



# ARMS TRANSFERS TO THE DEMOCRATIC REPUBLIC OF THE CONGO: ASSESSING THE SYSTEM OF ARMS TRANSFER NOTIFICATIONS, 2008–10

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## I. Introduction

The security situation in the Democratic Republic of the Congo (DRC) remains in flux. The United Nations arms embargo imposed in 2003 was intended to help the Congolese Government and the UN peace operation maintain peace in eastern DRC by restricting the flow of arms to non-state groups. With presidential and delayed provincial elections scheduled for 2011 and with President Joseph Kabila's government calling for the UN force to leave the country as soon as possible, the effective implementation of the embargo remains crucial.<sup>1</sup> In order to prevent a further deterioration of the security situation, it is imperative that states supplying arms to the DRC comply with the UN's requirements on timely notifications of upcoming transfers, avoid irresponsible transfers to the DRC and the surrounding region, and work with the relevant authorities to improve stockpile management and avoid cases of post-shipment diversion.

Despite the formal end of the 1998–2003 Second Congolese War, eastern areas of the DRC—specifically Ituri, Nord-Kivu and Sud-Kivu—have remained plagued by militias and other armed groups competing violently for influence, territory and natural resources.<sup>2</sup> The conflict has been fuelled by a ready availability of weaponry—particularly small arms and light weapons (SALW)—from domestic, regional and international sources. The human cost associated with efforts to end this violence has been high due to abuses by the Congolese national security forces—the Forces armées de la République démocratique du Congo (FARDC, Armed Forces of the DRC)—

<sup>1</sup> International Crisis Group, 'Congo: a stalled democratic agenda', Africa Briefing no. 73, 8 Apr. 2010, <<http://www.crisisgroup.org/en/regions/africa/central-africa/dr-congo/>>; and 'Elections loom as Kabila comes under fire from all sides', *Africa Confidential*, vol. 51, no. 10 (14 May 2010), p. 6.

<sup>2</sup> On the current state of the conflict in the DRC see International Crisis Group (note 1). On the role of natural resources in the conflict in the DRC see de Koning, R., 'Demilitarizing mining areas in the Democratic Republic of the Congo: the case of northern Katanga Province', SIPRI Insights on Peace and Security no. 2010/1, Jan. 2010, <[http://books.sipri.org/product\\_info?c\\_product\\_id=401](http://books.sipri.org/product_info?c_product_id=401)>.

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## SUMMARY

● The Democratic Republic of the Congo (DRC) has been subject to a United Nations arms embargo since 2003. In 2008 the UN Security Council lifted the last remaining restrictions on arms acquisitions by the Congolese Government, but maintained a requirement that states supplying arms notify the Sanctions Committee on the DRC prior to delivery. Ensuring that the Congolese system works as intended is of importance for improving the situation in the DRC but also has implications for the use of such systems in other conflict zones.

Supplier states' record of conformity with the reporting requirements has been mixed. While some suppliers have notified the Sanctions Committee of transfers, others have been less forthcoming. Even in situations where notifications have been provided, information is often incomplete or provided late.

To improve levels of notification, the Sanctions Committee needs to clarify its rules on which state must report arms transfers that involve a number of intermediaries. The UN's Group of Experts on the DRC could also draw on practices used in monitoring other arms embargoes. Presenting information on incomplete or absent notifications more systematically could serve to highlight the challenges in implementing the notification system.



***Ensuring that the Congolese system works as intended has implications for the use of similar systems in other conflict zones***

and reprisals by the Forces démocratiques de libération du Rwanda (FDLR, Democratic Forces for the Liberation of Rwanda), the Congrès national pour la défense du peuple (CNDP, National Congress for the Defence of the People) and other armed groups. According to multiple reports, several hundred thousand people have been displaced as they sought to escape the violence.<sup>3</sup>

In 2008 the UN Security Council renewed the ban on transfers of arms to ‘non-governmental entities and individuals’ in the DRC.<sup>4</sup> At the same time, it lifted the last remaining restrictions on arms acquisitions by the security forces of the Congolese Government but maintained the requirement that supplier states notify the UN Sanctions Committee on the DRC before supplying arms or training to the FARDC. The Congolese system of notification can be seen as a middle ground between a full arms embargo and a withdrawal of all restrictions on arms transfers. It reflects an attempt to recognize the sovereign rights of the target country while retaining some level of international oversight of arms transfers. Attempts to reconcile these conflicting goals have also been made in the implementation of the arms embargoes on Côte d’Ivoire and, until December 2009, Liberia. However, in these two cases, the Security Council required that the relevant sanctions committee grant an explicit exemption before arms transfers to government forces took place, thereby exercising control and oversight over arms transfers to these states.<sup>5</sup> In the case of the DRC, the only obligation is that exporting states should inform the Sanctions Committee of a proposed transfer. Ensuring that the Congolese system works as intended is of importance for improving the situation in the DRC but also has implications for the use of similar systems in other conflict zones.

This Background Paper takes stock of how the system of notification under the UN arms embargo on the DRC has been implemented since 2008. Section II of this paper describes the development of the UN arms embargoes on the DRC since it was imposed in 2003 and highlights some concerns around possible embargo violations, particularly as they relate to the FARDC. Section III presents an assessment of available open-source information on transfers of SALW and other conventional weapons to the FARDC between 2008 and 2010. Section IV concludes by highlighting the limitations of the current system, showing that it only has a chance of working if supplier states fully support the process, and summarizes some specific recommendations related to improving the transparency of the notification system.

<sup>3</sup> United Nations, Security Council, Final report of the Group of Experts on the Democratic Republic of the Congo, annex to S/2009/603, 23 Nov. 2009, para. 16; Human Rights Watch (HRW), ‘You will be Punished’: Attacks on Civilians in Eastern Congo (HRW: New York, Dec. 2009); and ‘Some 70,000 flee DR Congo unrest: UN’, Agence France-Presse, 13 July 2010.

<sup>4</sup> UN Security Council Resolution 1807, 31 Mar. 2008.

<sup>5</sup> UN Security Council Resolution 1572, 15 Nov. 2004, paras 8, 14(c); and UN Security Council Resolution 1683, 13 June 2006, para 6. In Dec. 2009 the UN Security Council lifted the arms embargo on the Liberian Government for a trial period of 1 year but, as in the case of the DRC, required that the Sanctions Committee on Liberia be notified in advance of shipments of arms and related materials to the Liberian Government. UN Security Council Resolution 1903, 17 Dec. 2009.



## II. The arms embargo on the DRC

In July 2003 the UN Security Council imposed a mandatory arms embargo on all armed groups and militias operating in eastern DRC.<sup>6</sup> Transfers to the UN Organization Mission in the Democratic Republic of the Congo (MONUC) and those parts of the Congolese armed and police forces integrated under national control were exempt.<sup>7</sup> In March 2004 the Security Council established the Sanctions Committee on the DRC and a Group of Experts to monitor the implementation of the arms embargo.<sup>8</sup>

From the beginning, enforcing the arms embargo on the DRC has been beset with multiple challenges. As the Group of Experts noted in July 2004, the DRC's 9000-km-long porous border and unregulated airspace are not propitious for monitoring—let alone enforcing—an arms embargo.<sup>9</sup> Over the years, various Group of Experts reports have noted the role played by actors in the Great Lakes region in facilitating transfers of arms and military equipment to beligerent parties in the DRC (see table 1 for recent examples). In certain cases, the findings of the Group of Experts appear to have led certain supplier states to pay more attention to their arms exports to the Great Lakes region and prevent potentially destabilizing transfers to the DRC's neighbours (see box 1 for recent examples).

In October 2004 the Security Council gave MONUC the task of enforcing the embargo and authorized the use of 'all necessary means' in carrying out inspections and seizing suspect weapons.<sup>10</sup> In April 2005 the coverage of the arms embargo was extended to include any recipient in the DRC except MONUC. The Congolese security forces were again conditionally exempt, as long as recipient units had 'completed the process of their integration, or operate under the command, respectively, of the [integrated general staff] of the Armed Forces or of the National Police . . . or are in the process of their integration'.<sup>11</sup> Furthermore, arms destined for these units had to be received at sites designated by the Congolese Government in coordination with MONUC, and supplier states had to provide the Sanctions Committee with advance information about any deliveries.<sup>12</sup> At the same time, the Security Council urged all states to prohibit unregulated air traffic in the region.<sup>13</sup>

**Table 1.** Alleged shipments of weapons and ammunition to the FDLR arriving in the Democratic Republic of the Congo by boat from Tanzania

Date	Description of alleged shipments
June 2008	'A consignment of AK-47s'
Jan. 2009	A 'large delivery of ammunition and 107 mm rockets'
Apr. 2009	'ammunition and 82 mm mortars'
Mar. 2009	'R-4 assault rifles, AK-47s, around 100 rocket-propelled grenades and boxes of ammunition'
Nov. 2009	Around '100 boxes of ammunition, 10 machines guns and several rocket-propelled grenades'

FDLR = Forces démocratiques de libération du Rwanda.

Source: United Nations, Security Council, Final report of the Group of Experts on the Democratic Republic of the Congo, annex to S/2009/603, 23 Nov. 2009, paras 69, 80.

<sup>6</sup> UN Security Council Resolution 1493, 28 July 2003, para. 20.

<sup>7</sup> On 1 July 2010 MONUC was renamed the UN Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO). UN Security Council Resolution 1925, 28 May 2010.

<sup>8</sup> UN Security Council Resolution 1533, 12 Mar. 2004, paras 8, 9, 10.

<sup>9</sup> United Nations, Security Council, Report of the Group of Experts on the Democratic Republic of the Congo, annex to S/2004/551, 15 July 2004, p. 10.

<sup>10</sup> UN Security Council Resolution 1565, 1 Oct. 2004, paras 4, 6.

<sup>11</sup> UN Security Council Resolution 1596, 18 Apr. 2005, paras 1, 2.

<sup>12</sup> UN Security Council Resolution 1596 (note 11), para. 4.

<sup>13</sup> UN Security Council Resolution 1596 (note 11), paras 12–15. See also Griffiths, H., 'Building air traffic capacity in Africa: options for improving security and governance', SIPRI Policy Brief, Oct. 2009, <[http://books.sipri.org/product\\_info?c\\_product\\_id=390](http://books.sipri.org/product_info?c_product_id=390)>.

**Box 1.** The impact of the arms embargo on the Democratic Republic of the Congo on export decisions regarding arms transfers to neighbouring states

During the 2000s, states bordering the Democratic Republic of the Congo (DRC) were repeatedly accused of channelling weapons to the different armed groups and militias operating in the east of the country.

The 2009 Group of Experts report raises concerns regarding the delivery of a large number of light and small calibre weapons to Burundi during 2008. The weapons arrived on ‘special flights’ at Bujumbura International Airport and were collected by officials from the presidency and other security agencies. According to the report, ‘Burundian security officials have confirmed some of these deliveries, which they claim have not been accounted for in official stockpiles.’<sup>a</sup>

The report also states that a Burundian delegation had travelled to Malaysia to arrange the purchase of 40 000 Steyr AUG assault rifles and ammunition, officially for the Burundian police forces. Given that the Burundian police force numbered no more than 20 000, the Group of Experts deemed the purchase of weapons to be ‘excessive’.<sup>b</sup> In December 2009 the Malaysian media reported that the Malaysian Government had blocked a proposed deal for the export of 30 000 Steyr assault rifles to Burundi worth more than 200 million ringgit (\$64 million).<sup>c</sup> It was explained that one of the reasons for denying the export was the risk that the weapons could end up in the DRC or Rwanda.

In other cases, transfers have been allowed to take place despite warnings contained in reports by the Group of Experts. In September 2008 Rwanda took delivery of 49 kits of parts and tools for 14.5-mm KPVT machine guns from Armico Ltd, a Bulgarian company. The delivery was allowed to take place despite allegations by the Group of Experts of Rwandan support for the CNDP.<sup>d</sup>

<sup>a</sup> United Nations, Security Council, Final report of the Group of Experts on the Democratic Republic of the Congo, annex to S/2009/603, 23 Nov. 2009, paras 84–89.

<sup>b</sup> United Nations (note a), para. 89.

<sup>c</sup> Abas, M., ‘Behave or we will come down hard’, *Malay Mail*, 15 Dec. 2009; and Abas, M., ‘Arms deal shot down: Malaysia escapes UN censure after officials stop weapons sale to Burundi’, *Malay Mail*, 10 Dec. 2009.

<sup>d</sup> United Nations, Security Council, Final report of the Group of Experts on the Democratic Republic of the Congo, annex to S/2008/773, 12 Dec. 2008. For more on this deal see Amnesty International, TransArms and IPIS, *Deadly Movements: Transportation Controls in the Arms Trade Treaty* (Amnesty International: London, July 2010), pp. 12–15.

In March 2008 the Security Council lifted all restrictions on arms acquisitions by the Congolese Government—including the need to coordinate delivery sites with MONUC—but retained the embargo on transfers to non-state armed groups and militias. However, the Council reiterated the demand that supplier states had to provide advance information about any deliveries to the Sanctions Committee and specified that such notifications should include, where appropriate, ‘the end-user, the proposed date of delivery and the itinerary of shipments’.<sup>14</sup> In November 2009 these measures on arms transfers to the DRC were extended until 30 November 2010.<sup>15</sup>

On 6 August 2010, on the recommendation of the Group of Experts, the Sanctions Committee adopted guidelines for the conduct of its work.<sup>16</sup> The guidelines lay out the mandate of the Sanctions Committee ‘to examine and to take appropriate action on information concerning alleged violations of the arms embargo’ and

<sup>14</sup> UN Security Council Resolution 1807 (note 4), para. 5.

<sup>15</sup> UN Security Council Resolution 1896, 30 Nov. 2009, para. 1.

<sup>16</sup> United Nations, Security Council Committee established pursuant to resolution 1533 (2004) concerning the Democratic Republic of the Congo, Guidelines of the committee for the conduct of its work, 6 Aug. 2010, <<http://www.un.org/sc/committees/1533/>>. The production of the guidelines followed a decision by the UN Security Council to expand the mandate of the Sanctions Committee to ‘specify the necessary information that Member States should provide in order to fulfil the notification requirement set out in paragraph 5 of resolution 1807 (2008) and to circulate this among Member States’. UN Security Council Resolution 1896 (note 15), para. 4(c). The Sanctions Committee subsequently gave the Group of Experts the task of producing these guidelines.



to receive notifications in advance from States made under paragraph 5 of resolution 1807 (2008), to inform MONUC and the Government of the Democratic Republic of the Congo of every notification received, and to consult with the Government of the Democratic Republic of the Congo and/or the notifying State, if appropriate, to verify that such shipments are in conformity with [the ban on transfers to non-governmental entities].<sup>17</sup>

The guidelines also outline the information required in the notifications to the Sanctions Committee on transfers of arms, military equipment and training to the FARDC.<sup>18</sup> The guidelines do not explicitly require the Sanctions Committee to inform the Group of Experts of each notification received. However, it appears from the reports that have been published that the Group does have access to relevant notifications.<sup>19</sup>

The March 2008 decision to remove the remaining constraints on acquisitions by the FARDC met with criticism since certain FARDC units continued to engage in human rights abuses and to provide support for armed groups.<sup>20</sup> Reports of the Group of Experts covering the periods before and after the constraints were removed identify elements within the FARDC as one of the main sources of arms and military equipment for the FDLR and other armed groups. While some of the acquisitions by armed groups were the result of thefts and seizures, the reports also identify FARDC officers and units involved in the diversion of arms and military equipment to non-governmental groups in violation of the arms embargo.<sup>21</sup>

The complete lack of stockpile management by the FARDC has been frequently cited as one of the main challenges to preventing illicit arms flows in the DRC.<sup>22</sup> The November 2009 Group of Experts report recommended that all international donors supporting security sector reform (SSR) in the DRC 'should include stockpile management as a pre-condition for providing assistance to [the] FARDC'.<sup>23</sup> However, while the UN Security Council recommended in December 2009 that the Congolese Government 'promote stockpile security, accountability and management of arms and ammunition as an urgent priority', it fell short

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<sup>17</sup> United Nations (note 16), para. 2(c), (d), (m).

<sup>18</sup> United Nations (note 16), para. 11.

<sup>19</sup> In addition, UN Security Council resolutions 1807, 1857 and 1896 demand that all parties and all states cooperate fully with the work of the Group of Experts, ensure the safety of its members, and provide unhindered and immediate access to persons, documents and sites that the Group deems relevant to the execution of its mandate. UN Security Council Resolution 1807 (note 4), para. 21; UN Security Council Resolution 1857, 22 Dec. 2008, para. 14; and UN Security Council Resolution 1896 (note 15), para. 13.

<sup>20</sup> Worsnip, P., 'UN fully exempts Congo government from arms ban', Reuters, 31 Mar. 2008; and Amnesty International, 'Democratic Republic of Congo: now is not the time to relax the UN arms embargo', Media briefing, 26 Mar. 2008, <<http://www.amnesty.org/en/library/asset/IOA40/011/2008/en/5ad577c0-07e4-11dd-badf-1352a91852c5/ior400112008eng.pdf>>.

<sup>21</sup> United Nations, Security Council, Final report of the Group of Experts on the Democratic Republic of the Congo, pursuant to Security Council Resolution 1698 (2006), annex to S/2007/423, 18 July 2007, para. 177; United Nations, Security Council, Report of the Group of Experts on the Democratic Republic of the Congo, annex to S/2008/772, 12 Dec. 2008; and United Nations (note 3), p. 3.

<sup>22</sup> E.g. United Nations, Security Council, Final report of the Group of Experts on the Democratic Republic of the Congo, annex to S/2008/773, 12 Dec. 2008, para. 138; and United Nations, Security Council, Interim report of the Group of Experts on the Democratic Republic of the Congo, annex to S/2009/253, 18 May 2009, para. 71.

<sup>23</sup> United Nations (note 3), para. 378(13).





of recommending this kind of conditionality in donor assistance.<sup>24</sup> In these circumstances, maintaining the system of notification remains an important element of international efforts to prevent a deterioration of the security situation in the DRC. Fully implemented, the notification system would provide a measure of oversight of arms transfers to the DRC and assist the Group of Experts in its efforts to trace illegally held arms and ammunition.

### III. Arms transfers to the DRC and the system of notifications

Information provided by states to the Sanctions Committee on planned transfers of arms and military equipment to the FARDC is not systematically made available for public analysis. However, the Group of Experts has documented several transfers to the FARDC that have taken place without the Sanctions Committee being given any form of notification. In order to show how the notification system works in practice and to highlight possible areas for improvement, this section gathers available open-source information on transfers of arms to the FARDC between 2008 and 2010. It identifies the cases where states are known to have supplied notifications to the Sanctions Committee and cases where transfers have been identified by the Group of Experts as having taken place without any notification or where it is unclear whether prior notification was provided to the Sanctions Committee.

#### **Transfers notified to the Sanctions Committee**

The November 2008 Group of Experts report lists Belgium, China, France, Sweden and the United Kingdom as having provided notifications to the Sanctions Committee during 2008.<sup>25</sup> However, this report does not provide systematic information on which states provided notifications regarding shipments of arms and which provided notifications on the provision of assistance, advice or training related to military activities, or what the notifications contained. All five of these states reported to the UN Register of Conventional Arms (UNROCA) on transfers made in 2008, but their reports do not mention transfers for the DRC.<sup>26</sup> However, in their national reports on arms exports, Belgium, France and the UK reported issuing licences for exports to the DRC during 2008.<sup>27</sup> Although there is no equivalent list of notifications made during 2009 or 2010, it is known that China and Ukraine have notified the Sanctions Committee of transfers during this period.

China has provided at least three notifications to the Sanctions Committee since 2008: two relating to military training programmes for the FARDC (in June 2008 and August 2009) and one relating to a delivery of arms and military equipment (in April 2009).<sup>28</sup> However, the April 2009 notification only stated that arms and ammunition would be delivered to the DRC later

<sup>24</sup> UN Security Council Resolution 1896 (note 15), para. 9.

<sup>25</sup> United Nations (note 22), para. 144.

<sup>26</sup> UN Register of Conventional Arms, <[http://disarmament.un.org/un\\_register.nsf](http://disarmament.un.org/un_register.nsf)>.

<sup>27</sup> Germany and the UK also reported supplying arms and military equipment to UN missions in the DRC during 2008. Eleventh Annual Report According to Article 8(2) of Council Common Position 2008/944/CFSP Defining Common Rules Governing Control of Exports of Military Technology and Equipment, *Official Journal of the European Union*, C265, 6 Nov. 2009, pp. 310, 394.

<sup>28</sup> United Nations (note 3), paras 259–64.



in the month for use in China's training programme for the FARDC—it is unclear whether this delivery took place (see below).

On 20 January 2010 Ukraine reportedly informed the Sanctions Committee of a delivery of 20 T-72 tanks, 100 lorries, 60 anti-aircraft guns, 10 000 Kalashnikov assault rifles and several hundred thousand rounds of ammunition; these arms arrived at the Congolese port of Matadi on 6 March 2010. Reports indicate that the deal is worth \$80 million and that it was agreed following an April 2009 visit to Ukraine by the Congolese foreign minister, Alexis Thambwe Mwamba.<sup>29</sup> During the visit, Thambwe Mwamba stated that the DRC hopes to 'create a new army and for us this direction in cooperation is a priority'. During a military parade that took place on 30 June 2010 to commemorate the 50th anniversary of the DRC's independence, a number of items on display could have formed part of this delivery, such as ZU-23-2 23-mm anti-aircraft cannons, ZPU-2 anti-aircraft guns and T-72 tanks. Based on practice following previous Ukrainian supplies to the FARDC, it is likely that Ukraine's exports will be discussed in the forthcoming Group of Experts report and in Ukraine's national report on arms exports in 2010 and its submission to UNROCA.

### **Transfers not notified to the Sanctions Committee or where information submitted was incomplete**

Group of Experts reports have identified a number of deliveries to the FARDC which the Group believes the Sanctions Committee was not notified about in advance or where the information submitted was incomplete. For some of these transfers, the supplier state is known (e.g. China, North Korea and Sudan), while for others the supplier remains unclear.

China has not consistently provided prior notifications to the Sanctions Committee, and some transfers may have taken place since 2008 without any notification to the Sanctions Committee. For example, in September 2008, 50 tractor trucks and tank-carrying trailers were delivered from China to Matadi. The bill of lading gave the consignee as the Congolese Government, and the cargo description stated that the goods were ordered by the Congolese Ministry of Defence. These items were ordered in November 2007 and April 2008 via the Belgian company Demimpex; however, according to the Belgian authorities, Demimpex had not been granted a brokering licence in connection with the deal.<sup>30</sup> By the end of 2009, no notification had been submitted to the Sanctions Committee in relation to the delivery of the vehicles.

As noted above, in April 2009 China notified the Sanctions Committee of a planned delivery to the DRC, but it is not known whether this delivery took place. Details of the exact arrival date, the name of the vessel and the cargo were not provided in the notification.<sup>31</sup> According to the Group of Experts, on 18 May 2009 a Chinese vessel, *An Xin Jiang*, delivered 16 containers of ammunition and equipment, weighing nearly 200 tonnes, to Matadi.<sup>32</sup> How-

<sup>29</sup> 'Ukraine supplies tanks, weapons to DRC', Agence France-Presse, 17 Mar. 2010; and Samus, M., [Not really a scandal], *Defense Express*, 18 Mar. 2010, <<http://www.defense-ua.com/rus/hotnews/?id=31369&prn=yes>> (in Ukrainian).

<sup>30</sup> United Nations (note 3), paras 276–78.

<sup>31</sup> United Nations (note 3), para. 259.

<sup>32</sup> United Nations (note 3), para. 260.

**Table 2.** Unnotified arms transfers by air from Sudan to the Democratic Republic of the Congo identified by the Group of Experts

Date	Route	Air carrier and aircraft
10 Sep. 2007	Tripoli–Khartoum–Kisangani	Faso Airways Il-76 XT-FCB, leased by Azza Air Transport
13 Sep. 2007	Kinshasa–Kisangani	Azza Air Transport Il-76 ST-APS
19 Nov. 2007	Khartoum–Kisangani	Azza Air Transport Il-76 ST-APS
22 Nov. 2007	Khartoum–Kisangani	Azza Air Transport Il-76 ST-APS
23 Nov. 2007	Khartoum–Kisangani	Azza Air Transport Il-76 ST-APS
26–27 May 2008	Khartoum–Kisangani	Azza Air Transport
20 Sep. 2008	Khartoum–Kisangani–Kinshasa	FARDC-operated Hewa Bora Boeing-707 9Q-CKR
23 Sep. 2008	Khartoum–Kisangani–Khartoum	FARDC-operated Hewa Bora Boeing-707 9Q-CKR
24 Sep. 2008	Khartoum–Kisangani–Khartoum	FARDC-operated Hewa Bora Boeing-707 9Q-CKR
25 Sep. 2008	Khartoum–Kisangani–Khartoum	FARDC-operated Hewa Bora Boeing-707 9Q-CKR
25 Sep. 2008	Khartoum–Kisangani	FARDC-operated Enterprise World Airlines Boeing 707 9Q-CRM
26 Sep. 2008	Khartoum–Kisangani–Kinshasa	FARDC-operated Hewa Bora Boeing-707 9Q-CKR
26 Sep. 2008	Khartoum–Kisangani	FARDC-operated Enterprise World Airlines Boeing 707 9Q-CRM
27 Sep. 2008	Khartoum–Kisangani	FARDC-operated Enterprise World Airlines Boeing 707 9Q-CRM
27 Oct. 2008	Khartoum–Kisangani	FARDC-operated Enterprise World Airlines Boeing 707 9Q
28 Oct. 2008	Khartoum–Kisangani	FARDC-operated Enterprise World Airlines Boeing 707 9Q
29 Oct. 2008	Khartoum–Kisangani	FARDC-operated Enterprise World Airlines Boeing 707 9Q
30 Oct. 2008	Khartoum–Kisangani	FARDC-operated Enterprise World Airlines Boeing 707 9Q
31 Oct. 2008	Khartoum–Kisangani	FARDC-operated Enterprise World Airlines Boeing 707 9Q-CRM
1 Nov. 2008	Khartoum–Kisangani	FARDC-operated Enterprise World Airlines Boeing 707 9Q-CRM
4 Dec. 2008	Khartoum–??	FARDC-leased Boeing 707
5 Dec. 2008	Khartoum–??	FARDC-leased Boeing 707
12 Feb. 2009	Khartoum–??	FARDC-leased Boeing 707
14 Feb. 2009	Khartoum–??	FARDC-leased Boeing 707

FARDC = Armed Forces of the Democratic Republic of Congo; ?? = unknown destination.

Sources: United Nations, Security Council, Final report of the Group of Experts on the Democratic Republic of the Congo, annex to S/2008/43, 13 Feb. 2008, paras 68–74; and United Nations, Security Council, Final report of the Group of Experts on the Democratic Republic of the Congo, annex to S/2009/603, 23 Nov. 2009, paras 265–71

ever, the Group was able neither to confirm the exact contents of the ship's cargo with the Chinese or Congolese authorities nor to establish whether the transfer corresponded to the notification received in April or if it represented a second, additional delivery.<sup>33</sup>

According to the Group of Experts, a ship registered in North Korea unloaded more than 3000 tonnes of military weaponry for the FARDC at the Congolese port of Boma in January 2009. The FARDC prevented the Congolese port authorities from verifying the cargo, and the ship's captain refused to sign official port documentation.<sup>34</sup> In October 2006 the UN Security Council barred North Korea from exporting major conventional weapons.<sup>35</sup> Due to the limits of its mandate, the Group of Experts report does not address the question of whether the delivery violates the UN sanctions on North Korea. However, the Panel of Experts on North Korea discussed

<sup>33</sup> United Nations (note 3), para. 263.

<sup>34</sup> United Nations (note 3), paras 257–58.

<sup>35</sup> UN Security Council Resolution 1718, 14 Oct. 2006, para. 8.





this case in its 2009 report.<sup>36</sup> This report also details South Africa's interdiction of a shipment of parts for T-54/55 tanks from North Korea to the DRC's neighbour, the Republic of the Congo, in October 2009.<sup>37</sup> At least one report has raised the possibility that the spare parts were destined for the DRC because the FARDC possess T-54/55 tanks (although the military of Republic of the Congo also possess such tanks).<sup>38</sup>

The UN Security Council specifically requires all states neighbouring Ituri, Nord-Kivu and Sud-Kivu—Burundi, Rwanda, Sudan and Tanzania—to 'maintain a registry for review by the [Sanctions] Committee and the Group of Experts' of all flights from their territories to the DRC.<sup>39</sup> However, none of these states has submitted data to the Sanctions Committee on such flights during 2008 and 2009. The Group of Experts has highlighted specific concerns over a series of flights from Sudan to the DRC in 2008–2009 where there was evidence that arms, ammunition and military equipment were being transferred to the FARDC (see table 2). Not one of these 24 flights was notified to the Sanctions Committee. At first, Sudan denied the claims and maintained that the flights in question were 'transporting "general items", including furniture and food'; it then ignored the Group of Expert's request to provide access to logbooks from Khartoum International Airport.<sup>40</sup>

*The Group of Experts has highlighted specific concerns over a series of flights from Sudan to the DRC in 2008–2009*

The Group of Experts documented the delivery of three Antonov An-12 transport aircraft to the DRC in late 2008 and early 2009 for the Congolese Air Force.<sup>41</sup> A fourth An-12 appears to have been delivered in 2010.<sup>42</sup> According to the Group of Experts, the aircraft have been leased to the DRC by an individual who is reportedly of Ukrainian nationality but who operates a company based in the United Arab Emirates (UAE). When the aircraft arrived in the DRC, they had civilian registration numbers from Sao Tome and Principe. None of the deliveries were notified to the Sanctions Committee.<sup>43</sup>

The Group of Experts has also raised questions regarding the possible delivery of Land Rover Defender 110 vehicles without any notification to the Sanctions Committee. The vehicles in question were supplied to the FARDC by a company based in Kinshasa that is closely associated with another company in Tanzania, raising suspicions that the goods may have arrived from Tanzania without prior notification.<sup>44</sup>

<sup>36</sup> United Nations, Report to the Security Council from the Panel of Experts established pursuant to Resolution 1874 (2009), Final version, [n.d.], para. 70; this document, which has not been published by the UN, is available at <<http://www.fas.org/irp/eprint/scr1874.pdf>>.

<sup>37</sup> Some of the information relating to this case has also been discussed in the media. See Charbonneau, L., 'S. Africa says they intercepted N. Korea arms shipment', Reuters, 22 Feb. 2010.

<sup>38</sup> Kelley, K. J., 'North Korea arms to Africa: unusual only because illegal', *East African*, 8 Mar. 2010.

<sup>39</sup> UN Security Council Resolution 1596 (note 11), para. 7.

<sup>40</sup> United Nations, Security Council, Final report of the Group of Experts on the Democratic Republic of the Congo, annex to S/2008/43, 13 Feb. 2008, para. 73; and United Nations (note 3), para. 271.

<sup>41</sup> United Nations (note 3), para. 287–93.

<sup>42</sup> This fourth An-12 aircraft, which is registered to the FARDC, was photographed at Kisangani airport in May 2010. Russianplanes.net, Photo 27259, 27 May 2010, <<http://russianplanes.net/EN/ID27259>>.

<sup>43</sup> United Nations (note 3), para. 287.

<sup>44</sup> United Nations (note 3), para. 280.



## IV. Conclusions

According to diplomats involved in its drafting, the UN Security Council resolution that imposed the system of notifications for transfers to the FARDC placed the onus on supplier states to conform with the enhanced reporting requirements.<sup>45</sup> It was hoped that the measures would also induce the Congolese Government to cooperate more fully with MONUC. Since 2008, supplier states' record of conformity with the reporting requirements has been mixed. While some suppliers have notified the Sanctions Committee of transfers to the FARDC, others have been less forthcoming. Even in situations where notifications have been provided, information is often incomplete or provided late. As the Group of Experts has noted, the failure of supplier states to notify the Sanctions Committee of upcoming deliveries 'makes it more difficult to differentiate between legitimate and illegitimate transfers of military supplies and to react in cases of diversion in a timely fashion'.<sup>46</sup>

When the UN Security Council renewed the notification system in November 2009, it stressed that all states have to abide by the notification requirements and tasked the Sanctions Committee with specifying the information that states should provide.<sup>47</sup> The guidelines provide a list of information to be provided, but do not provide clear guidance on which state should be responsible for notifying the Sanctions Committee when companies and individuals from different states are involved in a delivery of arms or military equipment to the FARDC. This can be seen in several of the cases documented by the Group of Experts. For example, in some cases the Congolese Government has used private companies to import or lease vehicles and aircraft for the FARDC. In these cases, the Group of Experts has called for 'greater oversight in the implementation of the notification procedure regarding provision of military assistance by private entities and individuals'.<sup>48</sup> Another example where the lines of reporting responsibility are unclear is that of the An-12 transport aircraft that were registered in Sao Tome and Principe but leased to the FARDC by a Ukrainian national based in the UAE. In this case it is unclear which state is responsible for notifying the Sanctions Committee. In complex cases involving the leasing of military equipment, clearer guidance should be provided on who is responsible for providing notifications.

In addition to improving the notification system itself, the Group of Experts should make more effort to systematically present the information on notifications received. This could help to better highlight the challenges facing the implementation of the notification system. While the 2008 and 2009 reports of the Group of Experts present numerous examples of transfers for which notifications were either absent or incomplete, there has been no attempt to systematically provide information on the notifications that have been provided and what they contain. The reports of the Panel of Experts on Liberia present information on exemptions provided to the Sanctions Com-

***Clearer guidance should be provided on who is responsible for providing notifications***

<sup>45</sup> UN Security Council Resolution 1807 (note 4); and Worsnip (note 20).

<sup>46</sup> United Nations (note 3), para. 254.

<sup>47</sup> UN Security Council Resolution 1896 (note 15).

<sup>48</sup> United Nations (note 3), para. 378(19).



mittee on Liberia and deliveries of arms and military equipment to Liberia.<sup>49</sup> The Liberian arms embargo has a different coverage and mandate to the embargo on the DRC and this model of reporting may not be directly applicable. Nonetheless, there may be ways in which information on complete, incomplete or absent notifications could be presented more systematically in the future reports on the DRC.

The deeper underlying issue facing the implementation of the notification requirement is the lack of political commitment by both the DRC and states that supply arms. Several supplier states appear to be unwilling or unable to participate in the notification process and sections of the Congolese Government regard the notification requirement as an infringement of the DRC's sovereignty. In its November 2009 report, the Group of Experts notes that, while writing the report, it was unable 'to hold any technical meetings with the Democratic Republic of the Congo Ministry of Defence, despite numerous attempts to initiate a constructive dialogue'.<sup>50</sup> On its release, the report provoked strong criticism from China, which was named as failing to provide complete and timely notifications to the Sanctions Committee.<sup>51</sup> The United States has also been named as failing to comply with the notification requirements, in relation to the provision of military training.<sup>52</sup> As permanent members of the Security Council, the failure of China and the USA to fully comply with the notification requirement sends a particularly poor message to other supplier states and undermines efforts to encourage other states to comply.

*The deeper underlying issue is the lack of political commitment by both the DRC and states that supply arms*

Despite the protests from the supplier states named in the Group of Experts reports, the Group is standing by its findings with the support of the UN Secretariat (in particular the Department of Political Affairs).<sup>53</sup> However, for the Group of Experts to be able to continue its work to uncover suspect transfers in the future, it will require high levels of political support from both the UN and its member states.

Along with the illicit cross-border trade in arms, the FARDC remains a key source of arms for the various armed groups that continue to operate in eastern DRC. Unless the Congolese security forces significantly improve the effectiveness of their stockpile management, the extent to which the current arms embargo—which places no restrictions on arms acquisitions by the FARDC—can maintain peace and stability in the region will be limited. However, effectively monitoring arms transfers to the DRC and ensuring the proper functioning of the system of notifications and the full implementation of supplier states' responsibilities in this area are essential to limiting the flow of arms that fuel the conflict in eastern DRC and remain more important than ever.

<sup>49</sup> United Nations, Security Council, Final report of the Panel of Experts on Liberia submitted pursuant to paragraph 4 (e) of Security Council Resolution 1854 (2008), annex to S/2009/640, 11 Dec. 2009, p. 42. See also note 5.

<sup>50</sup> United Nations (note 3), para. 256.

<sup>51</sup> Uganda, identified as one of the main transit points for illegally extracted gold from the DRC, was also strongly critical of the report. United Nations (note 3), paras 124–63.

<sup>52</sup> United Nations (note 3), para. 295.

<sup>53</sup> 'The experts win support', *Africa Confidential*, vol. 50, no. 24 (4 Dec. 2009), p. 5.

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SIPRI BACKGROUND PAPER

# ARMS TRANSFERS TO THE DEMOCRATIC REPUBLIC OF THE CONGO: ASSESSING THE SYSTEM OF ARMS TRANSFER NOTIFICATIONS, 2008–10

MARK BROMLEY AND PAUL HOLTOM

## CONTENTS

I. Introduction	1
II. The arms embargo on the DRC	3
III. Arms transfers to the DRC and the system of notifications	6
Transfers notified to the Sanctions Committee	6
Transfers not notified to the Sanctions Committee or where information submitted was incomplete	7
IV. Conclusions	10
Box 1. The impact of the arms embargo on the Democratic Republic of the Congo on export decisions regarding arms transfers to neighbouring states	4
Table 1. Alleged shipments of weapons and ammunition to the FDLR arriving in the Democratic Republic of the Congo by boat from Tanzania	3
Table 2. Unnotified arms transfers by air from Sudan to the Democratic Republic of the Congo identified by the Group of Experts	8

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