an air cargo operator which has had its AOC withdrawn by the authorities of one state for safety or security reasons has acquired an AOC in a flag of convenience registry. For example, an air carrier involved in destabilizing arms transfers that has come to the attention of the authorities of more regulated states may seek to continue operating the same aircraft, but use the AOC of a different company registered in the same territory.<sup>49</sup> African civil aviation authorities are aware of these practices noting that these carriers, which move from registry to registry, have the worst safety records on the African continent.<sup>50</sup>

This study argues that air carriers involved in destabilizing arms transfers consistently operate in violation of international air safety regulations. These air carriers therefore belong to an identifiable sub-set of a wider group of

<sup>44</sup> Air carriers are allowed to register as a carrier in one country and have their primary base of operations in another country, but in these cases both states have responsibilities under the Chicago Convention (referred to as the ‘State of Registry’ and ‘State of Operator’, respectively).

<sup>45</sup> A flag of convenience, also known as an ‘open registry’, is the registry of a commercial craft under a foreign flag in order to profit from less restrictive regulations (adapted from Merriam Webster online dictionary) a vessel or ship for which the nationality of the owner is different from the country of registration.

<sup>46</sup> E.g. see United Nations (note 27), p. 21.

<sup>47</sup> European Commission official, Interview with the author, Brussels, 2 Sep. 2008.

<sup>48</sup> Griffiths and Wilkinson (note 3), p. 12.

<sup>49</sup> Aircraft operated by Aerocom, a Moldova-registered cargo carrier, provide an example of such a practice. Aerocom lost its Moldova AOC following EU member state safety inspections in 2004. Aerocom aircraft were then registered under the Moldova AOC of Jet Line International until that company’s air operating certificate was withdrawn. See CIT-MAP case studies, <<http://www.sipri.org/contents/armstrad/cit-map>>.

<sup>50</sup> ‘Aircraft and operators that flit among nationalities to avoid oversight present “the biggest problem in African aviation,” accounting for around half of all aircraft accidents, says Nigerian Civil Aviation Authority Director General Harold Demuren.’ Michaels and Cullison (note 27).



entities which typically operate without due regard to the Chicago Convention and national laws. The diagrams in figures 1–3 map the conceptual shift described in this paper. Figure 1 illustrates the conceptual model which posits air carriers involved in destabilizing arms transfers and air carriers which routinely violate air safety regulations as two separate categories. Figure 2 illustrates the conceptual model arrived at in UN sanctions committee reports which note that in some cases, air cargo carriers involved in arms trafficking habitually violate air safety regulations and thus belong to both categories. Figure 3 illustrates the finding of this CIT-MAP study which finds that in all *known* cases, air cargo carriers involved in arms trafficking can be defined as an identifiable subset within a wider group of companies that consistently violate air safety regulations.

#### IV. The impact of EU air safety bans on air carriers named as involved in destabilizing arms transfers

##### Methodology

The CIT-MAP study determined that between March 2006 and June 2008, the EC individually named 321 air carriers in the relevant regulations detailing the coverage of the blacklist.<sup>51</sup> It found that three additional air carriers have also been targeted as a result of EC-led technical inspection missions, although these have not been named in the relevant EC regulations, bringing the total to 324.<sup>52</sup> Of those 324 air carriers, the sample was narrowed to 271 air carriers by excluding the 53 air carriers covered by the European Commission's collective ban on Indonesian air carriers in July 2007.<sup>53</sup> The Indonesian carriers were banned by the Commission on grounds that related almost exclusively to the safety of air *passenger* carriers, which make up the majority of carriers registered with the Indonesian authorities. The study then excluded an additional 99 carriers that had a purely passenger capacity and left only those carriers with a significant cargo capacity.<sup>54</sup> The remaining 172 air carriers included 122 carriers that could be positively identified as having an air cargo capacity and 50 where available information was insufficient to determine the carrier's operating profile.<sup>55</sup> The types of sanctions imposed on these carriers,

***Air carriers involved in destabilizing arms transfers consistently operate in violation of international air safety regulations***

<sup>51</sup> This study examines air carriers banned between Mar. 2006 and June 2008.

<sup>52</sup> The authorities in Serbia have decertified three air carriers following a visit by an EC technical mission but these have not been named in EC regulations. For information on these carriers see <<http://www.sipri.org/contents/armstrad/cit-map>>.

<sup>53</sup> Commission Regulation (EC) No. 787/2007 of 4 July 2007 (note 33), p. 12.

<sup>54</sup> In certain cases, the only indication that an air carrier had an air cargo capacity was the fact that it had been named in a UN or other arms trafficking-related report. This CIT-MAP study sought to control this distortion in the data by only excluding carriers where it could be established that the carrier fleet was largely or wholly passenger. This led to the inclusion of 50 companies in the cargo category where information was unavailable.

<sup>55</sup> These 50 air carriers were registered in the Democratic Republic of the Congo, Equatorial Guinea, Liberia, Sierra Leone and Swaziland where information on fleet composition is limited. These companies were included as air carriers with a significant air cargo capacity as part of a wider statistical approach that meant when insufficient data was available a more conservative estimate would be cited.



their implementation, and the rationale behind them, differ considerably. For the purpose of this study, they can be divided into those subject to ‘blanket bans’, ‘self regulation’, and ‘individual bans’. Of these 172 air cargo carriers, 134 were covered by blanket bans, 25 were covered by self regulation, and 13 were individually targeted (see below).

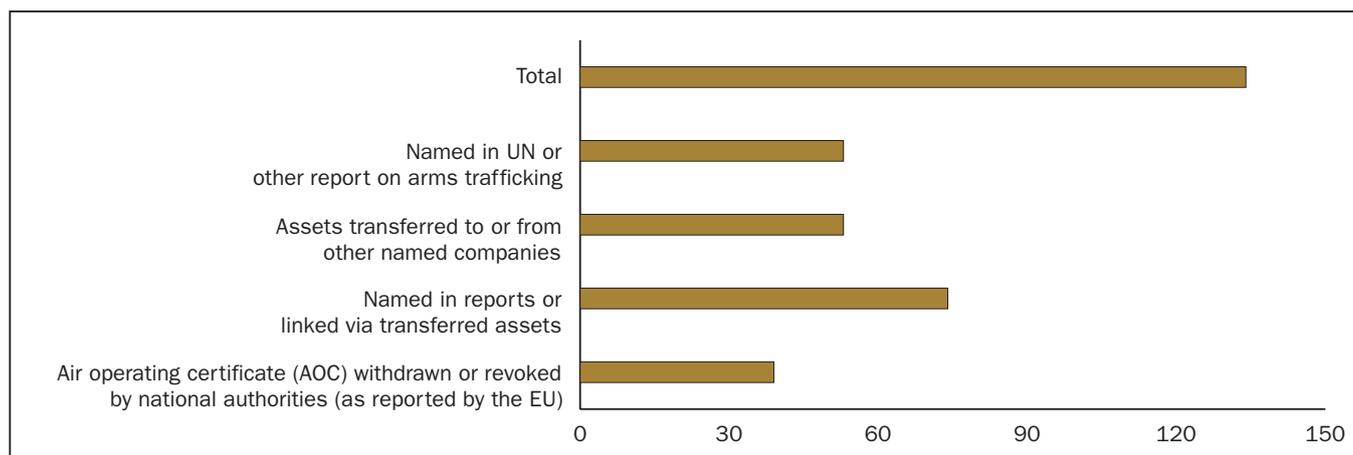
These 172 air cargo carriers were then analysed on the basis of whether or not their name had appeared in a UN or other arms trafficking-related report published between 1998 and 2008. This indicator was used to determine what proportion of the air cargo operators banned from EU air space on grounds of air safety are suspected of being involved in destabilizing arms transfers. They were also analysed on the basis of their asset operating history (AOH) to determine whether they had supplied, owned, leased or acquired aircraft to or from a company named in a UN or other arms trafficking-related report published between 1998 and 2008. This indicator was used to determine what proportion of the air cargo carriers banned from EU air space on grounds of air safety have conducted one or more business transaction with an air carrier suspected of being involved in destabilizing arms transfers.<sup>56</sup>

## Results

‘Blanket bans’ refer to situations in which all the air carriers registered with a particular CAA are barred from EU air space because of unreliable air carrier numbers and fleet data. Blanket bans have been imposed on the DRC, Equatorial Guinea, Indonesia, Kyrgyzstan, Liberia, Sierra Leone and Swaziland. These carriers are named in the EU documentation due to the fact that they held, or are believed to have held, an AOC issued by the banned CAA. However, the bans apply to all air carriers holding an AOC issued by these states, regardless of whether they have been individually named in the EU regulations.

Of the 172 carriers included in this CIT-MAP study, 134 can be categorized as subject to a blanket ban. Of those carriers subject to a blanket ban, 53 (40 per cent) have been named in a UN or other arms trafficking-related reports published between 1998 and 2008, 53 (40 per cent) have supplied, owned, leased or acquired aircraft to or from a company named in a UN or other arms trafficking-related report, and 74 (55 per cent) fall into one of these two categories (see figure 4). These relatively low figures, as compared with the other categories of air carriers, are due in large part to the significant number of carrier fleets for which no reliable, open source record could be obtained. The European Commission named every air carrier believed to have been registered with the banned CAAs which meant the inclusion of many which had either ceased operations or for which no other source of data was available. As a result, blanket bans contain the least number of targeted airlines and the highest number of unknown carriers.

<sup>56</sup> The shared asset operating history (AOH) can be an important indicator as UN reports have identified assets in the form of aircraft being transferred between outwardly separate companies in different countries which nevertheless remain under the control of one individual or a group of associates who are bound together through joint business ventures which involve destabilizing arms transfers to or within Africa. See the cases of Cess, Air Pass, Southern Cross Airlines, Flying Dolphin and Southern Gateway Corporation, United Nations (note 29), para. 228–236.



**Figure 4.** Number of air cargo carriers named in European Commission regulations and subject to a blanket ban

Source: CIT-MAP, <<http://www.sipri.org/contents/armstrad/cit-map>>.

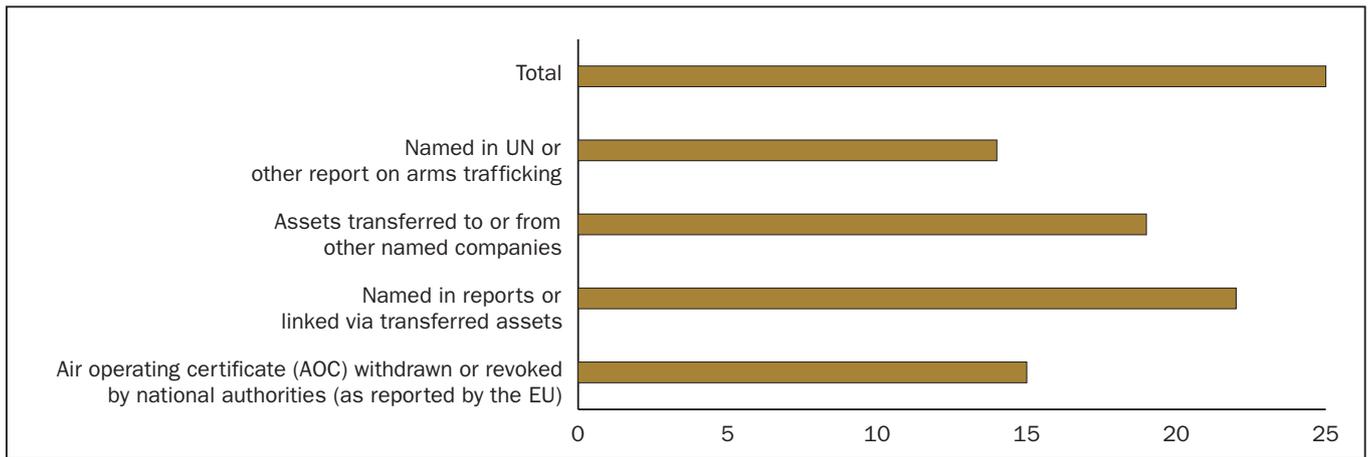
‘Self-regulation’ refers to situations in which the CAA of a non-EU member state places restrictions on an air carrier following a visit by an EC technical mission. The EC takes no formal action against the air carriers. These technical missions tend to focus on a specific set of concerns relating to a specific group of air carriers registered with the CAA in question. These air carriers have usually been the subject of inspections, operate particular aircraft types or frames of concern, or have come to the attention of the Commission from other air safety-related sources. The restrictions imposed by the national CAAs can include partial or complete bans on flights to the EU or the withdrawal of the air carriers’ AOC.

Of the 172 carriers included in this CIT-MAP study, 25 fall into the self-regulation category. Of those 25, 14 (56 per cent) have been named in a UN or other arms trafficking-related report published between 1998 and 2008, 19 (76 per cent) have supplied, owned, leased or acquired aircraft to or from a company named in a UN or other arms trafficking-related report, and 22 (88 per cent) fall into one of these two categories (see figure 5). This much higher ‘asset sharing’ statistic for registry-specific air carriers is probably a result of several factors. However, the most important is probably the availability of more detailed, open source information on the operating histories of air carriers in Bulgaria, Moldova, Russia and Serbia, as compared with the regions that have been subject to blanket bans such as Central and West Africa.

‘Individual bans’ refer to situations in which an air carrier has been banned from EU air space, not as part of registry-wide ban, but due to specific safety concerns relating to that air carrier. Individual bans provide both the Commission and the air carrier concerned with the maximum degree of flexibility in terms of a final outcome and do not automatically result in a total ban of the air carriers entry into EU airspace.<sup>57</sup> Individual listings in EC regulations may also only result in restrictions that are later lifted following behaviour modification.<sup>58</sup> While the EC may remove the restrictions placed on air cargo

<sup>57</sup> E.g. Johnsons Air of Ghana, although listed in EC regulations as seriously ‘deficient’ in terms of air safety was able to avoid a ban due to an action plan prepared in agreement with the Ghana CAA which met with EC approval.

<sup>58</sup> E.g. a number of Ilyushin 76 aircraft operated by Buraq Air of Libya were banned from the EU following ‘evidence of serious safety deficiencies on the part of Buraq Air concerning its cargo



**Figure 5.** Number of air cargo carriers named in European Commission regulations and subject to self regulation

Source: CIT-MAP, <<http://www.sipri.org/contents/armstrad/cit-map>>.

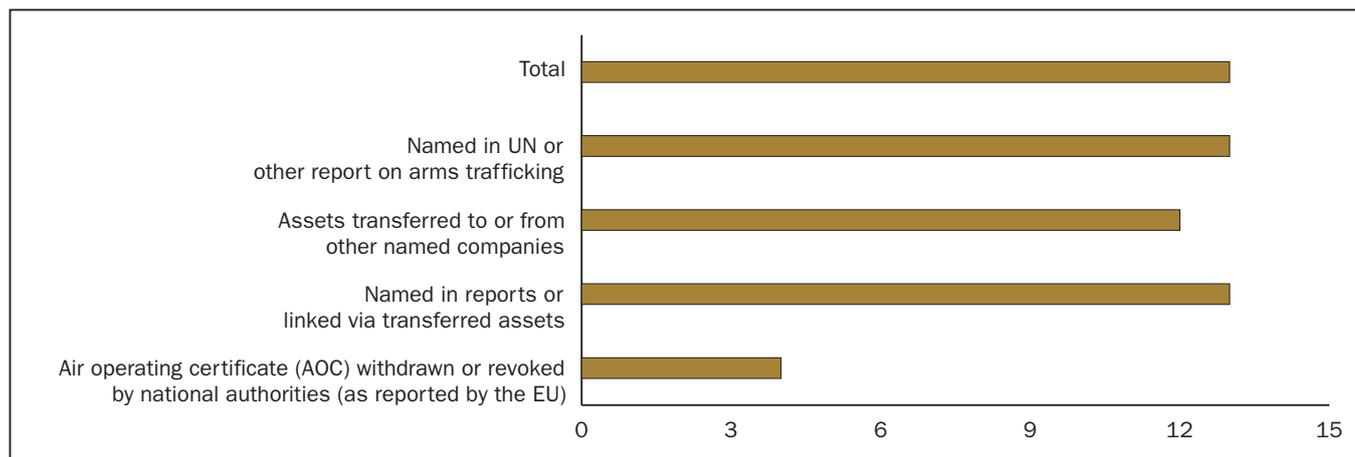
carriers listed individually in regulations following behavioural change, the opposite may also apply, with operators who refuse to modify behaviour moving from being restricted to a complete ban.<sup>59</sup>

Of the 172 air carriers included in this CIT-MAP study, 13 have been subject to individual bans. Of those 13, 13 (100 per cent) have been named in a UN or other arms trafficking-related report published between 1998 and 2008, 12 (92 per cent) have supplied, owned, leased or acquired aircraft to or from a company named in a UN or other arms trafficking-related report, and 13 (100 per cent) fall into one of these two categories (see figure 6).

In sum, of the 172 air cargo carriers that have been listed in EC air safety regulations or targeted as a result of EC-led technical inspection missions, 80 (47 per cent) have been named in a UN or other arms trafficking-related report, 85 (49 per cent) have supplied, owned, leased or acquired aircraft to or from a company named in a UN or other arms trafficking-related report and 109 (63 per cent) fall into one of these two categories (see figure 7). The importance of these statistics increases when the volume of cargo operations and cargo operators is measured in relation to their passenger counterparts. Cargo flights represent only a small fraction of the total number of passenger flights, as little as 5 per cent in Western European states such as the United

operations.’ These restrictions were subsequently lifted after the EC noted that the cargo operations which led to its inclusion in Annex B ‘have been terminated.’ By June 2006 when Buraq Air was removed from the EC safety ban list, the 3 Ilyushin 76 aircraft, which belonged to GST Aero, a Kazakhstan-registered cargo carrier named in a number of UN reports, were no longer operating under a Buraq Air call sign. Commission Regulation (EC) No. 474/2006 of 22 March 2006 (note 16), p.16; Commission Regulation (EC) No. 910/2006 of 20 June 2006 amending Regulation (EC) No. 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community referred to in Chapter II of Regulation (EC) No. 2111/2005 of the European Parliament and of the Council (Text with EEA relevance), *Official Journal of the European Union*, L168, 21 June 2006, p. 16; and Air Transport Data Base, <<http://www.aertransport.org>>.

<sup>59</sup> E.g. Air West of Sudan was initially listed in EC regulations as restricted to only one Ilyushin 76 allowed to operate within EU airspace. However, after this aircraft—also originating from GST Aero—was found to have ‘serious safety deficiencies’, Air West was subject to a complete ban. See Commission Regulation (EC) No. 910/2006 of 20 June 2006 (note 58), p. 17 and Commission Regulation (EC) No. 235/2007 of 5 March 2007 amending Regulation (EC) No. 474/2006 establishing the Community list of air carriers which are subject to an operating ban within the Community (Text with EEA relevance), *Official Journal of the European Union*, L66, 6 Mar. 2007, p. 3.



**Figure 6.** Number of air cargo carriers named in European Commission regulations and subject to individual ban

Source: CIT-MAP, <<http://www.sipri.org/contents/armstrad/cit-map>>.

Kingdom.<sup>60</sup> According to the AeroTransport Data Bank, a leading air transportation database, there are 3932 air passenger carriers currently operating and only around 500 air cargo carriers.<sup>61</sup>

The CIT-MAP study finds a high correlation between air cargo carriers named in EC air safety regulations or targeted as a result of EC-led technical inspection missions and air carriers with a suspected involvement in destabilizing arms transfers or links to such carriers. The correlation becomes progressively stronger as those air carriers which are known to have an exclusive or predominant passenger profile are excluded. The correlation becomes stronger still when the results are disaggregated by blanket bans, self regulation and individual bans with the highest correlation possible—100 per cent—for carriers subject to individual bans. This disaggregation suggests that the more targeted an EC safety ban is in terms of individual cargo carriers, the greater the chance that it will result in the ban of a carrier suspected of involvement in destabilizing arms transfers.

## Impact

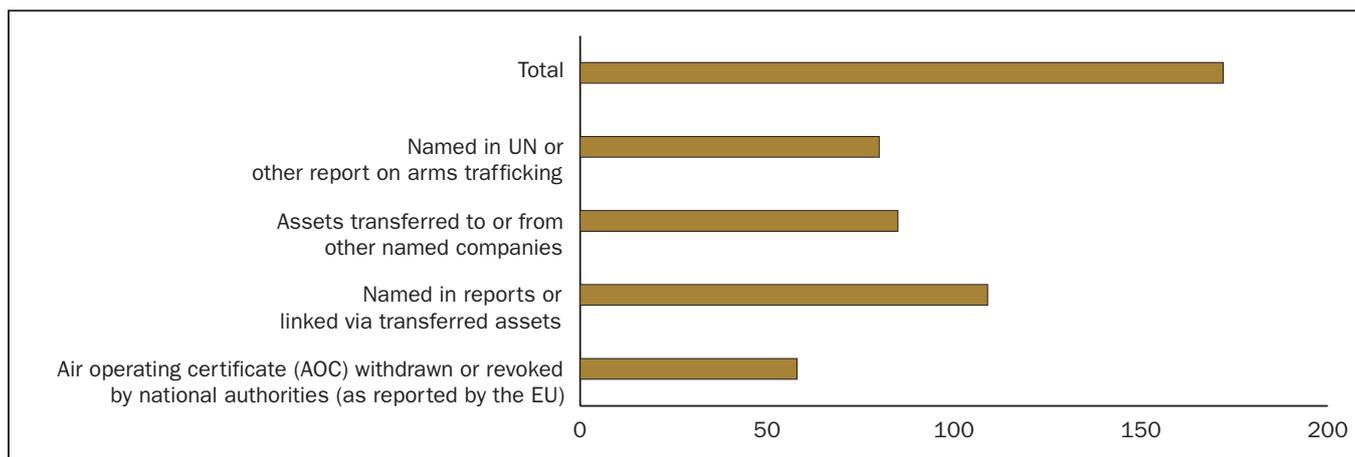
According to a CIT-MAP survey, a total of 186 air cargo carriers have been named in a UN or other arms trafficking-related reports between 1998 and 2008. Of these, 80 have also been listed in EC regulations or targeted as a result of EC-led technical inspection missions.<sup>62</sup> Hence, through the application of rigid air safety regulations, the EU has indirectly managed to identify 43 per cent of all the air carriers that have been named in a UN or other arms trafficking-related report between 1993 and 2008.

The impact of EC regulations and technical inspection missions on companies named in UN and other arms trafficking-related reports has been profound. Of the 80 air carriers listed in EC regulations or targeted following inspection missions *and* named in UN reports and other arms traffick-

<sup>60</sup> Safety Regulation Group, *CAP 681: Global Fatal Accident Review 1980–1996* (Civil Aviation Authority: United Kingdom, Mar. 1998), p. 17.

<sup>61</sup> Email from Alexandre Avrane, CEO AeroTransport Data Bank, 3 Sep. 2008.

<sup>62</sup> This figure includes the 3 air cargo carriers decertified by Serbia but not named in EC air safety regulations and therefore not included in dataset's statistical results.



**Figure 7.** Number of air cargo carriers named in European Commission regulations.

Source: CIT-MAP, <<http://www.sipri.org/contents/armstrad/cit-map>>.

ing-related reports, 53 have subsequently been reported as decertified or have been liquidated and 4 have had their operations restricted.<sup>63</sup> Of the remaining 23 cargo carriers named in arms trafficking-related reports or with established links to such companies and listed in EC regulations, only four have reportedly increased their operational capacity where the carrier's fleet composition is documented in industry databases.<sup>64</sup> At least two of these carriers receive some measure of state support and are not non-governmental in the generally accepted sense.<sup>65</sup> Of the 29 air cargo operators with established links to the companies named in UN and other trafficking-related reports that have been listed in EC air safety regulations or been targeted as a result of EU technical inspection missions, 13 have had their AOC restricted or withdrawn. These include six air carriers registered in Russia and Ukraine.<sup>66</sup>

In relative terms, EU air safety enforcement measures through bans and inspection missions have led to formal AOC removal and notification in at least 10 times as many cases as any UN asset freeze or US Department of the Treasury Office of Foreign Assets Control (OFAC) listing.<sup>67</sup> These statistics, derived from formal reporting to the European Commission and open source

<sup>63</sup> See CIT-MAP Air Cargo Database <<http://www.sipri.org/contents/armstrad/cit-map>>.

<sup>64</sup> Analysis based on information collected from AeroTransport Data Bank, <<http://www.atdb.aero/>>.

<sup>65</sup> Air Koryo is considered to be a component of the Armed Forces of the Democratic People's Republic of Korea. Wimbi Dira has strong connections to figures within the government of the Democratic Republic of the Congo.

<sup>66</sup> The Russian and Ukrainian authorities have reportedly restricted the AOCs of 11 air carriers, 5 of which have been named in UN and other arms trafficking-related reports and 6 of which have operated aircraft used by other companies named in UN or other trafficking-related reports.

<sup>67</sup> The United Nations asset freeze list for the Democratic Republic of the Congo comprises just 2 air cargo companies. The Liberian UN asset freeze list, adopted by the US Department of the Treasury Office of Foreign Assets Control (OFAC) and the European Union via Commission Regulation (EC) No. 2024/2005 of 12 December 2005 listed 14 companies which according to open source databases and other records appear to have operated aircraft. However, only 3 companies ceased operations when the various asset freezes were imposed or, subsequently, as a result of these actions. Commission Regulation (EC) No. 2024/2005 of 12 December 2005 amending Council Regulation (EC) No. 872/2004 concerning further restrictive measures in relation to Liberia, *Official Journal of the European Union*, L326, 13 Dec. 2005; and AeroTransport Data Bank, <<http://www.atdb.aero/>>.



databases, are mitigated by the fact that a significant number of the air carriers banned under EC regulations appear to have ceased operations prior to being named in the blacklist.<sup>68</sup> This is particularly true of the bans imposed on Equatorial Guinea, Liberia and Sierra Leone. This is because, although these companies ceased operations, their AOC was either never formally cancelled or the AOC was cancelled but the CAA never informed the ICAO.<sup>69</sup> In any event, at the time of the EC blacklisting all these companies were still listed in the ICAO designator list, making it likely that any aircraft operating on the basis of that designator could gain permission to land or depart in any other African state based on identification via radio communications.<sup>70</sup> In these cases, EC blacklisting has, at a minimum, led to the formal curtailment of aircraft, carriers or individuals who would use such designators to undertake flights in Africa and the Middle East.

Some carriers have attempted to negate the effects of the ban or closure by re-registering businesses and aircraft under other company names or in different states in their attempts to acquire another air operating certificate and thus circumvent the ban. In some cases these carriers have moved out of the cargo sector to focus on passenger-only flights. A number of these operations appear to be passenger charter services specializing in pilgrimage flights to Mecca from Africa, South West and Central Asia and the Middle East.<sup>71</sup> Other companies remain specifically dedicated to cargo and continue to deliver small arms and ammunition. A number have been listed in recent UN sanctions committee reports under their new names.<sup>72</sup> In these cases the EU ban has disrupted the carrier's activities, but has only temporarily halted operations.

Nevertheless, such carriers have had their operations disrupted through AOC withdrawal. They have been forced to re-register their aircraft in other states identified by the UN as operating flags of convenience registries, even if they have maintained their old trading name.<sup>73</sup> Other companies named in

***EU air safety bans have had a profound impact on the activities of carriers named in UN and other arms trafficking-related reports***

<sup>68</sup> This is according to AeroTransport Data Bank, <<http://www.atdb.aero/>>. According to the collated data, up to 15 companies may have ceased operations. See CIT-MAP Air Cargo Database <<http://www.sipri.org/contents/armstrad/cit-map>>.

<sup>69</sup> European Union official, Interview with the author, 2 Aug. 2008.

<sup>70</sup> European Union official (note 69).

<sup>71</sup> E.g. Phoenix Aviation, registered in Kyrgyzstan prior to AOC withdrawal and named in a number of arms trafficking-related reports has split into two companies. One company, AVE.com—based in Sharjah, United Arab Emirates—now deals exclusively with passenger charter flights serving the Middle Eastern market.

<sup>72</sup> E.g. according to AeroTransport Data Bank, East Wing Aviation is the successor to GST Aero, a Kazakhstan-registered cargo carrier named in a number of UN reports. Following the EC air safety ban on GST Aero in Mar. 2006, aircraft belonging to GST Aero were transferred to East Wing in Dec. 2006. A UN Security Council report on Sudan noted that an aircraft bearing GST Aero markings and registration number was observed in Chad on 27 May 2007. The United Nations panel of experts believed that the Antonov 12 was unloading arms and ammunition. The Kazakhstan Government stated to the UN that GST Aero ceased activities as of 30 Nov. 2006. The UN report states that this Anotonov 12 has been operated by East Wing since Dec. 2006. United Nations, Security Council, Report of the Panel of Experts established pursuant to resolution 1591 (2005) concerning the Sudan prepared in accordance with paragraph 2 of resolution 1713 (2006), S/2007/584, 3 Oct. 2007, para. 135.

<sup>73</sup> British Gulf International is one example of a company which changed civil aviation registry. Formerly registered in Kyrgyzstan, it registered in Sao Tome and Principe in 2007 after all air carriers in Kyrgyzstan were subject to a blanket ban by the European Commission the same year.



UN or other trafficking-related reports and blacklisted by the European Commission have been forced to close.<sup>74</sup>

## V. Conclusions

It is clear that EU air safety bans have had a profound impact on the activities of carriers named in UN and other arms trafficking-related reports. It is also clear that in contrast to the various UN asset freezes implemented sporadically in support of certain UN embargoes, EC air safety regulation enforcement and technical inspection missions have resulted in the closure of many more air cargo carriers. Some of the reasons for this are more obvious than others. European Community regulations administered by the European Commission are among the strongest forms of transnational law and are

***Attempts to control arms trafficking via air may be best served, in part, through targeted air safety regulation enforcement***

binding and enforceable upon all EU member states.<sup>75</sup> This ensures that bans are implemented across the EU as well as being applicable in Iceland, Lichtenstein, Norway and Switzerland. EC legislation can also have an indirect impact beyond the borders of the EU. One factor is the process of EU enlargement, whereby states in Eastern and South-Eastern Europe have to meet certain criteria for membership, including those related to civil aviation and air safety. For states such as Moldova and Serbia, EU membership may be some years off. However, there remains a need to standardize air safety implementation and operating procedures to ensure the EU recognition which allows Moldovan or Serbian airlines, such as JAT Airways, to operate within the EU.<sup>76</sup> A third factor influencing East European states in the field of air safety is the reorganization and ongoing transformation of Europe's airspace. National barriers and controls are being reduced as part of processes clustered around air traffic control and regulatory mechanisms associated with the Single European Sky and the European Common Aviation Area. These processes, together with those agencies and institutions now responsible for air safety, will increase the role of EU agencies in the recognition and regulation of third country carriers.

A fourth factor is the EU's position as the world's largest economy and a major external trading partner for states in Africa, Central Asia, Eastern Europe and the Middle East. A number of EU member states are principal destinations for many of the larger air passenger and cargo carriers based in Africa, Central Asia, Eastern Europe and the Middle East. As a result, access to European airspace is an important issue for governments, particularly those with strong ties to national air carriers. An EU ban or restrictions on such carriers can have a significant political, economic or financial impact and thus governments are less likely to afford protection to more dubious cargo carriers operating from registries to which the EC objects on safety

<sup>74</sup> Companies such as DAS Air Cargo and Dairo Air Services have been forced to close as a result of the EU ban. See Wakabi, M., 'Uganda: cargo liner DAS taxis to a halt', *East African*, 22 Jan. 2008.

<sup>75</sup> This is because EU law, unlike UN treaties, has a direct effect within the legal systems of its member states and overrides national law in many areas, including those European Commission-administered EC regulations. EC regulations, once adopted, become legally binding on member states which must comply or face sanction. EC regulations can thus be described as *supra-national* legislation.

<sup>76</sup> European Union official, Interview with author, 1 Sep. 2008.



grounds. The threat of a blanket ban or more targeted registry-specific action may act as an incentive for decertification cooperation for many CAAs and, increasingly, as a deterrent against practices associated with ‘flags of convenience’ which are contrary to the principles of the Chicago Convention.<sup>77</sup> Nevertheless, in spite of the impact of the ban and the recent air safety regulations, banned carriers continue to operate in states adjacent to the EU. A lack of information supplied by the Russian authorities ensures that it is currently problematic for Eurocontrol to completely monitor Russian-imposed restrictions on certain carriers. In addition, banned carriers from other states continue to conduct overflights of EU airspace. More significantly, carriers in Africa, Central Asia, Eastern Europe and the Middle East have re-registered aircraft and entities as part of efforts to circumvent the ban and the EC air safety enforcement regulations.

Despite such adaptation, 30 months after they were first issued, the impact of EC air safety regulation enforcement to date has been significant. The findings of this CIT-MAP study show that attempts to control arms trafficking via air may be best served, in part, through targeted air safety regulation enforcement. As this process moves forward, the European Council, the Commission, member states and agencies can utilize a range of foreign and security policy, development aid and technical assistance instruments and programmes which, when combined with EC regulations and the EU market, may provide an impressive toolbox for combating destabilizing transfers of SALW.

<sup>77</sup> European Union official (note 76).



## Abbreviations

AC-ASV	Air Carriers-Air Safety Violators
AC-AT	Air Carriers-Arms Traffickers
AOC	Air operating certificate
ASC	Air Safety Committee
CAA	Civil Aviation Authority
CFMU	Central Flow Management Unit
CIT-MAP	Countering Illicit Trafficking- Mechanism Assessment Project
EAS	European Aviation Safety Agency
Eurocontrol	European Organisation for the Safety of Air Navigation
ICAO	International Civil Aviation Organisation
OFAC	Office of Foreign Assets Control
SALW	Small arms and light weapons
SARP	Standards and recommended practice
USOAP	Universal Safety Oversight Audit Program



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# STEMMING DESTABILIZING ARMS TRANSFERS: THE IMPACT OF EUROPEAN UNION AIR SAFETY BANS

HUGH GRIFFITHS AND MARK BROMLEY

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