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GREED, GUNS AND GRIST: U.S. MILITARY ASSISTANCE AND ARMS TRANSFERS TO DEVELOPING COUNTRIES

ELIZABETH POWERS*

I. INTRODUCTION

Commercial sales of conventional weapons,¹ military services, and small arms and light weapons (SA/LW)² net billions of dollars for U.S. businesses each year.³ Military assistance (i.e., government-to-government military aid) pours additional billions into the arms and military services industry.⁴ In 2008 military assistance ranked third on the U.S. foreign aid budget.⁵ Weapons sales and military assistance are the lifeblood of many corrupt leaders. These leaders line their coffers with government money meant to be used for military assistance purposes, and use the acquired weaponry to engage in international antagonism and the repression of their citizens.⁶

A glaring example of the negative effects of developing world arms spending sprees is the Democratic Republic of the Congo (DR Congo),⁷ where military assistance and United States-supplied weapons enabled

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1. RICHARD GRIMMETT, CRS REPORT FOR CONGRESS, CONVENTIONAL ARMS TRANSFERS TO DEVELOPING NATIONS 1998-2005 89 (2006) [hereinafter GRIMMETT 1998-2005], *available at* <http://www.fas.org/sgp/crs/weapons/RL33696.pdf>. “Small arms” are defined as arms operated for personal use; “light weapons” are arms that can be operated by a small group of people. The Secretary-General, *Report of the Secretary General and Group of Governmental Experts on Small Arms*, 24 n.5, *delivered to the General Assembly*, UN DOC. A/54/258 (Aug. 19, 1999).

2. U.S. GEN. ACCOUNTING OFFICE, CONVENTIONAL ARMS TRANSFERS: U.S. EFFORTS TO CONTROL THE AVAILABILITY OF SMALL ARMS AND LIGHT WEAPONS 7 (2000), <http://www.gao.gov/archive/2000/ns00141.pdf>.

3. The Secretary-General, *supra* note 1, at 24 n.5.

4. CURT TARNOFF & LARRY NOWELS, CRS REPORT FOR CONGRESS, FOREIGN AID: AN INTRODUCTORY OVERVIEW OF U.S. PROGRAMS AND POLICY 7 (2004). In 2004, the U.S. spent \$4.791 billion in military aid. *Id.* at 29.

5. CONNIE VEILLETTE & SUSAN B. EPSTEIN, CRS REPORT FOR CONGRESS, STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS: FY2008 APPROPRIATIONS 1 (2007). Military aid outstripped humanitarian and multilateral aid. *Id.*

6. *See* Joe Oloka-Onyango, *Beyond the Rhetoric: Reinvigorating the Struggle for Economic and Social Rights in Africa*, 26 CAL. W. INT’L L.J. 1, 43 (1995) (summarizing various civil liberties violations by African dictators).

7. The DR Congo changed names many times throughout its tenure as an independent country. While it may be historically incorrect to refer to the Democratic Republic of the Congo at all times, for the sake of simplicity, the abbreviation “DR Congo” is used throughout this article.

Mobutu Sese Seko (Mobutu) to retain power for over thirty years.⁸ Mobutu's downfall precipitated the Congo Conflict, which has lasted for over seven years and cost more than 3.8 million lives.⁹ The reverberations of the Congo Conflict are still felt throughout Central Africa.¹⁰ Over \$9 billion has been poured by the international community into the DR Congo to pick up the pieces left in the wake of the Congo Conflict.¹¹

Part I of this Article surveys the regulatory framework in which arms transfers and military assistance occur.¹² Part II provides a historical background of the DR Congo, and summarizes and examines U.S. military aid and sales to the DR Congo since its independence from Belgium.¹³ Part III examines the consequences of military aid on the DR Congo and argues that the same analysis applies to other developing countries.¹⁴ Parts II and III illustrate the inconsistencies and ineffectiveness of the U.S. arms export control regime.¹⁵ Finally, Part IV recommends a framework for reform of the arms export control regime to reconcile it with U.S. foreign policy and national security interests.¹⁶

8. Mobutu Sese Seko's birth name was Joseph-Desire Mobutu. He changed his name in a populist move to promote Africanization. *Mobutu Dies in Exile in Morocco: Ruled Zaire with Iron Grip for 3 Decades*, CNN, Sept. 7, 1997, <http://www.cnn.com/WORLD/9709/07/mobutu.wrap/>.

9. U.S. DEP'T OF STATE, BUREAU OF AFRICAN AFFAIRS, BACKGROUND NOTE: DEMOCRATIC REPUBLIC OF THE CONGO (2008) [hereinafter BACKGROUND NOTE], <http://www.state.gov/r/pa/ei/bgn/2823.htm>.

10. JOHN PRENDERGAST & DAVID SMOCK, U.S. INST. OF PEACE, PUTTING HUMPTY DUMPTY TOGETHER: RECONSTRUCTING PEACE IN THE CONGO 2 (1999), available at <http://www.usip.org/pubs/specialreports/sr990831.pdf>.

11. MONUC, Budget, <http://www.monuc.org/News.aspx?newsID=11533&menuOpened=About%20MONUC>. The operational budget for MONUC from July 1, 2007 to June 30, 2008 was \$1,115.65 million. Democratic Republic of the Congo—MONUC—Facts and Figures, <http://www.un.org/Depts/dpko/missions/monuc/facts.html> [hereinafter MONUC—Facts and Figures]. MONUC has been operating in the DR Congo since 1999 with a comparable budget each year. *Id.* See also UN Mission in the Dem. Rep. of the Congo [MONUC], MONUC and the Elections: *DR 2006 Elections*, 1 (July 2006), <http://www.un.org/Depts/dpko/missions/monuc/elec.pdf> [hereinafter MONUC and the Elections] (detailing the MONUC cost to date and the budgetary breakdown). The United States funds 26.7% of all UN peacekeeping operations, and therefore has spent over \$2.4 billion to fund MONUC. *Id.*

12. *Infra* Part I.

13. *Infra* Part II.

14. *Infra* Part III.

15. *Infra* Parts II & III.

16. *Infra* Part IV.

II. THE U.S. MILITARY ASSISTANCE AND ARMS TRANSFER SCHEMA

The Congo Conflict is not a machete massacre.¹⁷ Millions of SA/LW units and conventional weaponry continue to wreak havoc within DR Congo's borders.¹⁸ The United States provided several forms of military assistance to the DR Congo before the Congo Conflict.¹⁹ Military assistance, given to DR Congo and other developing countries is governed by the Foreign Assistance Act (FAA).²⁰ Forms of military assistance include International Military Education and Training (IMET)²¹ and the provision of Excess Defense Articles (EDA).²²

Congress has codified parameters for the provision of IMET.²³ The President may provide IMET to military and related civilian personnel of friendly foreign countries.²⁴ IMET training and education is largely provided via foreign military members' attendance at U.S. operated military facilities.²⁵ Congress' ostensible purpose in providing IMET is to encourage beneficial relations and understanding between the United States and foreign countries, to further international peace and security,²⁶ to improve the ability of foreign countries to utilize their resources and become self-reliant,²⁷ and to increase recipient countries' awareness of human rights.²⁸ In 2002, Congress imposed a requirement that the Secretary of State track IMET participants' human rights records.²⁹

17. Although the major parties signed the Lusaka Accords in 2002, which were hailed as the end to the Congo Conflict, large scale battles continue to occur in Eastern DR Congo. *See, e.g.*, Press Release MONUC, Katanga: Armed Confrontations Between FARDC Troops in Kamina Brassage Centre (Feb. 19, 2008), <http://www.monuc.org/News.aspx?newsId=16721> (informing that armed confrontations occurred in Southeastern DRC). Ostensibly, the Goma Accords, signed in January 2008, were to bring a halt to continued conflict in Eastern DR Congo. BACKGROUND NOTE, *supra* note 9. Although the Goma Accord is arguably a means to "reestablish lasting peace and stability in the Great Lakes region," recent fighting in Eastern DR Congo indicates that the Goma accords are of limited significance. *Id.* *See also* *New Fighting Stops DR Congo Aid*, BBC NEWS, Apr. 25, 2008, available at <http://news.bbc.co.uk/2/hi/africa/7366477.stm> (discussing renewed conflict in eastern DR Congo after the Goma Accord took effect).

18. IRIN IN-DEPTH, GUNS OUT OF CONTROL: THE CONTINUING THREAT OF SMALL ARMS 19 (2006), <http://www.irinnews.org/pdf/in-depth/Small-Arms-IRIN-In-Depth.pdf>.

19. HUMAN RIGHTS WATCH WORLD REPORT 1998: DEMOCRATIC REPUBLIC OF CONGO, HUMAN RIGHTS DEVS., <http://www.hrw.org/worldreport/Africa-04.htm>.

20. 22 U.S.C.A. § 2151 (West 2008).

21. *Id.* § 2347.

22. *Id.* § 2321j.

23. *Id.* § 2347.

24. *Id.*

25. *Id.* § 2347(1)-(3).

26. *Id.* § 2347b(1).

27. *Id.* § 2347b(2).

28. *Id.* § 2347b(3).

29. *Id.* § 2347h(a).

Congress has also placed restrictions on presidential discretion in the provision of EDA.³⁰ The President may transfer EDA if such transfers are proposed to Congress in one of three ways.³¹ First, the President may justify the transfer in his or her annual congressional presentation documents for military assistance programs (Presidential Justifications).³² Second, he or she may show that the transfer falls under another permissible provision of the FAA.³³ Third, if the President did not justify the transfer in his or her annual Justifications, he or she may separately authorize it within the same calendar year of the desired transfer.³⁴ The President's Justifications must explain the purposes of the transfer, its value, and whether the transfer was on a grant or sale basis.³⁵

The President is limited to EDA transfers which are drawn from existing Department of Defense stocks,³⁶ and which do not require Department of Defense funds for shipping.³⁷ The President's Justifications must show that the transfer will not affect U.S. military preparedness,³⁸ that the foreign policy benefits of a sale as opposed to a grant have been weighed,³⁹ and that the sale will not adversely affect U.S. business interests.⁴⁰ The President is required to notify Congress thirty days in advance of a transfer in excess of \$7 million or of a designated defense article.⁴¹ Cumulative transfers may not exceed \$425 million annually.⁴²

EDA transfers or an IMET allotment made on grant basis for over \$3 million requires the President to find that the recipient country complies with the United Nations Charter and that the recipient will only use the defense articles for self-defense.⁴³ In addition to the Presidential Justifications, each year the Department of State submits Budget Justifications for

30. *Id.* § 2321j.

31. *Id.* § 2321j(a).

32. *Id.*

33. *Id.* Specifically, the President may show that the transfer is pursuant to Part VIII of Subchapter I of Chapter 32. *Id.*

34. *Id.*

35. *Id.* § 2321j(h).

36. *Id.* § 2321j(b)(1)(A).

37. *Id.* § 2321j(b)(1)(B).

38. *Id.* § 2321j(b)(1)(C).

39. *Id.* § 2321j(b)(1)(D).

40. *Id.* § 2321j(b)(1)(E).

41. *Id.* § 2321j(f)(1).

42. *Id.* § 2321j(g)(1).

43. *Id.* § 2314(b)(1)-(2).

the next fiscal year to fund EDA and IMET programs on a country-by-country, program-by-program basis.⁴⁴

Military assistance, however, is merely one piece in the large mosaic of arms transfers. In the private sphere, U.S. weapons manufacturers considerably outsell their competitors. Private sales to the DR Congo during the Cold War and afterwards were commonplace.⁴⁵ Private sales are governed by the Arms Export Control Act (AECA).⁴⁶ By Executive Order No. 11958,⁴⁷ the President delegated authority to enforce private arms sales regulations under the AECA to the Secretary of State.⁴⁸ The State Department issued the International Traffic in Arms Regulations (ITAR) to implement this authority.⁴⁹

Pursuant to the AECA, the President must provide Congress with a classified report of all sales eligible for approval during the calendar year greater than \$7 million.⁵⁰ Similar to FAA requirements, the President must provide additional information to Congress if so requested.⁵¹ Under the AECA, the President is required to notify Congress of any offer to sell more than \$25 million in defense goods or services to a foreign client.⁵² Congress may block the proposed sale by a joint resolution disapproving the sale, which is subject to a presidential veto.⁵³

The AECA further provides that defense articles and services on the President's United States Munitions List (Munitions List)⁵⁴ are subject to registration and licensing requirements.⁵⁵ The Munitions List has twenty-one categories, which range from items solely for military use to items that

44. *See generally* U.S. DEP'T OF STATE, CONGRESSIONAL BUDGET JUSTIFICATION FOR FOREIGN OPERATIONS (2007), <http://www.state.gov/s/d/rm/rls/cbj/> [hereinafter 2007 BUDGET JUSTIFICATIONS] (providing a program-by-program, region-by-region, and country-by-country breakdown of the proposed foreign operation budget for 2007).

45. *See* WILLIAM HARTUNG & BRIDGET MOIX, ARMS TRADE RES. CTR., DEADLY LEGACY: U.S. ARMS TO AFRICA AND THE CONGO WAR (2000), <http://www.worldpolicy.org/projects/arms/reports/congo.htm> (providing an analysis of U.S. involvement in DR Congo).

46. 22 U.S.C. § 2751 (West 2008).

47. Exec. Ord. No. 11,958, 42 Fed. Reg. 4,311 (Jan. 18, 1977), *reprinted as amended in* 22 U.S.C.A. § 2751 (2008), 1977 WL 201870.

48. *Id.*

49. *Id.*; *see* 22 C.F.R. pt. 129 (2007) (noting that the Directorate of Defense Trade Controls (DDTC) administers the ITAR).

50. 22 U.S.C.A. § 2765(a)-(c).

51. *Id.* § 2776(b)(1)(A)-(P).

52. *Id.*

53. *See* Harold Hongju Koh, *Why the President (Almost) Always Wins in Foreign Affairs: Lessons of the Iran Contra Affair*, 97 YALE L.J. 1255, 1266 (1988) (detailing flaws in the foreign policy decision making process and chronicling the ascendancy of the executive branch in the area).

54. 22 U.S.C.A. § 2778(a).

55. *Id.* § 2778(b).

have civil application.⁵⁶ The AECA targets private individuals engaged in the manufacture, export, import, or the brokering of items on the Munitions List.⁵⁷ Individuals who willfully violate the AECA may be subject to criminal penalties.⁵⁸ The AECA and ITAR do not apply extraterritorially.⁵⁹

Despite substantial regulation, criticism has been levied at the State Department's export licensing procedures, which often involve lost applications, inconsistent licensing decisions, and processing delays.⁶⁰ The U.S. system of dual jurisdiction between the State Department and the Commerce Department has likewise been ridiculed.⁶¹

Although arms assistance and SA/LW sales and transfers are highly regulated, loopholes exist. The Department of Defense engages in largely unmonitored Joint Combined Exchange Training (JCET).⁶² The JCET programs are similar to IMET in that military personnel from other countries participate in military training.⁶³ The JCET programs do not, however, have the same level of congressional oversight as IMET programs, nor do they require similar Presidential Justifications.⁶⁴ JCET programs have recently come under considerable scrutiny.⁶⁵ In 1999, a General Accounting Office Report to Congress found that the Department of Defense had not accurately accounted for the number of JCET programs or their costs.⁶⁶ To

56. 22 C.F.R. § 121.1 (2007).

57. 22 U.S.C.A. § 2778(b)(1)(A)(1).

58. *Id.* § 2778(c).

59. *See, e.g.*, United States v. Yakou, 428 F.3d 241, 252-54 (D.C. Cir. 2005) (finding that it was Congress' intent in promulgating the AECA that it would only apply to U.S. persons even though foreign brokers outside of the United States could be involved in activities affecting the United States).

60. *See generally* U.S. GEN. ACCOUNTING OFFICE, EXPORT CONTROLS: REENGINEERING BUSINESS PROCESSES CAN IMPROVE EFFICIENCY OF STATE DEPARTMENT LICENSE REVIEWS 6-11 (Dec. 31, 2001) (highlighting the overly burdensome nature of the State Department's export licensing procedures).

61. U.S. GEN. ACCOUNTING OFFICE, REP. NO. GAO-02-120, EXPORT CONTROLS: CLARIFICATION OF JURISDICTION FOR MISSILE TECHNOLOGY ITEMS NEEDED 7-11 (Oct. 9, 2001).

62. 10 U.S.C. § 2011 (2000).

63. *See, e.g., id.* § 2011(a) (discussing the authority to pay training expenses with friendly foreign forces).

64. *Compare id.* § 2011 (requiring the Secretary of Defense to submit a report to Congress specifying the recipient countries, training and benefits flowing from the provision of JCET funding for each fiscal year) with 22 U.S.C.A. § 2347 (West 2008). Congress clearly indicated which type of programs it prefers the President to fund, placed limitations to which countries' assistance may be provided, required the Secretary of Defense to submit human rights reports regarding recipient countries, and required Presidential Justifications. *Id.*

65. *See generally* U.S. GEN. ACCOUNTING OFFICE, MILITARY TRAINING: MANAGEMENT AND OVERSIGHT OF JOINT COMBINED EXCHANGE TRAINING 7, 32-40 (1999), available at <http://www.gao.gov/archive/1999/ns99173.pdf> (finding that the Department of Defense has not made accurate reports to Congress regarding JCET operations).

66. International Military Training Transparency and Accountability Act, H.R. 1063, 106th Cong. (1999).

correct the problem the International Military Training Transparency and Accountability Act (Transparency and Accountability Act) was introduced the same year.⁶⁷ The Transparency and Accountability Act would essentially close the JCET loophole and prohibit all forms of military training and services to countries that are ineligible for IMET.⁶⁸ The Transparency and Accountability Act was referred to the House International Relations Committee where it has languished for almost eight years.⁶⁹

Where Congress took action, for example, on sales to sub-Saharan African countries, oversight has been lax.⁷⁰ Sales to countries who participated in the Congo Conflict may be viewed in light of 22 U.S.C. § 2773.⁷¹ Section 2773 states Congress' preference against selling military articles and defense services to Sub-Saharan Africa.⁷² Section 2773 does not bind the President; rather it puts him or her on notice that Congress may bind him or her at a later date if he or she does not act consistently with Congress' preferences.⁷³ Despite Congress' preference against arms transfers to Sub-Saharan Africa, U.S. manufactured arms continued to pour across borders throughout the Congo Conflict, as well as the civil wars in Liberia, Angola, and Sierra Leone.⁷⁴ The abundance of U.S. manufactured and supplied arms in conflict zones was largely the result of applicants indicating the arms were for end-user sales, which would pass muster under ITAR.⁷⁵ These applicants later sold the articles to countries or groups under embargos.⁷⁶ In 1996, Congress recognized the difficulties presented by end-user

67. *Id.*

68. *Id.*

69. See THOMAS Home, The Library of Congress, H.R. 1063, <http://thomas.loc.gov/cgi-bin/bdquery/z?d106:HR01063:@@C> (indicating the latest action for H.R. 1063).

70. 22 U.S.C.A § 2773 (West 2008). Section 2773 provides:

It is the sense of the Congress that the problems of Sub-Saharan Africa are primarily those of economic development and that United States policy should assist in limiting the development of costly military conflict in that region. Therefore, the President shall exercise restraint in selling defense articles and defense services, and in providing financing for sales of defense articles and defense services, to countries in Sub-Saharan Africa.

Id.

71. *Id.*

72. *Id.*

73. Kevin Sheehan, *Executive-Legislative Relations and the U.S. Arms Export Control Regime in the Post-Cold War Era*, 33 COLUM. J. TRANSNAT'L L. 179, 189-90 (1995).

74. HARTUNG & MOIX, *supra* note 45. See BUREAU OF INTELLIGENCE AND RESEARCH, U.S. DEP'T OF STATE, ARMS AND CONFLICT IN AFRICA (July 1, 2001), <http://www.state.gov/s/inr/rls/fs/2001/4004.htm> (indicating that weapons continued to pour into Sub-Saharan Africa despite arms embargos).

75. *End Users Worry Arms Critics*, THE WASHINGTON TIMES, Nov. 30, 2003, <http://washingtontimes.com/news/2003/nov/29/20031129-115544-1905r/>.

76. *Id.*

sales to parties under an embargo by amending Section 2785 of the AECA.⁷⁷ The amendment requires the Department of Defense to monitor end-user sales with the objective of providing “reasonable assurances that . . . the recipient is complying with the requirements imposed . . . with respect to the use, transfers, and security of defense articles and defense services.”⁷⁸ The end-use monitoring program has been deemed critical for maintaining physical accountability and security for weapons.⁷⁹ The program, however, has had only limited success, as sales are still permitted to end-users in developing countries that abut conflict zones.⁸⁰

Other attempts for reform have similarly been unsuccessful. In 1999, the McKinney-Rohrabacher Code of Conduct on Arms Transfers (Code of Conduct) was introduced.⁸¹ Essentially, the Code of Conduct *requires* presidential certification to Congress that the recipient country of U.S. military assistance and arms transfers is democratic, respects human rights, is not engaged in acts of armed aggression, and fully participates in the UN register of conventional arms.⁸² Like the Transparency and Accountability Act, the Code of Conduct died quietly and has awaited an Executive Comment since 1999.⁸³

An example of the present inconsistencies in U.S. policy regarding military assistance and arms transfers are the Cameroon provisions. In 2006, the United States provided \$236,000 in foreign military assistance to Cameroon.⁸⁴ In the 2007 Budget Justifications,⁸⁵ the State Department acknowledged that Cameroon’s “democratic institutions are weak, corruption remains a real problem, and human rights abuses by Cameroon’s police and gendarmes forces are a concern.”⁸⁶ According to the 2007 Budget Justifications, IMET funds were to be used “for professional military development courses stressing resource management, [and] civilian-military relations.”⁸⁷ The 2007 Budget Justifications also highlight Cameroon’s

77. Defense and Security Assistance Amendments of 1996, Pub. L. No. 104-164, § 40A, 110 Stat 1421, 1436-37.

78. *Id.*

79. 2007 BUDGET JUSTIFICATIONS, *supra* note 44, at 227.

80. *DR Congo Arms Embargo ‘Failing,’* BBC NEWS, Oct. 16, 2006, <http://news.bbc.co.uk/2/hi/africa/6055864.stm>.

81. Code of Conduct on Arms Transfers Act of 1999, H.R. 2269, 106th Cong. (1999).

82. *Id.* § 3(a).

83. See THOMAS Home, The Library of Congress, H.R. 2269, <http://thomas.loc.gov/cgi-bin/bdquery/z?d106:HR02269:@@X> (noting the actions for H.R. 2269).

84. 2007 BUDGET JUSTIFICATIONS, *supra* note 44, at 263. This amount is a decrease from the FY 2004, where \$361,000 was spent on IMET to Cameroon. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

eligibility to receive EDA on a grant basis pursuant Section 516 of the FAA.⁸⁸ The 2007 Budget Justifications state that the material would be used by the government of Cameroon for internal security, counter-narcotic activities, peacekeeping deployments, and military modernization efforts.⁸⁹

The Human Rights Country Report for Cameroon, also published by the State Department, highlights several human rights violations.⁹⁰ Violations by Cameroon's security forces include "numerous unlawful killings by security forces[,] regular torture, beatings, and other abuses of persons . . . by security forces[,] impunity among the security forces[,] severe limits on citizens' ability to change their government[,] restrictions on freedoms of speech, press, assembly, and association."⁹¹ Yet the 2007 Budget Justifications noted that "Cameroon is a stable country in which the government has been effective in managing ethnic and linguistic diversity."⁹² A possible explanation for the inconsistencies between the Country Report and the Budget Justifications is a possible bureaucratic wall within the State Department.⁹³

The present loopholes and proscribed nature of the FAA and AECA and implementing procedures promulgated by the State Department reflect the need to correct problems arising from the provision of military assistance and unregulated arms sales to developing countries. Examining the disastrous effect that the combination of weapons sales, military assistance, cold war tensions, and corrupt politics had in DR Congo, evidences a compelling need for further revision of the FAA and AECA.

III. CASE ON POINT: THE DEMOCRATIC REPUBLIC OF CONGO

They were no colonists; their administration was merely a squeeze, and nothing more, I suspect. They were conquerors, and for that you want only brute force—nothing to boast of, when you have it, since your strength is just an accident arising from the weaknesses

88. *Id.*

89. *Id.*

90. U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES: CAMEROON (2006), <http://www.state.gov/g/drl/rls/hrrpt/2005/61558.htm>.

91. *Id.*

92. 2007 BUDGET JUSTIFICATIONS, *supra* note 44, at 263.

93. This is a problem that human rights groups have tried to address. Human Rights Watch highlighted the inconsistencies in the State Department's Country Report on the Philippines and the 2001-2002 State Department estimate on military aid to be provided to the Philippines. The Country Report listed numerous and serious human rights violations while the budget estimate listed 30,000 M16 rifles which were to be provided to the Philippine government. HUMAN RIGHTS WATCH, SMALL ARMS AND HUMAN RIGHTS: THE NEED FOR GLOBAL ACTION (2003), <http://hrw.org/background/arms/small-arms-070703-03.htm>.

of others. They grabbed what they could get for the sake of what was to be got. It was just robbery with violence, aggravated murder on a great scale, and men going at it blind—as is very proper for those who tackle darkness.⁹⁴

The scramble for Africa began with King Leopold's fabulous piece of cake: the Belgian Congo. In the 125 years since its boundaries were artificially demarcated, DR Congo has experienced independence, two coups de état, several civil wars, assassinations, and the despoliation of its resources.⁹⁵ The scramble for DR Congo continues largely unabated.⁹⁶ Since the assassination of Patrice Lumumba in 1960 the United States has played an integral role in the development of DR Congo.⁹⁷ The United States provided military assistance to Mobutu throughout his tenure as one of Africa's most infamous dictators.⁹⁸ Foreign aid flowed freely into DR Congo despite brutal repression, failed and corrupt parastatals, and downright banditry amongst the upper echelons of government.⁹⁹ It took the disintegration of the Soviet Union and the contemporaneous thawing of the Cold War for foreign aid to the DR Congo to significantly diminish.¹⁰⁰ Unable to hold the reins of government without large U.S. aid packages, Mobutu was overthrown in 1996.¹⁰¹ Mobutu's ousting came at a high price: over six years of conflict and more than five million deaths.¹⁰²

A. THE DR CONGO BEFORE MAJOR WESTERN INVOLVEMENT

The U.S. subsidized influx of weapons was nothing novel to DR Congo. Henry Morton Stanley, explorer extraordinaire to DR Congo, brought with him a powerful private army equipped with a thousand rapid

94. JOSEPH CONRAD, *THE HEART OF DARKNESS AND SELECTED SHORT FICTION* 50 (Barnes & Noble Classics 2003) (1902).

95. DR Congo had its first democratic election in July 2006. *Observers Praise DR Congo's Poll*, BBC NEWS, Oct. 31, 2006, <http://news.bbc.co.uk/2/hi/africa/6101538.stm>. A run-off vote for president went relatively smoothly on October 30, 2006. *Id.* A U.S. observer stated that the poll was "light years ahead of anything" the DR Congo had previously seen. *Id.*

96. *UN Troops 'Armed DR Congo Rebels'*, BBC NEWS, Apr. 28, 2008, <http://news.bbc.co.uk/2/hi/africa/7365283.stm>.

97. HARTUNG & MOIX, *supra* note 45.

98. *Id.*

99. *Id.*

100. *Id.*

101. Jim Bitterman, *Zaire's Absent, Ailing Leader Says He's Ready to Fight Back*, CNN, Nov. 20, 1996, <http://www.cnn.com/WORLD/9611/20/zaire.mobutu/index.html>.

102. BENJAMIN COGHLAN ET AL., *INT'L RESCUE COMM., MORTALITY IN THE DEMOCRATIC REPUBLIC OF CONGO: AN ONGOING CRISIS* ii (2007), http://www.theirc.org/resources/2007/2006-7_congomortalitysurvey.pdf.

fire rifles, a dozen small Krupp canons, and four machine guns.¹⁰³ Morton Stanley's armament was only a precursor to DR Congo's colonial era, which was epitomized by the conscription of Congolese into the labor-intensive rubber and ivory export industries. The Belgian experience in DR Congo stands apart from other European countries' experiences in Africa due to its brutality and complete control over the indigenous population.¹⁰⁴ From 1878 to 1960, DR Congo's colonial period, all government entities were in strictly Belgian hands.¹⁰⁵ The transition of DR Congo from a Belgian colony to an independent country was abrupt and chaotic. In January 1960, Congolese political leaders and the Belgian government agreed upon a date for independence a mere six months later: June 30, 1960.¹⁰⁶ Two political parties vied for power during the run-up to the official transition date: the Association des Bakongo (ABAKO), an ethnic political party supporting the unification of the Bakongo people lead by Joseph Kasa-Vubu (Kasa-Vubu); and the Congolese National Movement (MNC), a nationalist party lead by Patrice Lumumba (Lumumba).¹⁰⁷

To effectively form a government, the two parties agreed to share power, with Kasa-Vubu as President and Lumumba as Prime Minister.¹⁰⁸ Kasa-Vubu was a moderate and was generally conciliatory towards Belgium.¹⁰⁹ Lumumba's feelings toward the former colonial power were made clear during a dinner celebrating DR Congo's independence on June 30, 1960.¹¹⁰ At the dinner, Belgium's King Baudouin remarked that "[t]he independence of the Congo . . . constitutes the culmination of the work conceived by the genius of King Leopold II."¹¹¹ In response, Lumumba frantically scribbled notes in preparation for his speech. He replied to King Baudouin:

We have seen our lands despoiled under the terms of what was supposedly the law of the land but which only recognized the right of the strongest. . . . We have seen the terrible suffering of those

103. ADAM HOCHSCHILD, *KING LEOPOLD'S GHOST: A STORY OF GREED, TERROR, AND HEROISM IN COLONIAL AFRICA* 84 (Houghton Mifflin 1998).

104. *Id.* at 158.

105. MARTIN MEREDITH, *THE FATE OF AFRICA: FROM THE HOPES OF FREEDOM TO THE HEART OF DESPAIR* 93-94 (2005). In 1878 King Leopold enlisted Henry Morton Stanley to carve out territory for him along the Congo River. *Id.* at 94-95. After King Leopold was forced to turn the territory over to the government of Belgium the military officers were strictly Belgian. *Id.* at 96.

106. *Id.* at 100.

107. *Id.* at 98.

108. *Id.* at 102.

109. *Id.* at 101.

110. *Id.* at 93.

111. *Id.*

banished to remote regions because of their political opinions or religious beliefs, exiled within their own country, their fate truly worse than death itself. . . . And finally, who can forget the volleys of gunfire in which so many of our brothers perished, the cells where the authorities threw those who would not submit to a rule where justice meant oppression and exploitation.¹¹²

Days after independence, the army, still under the heel of Belgian military commanders, rebelled against the nascent government.¹¹³ Belgium quickly offered to restore order.¹¹⁴ Lumumba flatly rejected Belgium's offer but was unable to quell the rebellion.¹¹⁵ The crisis further escalated when Katangan leader Moïse Tshombe (Tshombe), prompted by Belgian mining interests and the Belgian government, withdrew the Katanga province from DR Congo.¹¹⁶ Belgium, fearing for the viability of its former colony, unilaterally sent in its forces to restore order.¹¹⁷ Lumumba declared Belgium's deployment an act of war.¹¹⁸

Lumumba turned to the United Nations to bring the Katanga province back into DR Congo and restore order.¹¹⁹ When the United Nations did not satisfy Lumumba's requests, he asked the Soviet Union for logistical assistance.¹²⁰ As a result of Lumumba's request to the Soviet Union, DR Congo became embroiled in the Cold War.¹²¹

Reacting to Lumumba's bold moves, Belgium urged Kasa-Vubu to dismiss Lumumba.¹²² Kasa-Vubu was receptive to Belgian interests and dismissed Lumumba on September 5, 1960.¹²³ In response, Lumumba

112. *Id.* at 94.

113. *Id.* at 102.

114. *Id.* at 103.

115. *Id.*

116. *The Heart of Darkness*, TIME, Dec. 22, 1961, <http://www.time.com/time/magazine/article/0,9171,827134,00.html> [hereinafter *The Heart of Darkness*]. Katanga is a region in South East Congo which is of strategic importance due to its vast mineral wealth. *Scramble for DR Congo's Mineral Wealth*, BBC NEWS, Apr. 17, 2006, <http://news.bbc.co.uk/2/hi/africa/4900734.stm>.

117. *The Heart of Darkness*, *supra* note 116.

118. *The Bear's Teeth*, TIME, Feb. 24, 1961, <http://www.time.com/time/magazine/article/0,9171,828769,00.html>.

119. TYRONE SAVAGE, *The Democratic Republic of the Congo: Inchoate Transition, Interlocking Conflicts*, in THROUGH FIRE WITH WATER 139 (Eric Doxtader & Charles Villavicencio eds., Africa World Press 2003).

120. *Id.* at 140.

121. *Id.* Lumumba's invitation to the Soviet Union was seen as a decisive moment. *Id.* At the time U.S. foreign policy centered on the so-called "Domino Theory," where if one country fell to communism others would also in quick succession. *Id.*

122. *Id.*

123. *Id.* at 141.

dismissed Kasa-Vubu.¹²⁴ The result was a constitutional impasse that paved the way for Mobutu. On September 14, 1960 Mobutu announced that the army, with the help of the caretaker government, would henceforth rule the country.¹²⁵ Subsequently, Mobutu worked out a deal with Kasa-Vubu, wherein Mobutu would cede the country back to Kasa-Vubu in exchange for a larger role in government.¹²⁶ The United Nations recognized the deal as legitimate.¹²⁷ Lumumba was consigned to be a prisoner in his own home, defrocked of his title of Prime Minister, and in fear for his life.¹²⁸

The Katangan succession, Belgian involvement, and the invitation by Lumumba to the Soviet Union, provoked the United States to enter the fray. The Congo Crisis was the first time the United States became significantly involved in African affairs.¹²⁹ The U.S. involvement in the Congo Crisis included racist senators, air-force support for UN Blue Helmets, and citizens who formed the Committee for Aid to Katanga Freedom Fighters.¹³⁰

The combination of Cold War tensions, internal disagreement between ABAKO and the MNC, and foreign interests in DR Congo, all lead to Lumumba's downfall. Unfortunately, Lumumba did not heed the ominous signs. On or about January 17, 1961, Lumumba was murdered with the complicity of Mobutu, the government of Belgium, and perhaps the United States.¹³¹ He was captured as he tried to escape from house arrest in the former governor's mansion.¹³² He was flown to Katanga and executed by a firing squad.¹³³ It took forty-one years for Belgium to acknowledge its complicity in his murder.¹³⁴ The United States has yet to formally do so.

124. *Id.*

125. *Id.*

126. *Id.* at 140-41.

127. See BACKGROUND NOTE, *supra* note 9 (stating that a peacekeeping force of the UN was used to restore order).

128. SAVAGE, *supra* note 119, at 141.

129. IMMANUEL WALLERSTEIN, *AFRICA: THE POLITICS OF INDEPENDENCE AND UNITY* 245-46 (2005).

130. *The Heart of Darkness*, *supra* note 116.

131. SAVAGE, *supra* note 119, at 142. We will probably never know the exact date of his murder. See *Lumumba Apology: Congo's Mixed Feelings*, BBC NEWS, Feb. 6, 2002, <http://news.bbc.co.uk/2/hi/africa/1805546.stm> (reporting the Congolese response to Belgium's apology for their responsibility in Lumumba's death); Madeleine Kalb, *The C.I.A. and Lumumba*, N.Y. TIMES, Aug. 2, 1981, at 32 (exploring the role of the CIA in DR Congo and specifically the death of Lumumba).

132. SAVAGE, *supra* note 119, at 141.

133. *Id.*

134. *Id.*

B. HISTORY OF U.S. MILITARY ASSISTANCE AND ARMS SALES TO DR CONGO

After Lumumba's death, Kasa-Vubu had a tenuous hold on the reins of government. The Katangan secessionists still presented a problem to effective governance. In July 1964, Kasa-Vubu brought the Katangan secessionist leader, Tshombe out of retirement.¹³⁵ Tshombe's appointment as Prime Minister in a coalition government was Kasa-Vubu's final attempt to stave off his government's implosion.¹³⁶ Lumumba's supporters, known as Muleists, viewed this as an attack on their political ideology and revolted with the goal of seizing power in Kinshasa.¹³⁷

Western powers came to the aid of Kasa-Vubu, who they viewed as their pro-Western ally. The United States provided logistical support for a ragtag group of government forces, foreign mercenaries, and Belgian paratroopers.¹³⁸ The support helped suppress the Muleists and pushed them back to a contained area in Eastern DR Congo.¹³⁹ As a result, DR Congo was left with an unpopular, unelected government propped up not by the will of its people, but by the grace of foreign powers.¹⁴⁰

Tshombe quickly became dissatisfied with his role as Prime Minister and sought to enlarge his power.¹⁴¹ Kasa-Vubu preferred to retain as much power for himself as possible, and accordingly, dismissed Tshombe.¹⁴² This constitutional impasse had been played out before. The result was the same: On November 25, 1965, two years after the United States began providing aid to the Congolese military,¹⁴³ Mobutu seized power.¹⁴⁴ This time he took the reins with no intention of giving them up.

135. *Id.* at 140.

136. *Id.* at 143.

137. *Id.* at 119; *Lumumba Apology*, *supra* note 131. The insurrectionists were called Muleists and were based out of Lumumba's home district around Kisangani (then Stanleyville). *Id.*

138. Daniel Bergner, *The Other Army*, N.Y. TIMES, Aug. 14, 2005, at 29. Congo's troops were a mix of Katangan gendarmes, European mercenaries, and the remnants of the untrained Congolese army. *Id.* Despite the prohibition on the use of mercenaries by the Geneva Convention in 1949, they have routinely played a role in African conflicts. *Id.*

139. Ernesto "Che" Guevara worked with the East Congolese rebels briefly in their fight against the Kinshasa government led by Kasa-Vubu. MEREDITH, *supra* note 105, at 149.

140. PAUL NUGENT, AFRICA SINCE INDEPENDENCE 88-89 (2004).

141. *Id.* at 89.

142. *Id.*

143. See The Nat'l Archives, U.S. National Archives Report on FAA, <http://aad.archives.gov/aad/fielded-search.jsp?dt=822&cat=SB137&tf=F&bc=sb,sl>; (follow country code CX for list of documents regarding military assistance from the United States to the Congo) (detailing the weapons assistance and military training assistance the United States provided to the Congolese military in 1965).

144. MEREDITH, *supra* note 105, at 115.

Mobutu's rise to power was inextricably linked to U.S. support. United States military assistance to DR Congo began in 1963, less than two years after Lumumba was assassinated and while the country was in a power dispute.¹⁴⁵ All assistance went straight to DR Congo's military.¹⁴⁶ Since Mobutu was the commander-in-chief of the military forces, the United States provided aid to the branch of the Congolese government that had already seized power from those democratically elected.

United States military assistance to DR Congo initially was in grant form.¹⁴⁷ The policy of American administrations, however, soon shifted to a preference for arms sales.¹⁴⁸ In 1973 the Senate Foreign Relations Committee called on the State Department to "get . . . arms sales business back to free enterprise where they belong."¹⁴⁹ Thus, while military assistance grants to DR Congo (and other developing countries) stagnated between the late 1960s and 1970s, arms sales rose from approximately \$100 million in 1966 to \$3.5 billion in 1978.¹⁵⁰ However, the focus on weapons sales was short-lived. By the 1980s, few recipient developing countries, including DR Congo, could afford to pay for the weaponry due to massive indebtedness.¹⁵¹ Within twenty years, arms transfers had come full circle back to military assistance grants.¹⁵²

Arms transfers to Sub-Saharan Africa during this period reflected worldwide trends. In 1974 military assistance to Sub-Saharan Africa was at a low of \$40 million.¹⁵³ This figure dramatically increased during the Second Cold War, from 1982 to 1985.¹⁵⁴ During the Second Cold War, more than \$310 million in military aid were given to developing countries.¹⁵⁵ Further, U.S. policy was to encourage Western suppliers to provide arms through sales on favorable terms.¹⁵⁶ Thus, while the United States

145. The Nat'l Archives, *supra* note 143.

146. *Id.*

147. R.D. MCKINLAY & A. MUGHAN, *AID AND ARMS TO THE THIRD WORLD: AN ANALYSIS OF THE DISTRIBUTION AND IMPACT OF U.S. OFFICIAL TRANSFERS* 59 (St. Martin's Press 1984).

148. *Id.*

149. *Id.*

150. *Id.* at 60.

151. *Id.*

152. *Id.*

153. *Id.*

154. See generally Rune Skarstein, *Cold War: An Aberration or the Normality of Contemporary International Politics?*, 22 J. PEACE RES. 175, 177-80 (1985) (classifying the amount of U.S. aid to developing countries during periods of Détente as an anomaly during the Cold War). The Second Cold War lasted from 1982 to 1985. *Id.*

155. The Nat'l Archives, *supra* note 143.

156. DEMILITARIZING THE MIND: AFRICAN AGENDAS FOR PEACE AND SECURITY 92 (Alex de Waal, ed., Africa World Press 2002).

provided a significant amount of assistance over a period of a mere three years, it was only one player amongst many transferring arms to DR Congo.¹⁵⁷

Throughout his tenure as Africa's most notorious dictator, the United States provided Mobutu with more than \$300 million in weapons and \$100 million in military training.¹⁵⁸ It is also possible that the United States covertly transferred arms via clandestine Central Intelligence Agency operations in DR Congo.¹⁵⁹ Throughout this period the DR Congo received the most U.S. foreign aid out of all Sub-Saharan African countries, such aid outliving several U.S. administrations.¹⁶⁰ The United States viewed Mobutu as an ally in the Cold War and thus turned a blind eye to his pilfering of the economy and other character flaws.¹⁶¹

For more than thirty years Mobutu ruled DR Congo.¹⁶² "Mobutu's rule was based on bonds of personal loyalty between himself and his cohorts."¹⁶³ Throughout Mobutu's reign, a once poor uneducated boy from the backwaters somehow netted \$6 billion.¹⁶⁴ Each time Mobutu's power was seriously threatened, Western countries came to his aid.¹⁶⁵ President George H. W. Bush at one time went so far as to extol Mobutu as "one of our most valued friends."¹⁶⁶ When justifying the transfer of EDA to DR Congo, he declared "that the furnishing, sale and/or lease of defense articles and services to the Government of Congo will strengthen the security of the United States and promote world peace."¹⁶⁷ Such support enabled Mobutu to oppress political opponents and thus hampered the development of democracy and the rule of law within DR Congo.

157. *Timeline: Democratic Republic of Congo*, BBC NEWS, Apr. 30, 2008, http://news.bbc.co.uk/2/hi/africa/country_profiles/1072684.stm.

158. The Nat'l Archives, *supra* note 143.

159. *Id.*

160. GEORGE B.N. AYITTEY, *AFRICA UNCHAINED: THE BLUEPRINT FOR AFRICA'S FUTURE* 213 (2005).

161. MCKINLAY & MUGHAN, *supra* note 147, at 59.

162. *See generally* *Timeline: Democratic Republic of Congo*, *supra* note 157 (detailing significant events leading up to and major developments in the Congo Crisis).

163. SAVAGE, *supra* note 119, at 141.

164. Alan Cowell, *Mobutu's Zaire: Magic and Decay*, N.Y. TIMES, Apr. 5, 1992, at 31. Compare with \$110, the amount an average Congolese earns per year. *See* The World Bank Group, <http://ddp-ext.worldbank.org/ext/DDPQQ/report.do?method=showReport> (providing statistics on DR Congo's economic profile). It would take 54,545,455 years for one of Mobutu's former citizens to earn as much as he had amassed. Mobutu was not ashamed of his pilfering: he proudly admitted on a CBS program in 1984 that he was the second richest man in the world. AYITTEY, *supra* note 160, at 213.

165. *Timeline: Democratic Republic of Congo*, *supra* note 157. For example, in 1977, France and Belgium aided him in thwarting an attack by rebels based out of Angola. *Id.*

166. HOCHSHILD, *supra* note 103, at 303.

167. Presidential Determination No. 91-49, 56 Fed. Reg. 46,977 (Aug. 24, 1991).

C. TIMES CHANGE

Due to its mineral wealth, size, and location, DR Congo was able to use Cold War tensions to secure aid from the West.¹⁶⁸ At the end of the Cold War, as the amount of U.S. military assistance decreased, Mobutu's grip on power in the DR Congo ebbed.¹⁶⁹ After the end of the Cold War, the United States grew tired of propping up a dictator and kleptocrat.¹⁷⁰ The United States presented Mobutu with an ultimatum: either allow for multi-party politics, or be prepared to face an existence devoid of U.S. aid.¹⁷¹ Feeling the tightening of the purse strings, Mobutu allowed other parties to form and appointed a transition government in 1990.¹⁷² Within days of allowing political pluralism, over 400 political parties sprang up.¹⁷³

Mobutu quickly saw that he had little political support. He retracted his authorization of political pluralism, declared political parties illegal and prohibited them from assembling.¹⁷⁴ Shortly thereafter, approximately seventy-five students were killed protesting Mobutu's latest about-face.¹⁷⁵ Mobutu remained imperturbable and refused to open an internal inquiry into the matter.¹⁷⁶ As a result, countries that were once Mobutu's biggest donors turned to publicly criticize him.¹⁷⁷

During the impasse Mobutu forgot to pay the soldiers, and in 1991 they rebelled in Kinshasa.¹⁷⁸ The rebellion forced Mobutu to agree to a coalition government with opposition leaders, the Sovereign National Conference (SNC), which was intended to serve as a transitional government.¹⁷⁹ The SNC gave itself a legislative mandate and elected Etienne Tshisekedi as Prime Minister.¹⁸⁰ Sharing power, however, was not an acceptable outcome

168. SAVAGE, *supra* note 119, at 141.

169. HARTUNG & MOIX, *supra* note 45. Although U.S. military assistance and arms sales decreased after the end of the Cold War, they did not cease. *Id.* From 1989-1998 foreign military sales to DR Congo totaled approximately \$15,151,000. *Id.* Commercial sales amounted to approximately \$218,000. *Id.* The United States also provided IMET during this period in the amount of \$1,229,000. *Id.*

170. The noun kleptocrat is derived from "kleptocracy" which is defined as a "government characterized by rampant greed and corruption." AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed. 2003), available at <http://www.bartleby.com/61/38/k0083800.html>.

171. MEREDITH, *supra* note 105, at 393.

172. *Time Line of the Democratic Republic of the Congo*, *supra* note 157.

173. SAVAGE, *supra* note 119, at 143.

174. *Id.*

175. *Id.*

176. *Id.*

177. MEREDITH, *supra* note 105, at 393.

178. *Id.* at 391.

179. *Id.*

180. *Id.*

for Mobutu. In response Mobutu created his own government.¹⁸¹ The year-long stalemate between the SNC/Tshisekedi and Mobutu ended with an agreement to merge the two factions and hold an election within two years.¹⁸² The election did not occur. Mobutu subverted a transition to democracy by using his control over the armed forces to obstruct SNC government functions, intimidate opposition leaders, promote anarchy and chaos, and incite violence.¹⁸³

The death knell for Mobutu did not come from internal troubles; instead it was the result of the instability of a neighbor, Rwanda. In 1994 the majority Hutu population systematically exterminated the minority Tutsi population.¹⁸⁴ At the end of the genocide over 800,000 Tutsis and their Hutu sympathizers lay dead throughout Rwanda.¹⁸⁵ Hutu militias, known as the *Interahamwe*,¹⁸⁶ had fled to massive refugee camps in Eastern DR Congo after the Tutsis took control of the Rwandan government.¹⁸⁷ The *Interahamwe* used Eastern DR Congo as a base for attacks against their perceived enemies in Rwanda.¹⁸⁸ The newly installed Tutsi government in Rwanda, headed by President Paul Kagame, soon tired of constantly combating the *Interahamwe*.¹⁸⁹ President Kagame, upset that Mobutu would not oust the rebels from Eastern DR Congo, joined forces with Uganda's President, Yoweri Museveni.¹⁹⁰ President Museveni saw the strategic benefit of having a self-installed ally in the DR Congo.¹⁹¹ On October 8, 1996, Congolese rebel, Rwandan, and Ugandan forces attacked.¹⁹² They were headed by a Congolese face, Laurent Kabila, and shared a common goal: the ouster of Mobutu.¹⁹³

181. *Id.* at 392.

182. *Time Line of the Democratic Republic of the Congo*, *supra* note 157.

183. SAVAGE, *supra* note 119, at 142.

184. See PHILIP GOUREVITCH, WE WISH TO INFORM YOU THAT TOMORROW WE WILL BE KILLED WITH OUR FAMILIES 6 (1998) (“[E]veryone in the country’s Hutu majority group was called upon to murder everyone in the Tutsi minority.”).

185. *Id.*

186. Translated from Kinrwanza, in an interview with Rwandan refugees in Kenya, *Interahamwe* means those who attack together.

187. GOUREVITCH, *supra* note 184, at 269-72. Ironically, the international community spent more on aid for the Hutu *genocidiers* than on their Tutsi victims. *Id.*

188. *Id.*

189. MEREDITH, *supra* note 105, at 530-31.

190. *Id.* at 531.

191. *Id.*

192. *Id.*

193. *Id.* at 531-32.

D. THE FALL OF MOBUTU AND THE MILITARIZATION OF DR CONGO

Mobutu, weakened by a drop in U.S. funding, could not suppress the invading forces and fled after a year of warfare and failed peace talks.¹⁹⁴ Kabila swiftly moved into Kinshasa and consolidated power.¹⁹⁵ The United States quickly thereafter offered military support to the new government.¹⁹⁶

The change in government did not lend stability to DR Congo. Laurent Kabila soon tired of his Rwandan and Ugandan benefactors and attempted to sever relations.¹⁹⁷ Rwanda and Uganda reacted by reinvading DR Congo.¹⁹⁸ Kabila, unable to rebuff their forces alone, called upon a different set of neighbors for assistance: Angola, Zimbabwe, and Namibia.¹⁹⁹ By 2000, Rwanda and Uganda occupied the Eastern half of the country while Angola, Zimbabwe, and Namibia ruled the Western half.²⁰⁰ The result was one of the deadliest wars in African history.²⁰¹

The states that *de facto* partitioned DR Congo were also beneficiaries of arms transfers.²⁰² From 1989 to 1998, commercial arms sales to Angola were \$31,000; Namibia \$4,245,000; Rwanda \$324,000; Uganda \$11,420,000; Zimbabwe \$1,395,000.²⁰³ Furthermore, all of the foreign troops had received training via IMET funds.²⁰⁴ Angola's IMET value during this period was \$177,000; Namibia \$1,589,000; Rwanda \$1,425,000; Uganda \$3,856,000; and Zimbabwe \$2,661,000.²⁰⁵ Although foreign involvement in the Congo Conflict was extensive, indigenous factions (rebels) formed within DR Congo.²⁰⁶ As a result, a highly nuanced hybridization of civil war, proxy war, and international war was waged.

194. *Zaire's Mobutu Flees Kinshasa*, CNN, May 16, 1997, <http://www.cnn.com/WORLD/9705/16/mobuto.am/index.html?eref=sitesearch>.

195. MEREDITH, *supra* note 105, at 533.

196. HARTUNG & MOIX, *supra* note 45.

197. MEREDITH, *supra* note 105, at 538.

198. HUMAN RIGHTS WATCH, UPC CRIMES IN ITURI (2002-2003) (2006) [hereinafter UPC CRIMES IN ITURI], http://hrw.org/english/docs/2006/11/08/congo14517_txt.htm.

199. MEREDITH, *supra* note 105, at 539-40.

200. *Id.*

201. *See id.* 3.8 million deaths surpass the death toll of all other documented African conflicts. *Id.*

202. FOREIGN MILITARY SALES, FOREIGN MILITARY CONSTRUCTION AND MILITARY ASSISTANCE FACTS AS OF SEPTEMBER 30, 1998, U. S. DEP'T OF DEF. (1999).

203. *Id.*

204. *Id.*

205. *Id.*

206. UPC CRIMES IN ITURI, *supra* note 198.

In July 1999 the parties, including the indigenous factions, signed the Lusaka Accords.²⁰⁷ The Lusaka Accords called for the withdrawal of all foreign elements from DR Congo, the disarmament of rebel groups not party to the agreement (over fifty rebel leaders were party to the agreement), and the deployment of a peacekeeping force.²⁰⁸ The parties, however, fell far short of their promises and the fragile framework for peace quickly fractured.²⁰⁹ The failure of the Lusaka Accords led to a rapid growth in ethnic militarism throughout DR Congo.²¹⁰ Eventually, the various rebel-held zones were transformed into the rebel groups' fiefdoms.²¹¹ Eastern DR Congo became the most factionalized area.²¹² Rebel groups of note in the area included the *Front des Nationalistes et Intégrationnistes* (FNI) lead by Peter Karim, the *Front de Résistance Patriotique in Ituri* (FRPI) lead by "Cobra" Matata, and the *Mouvement Révolutionnaire Congolais* (MRC) lead by Matthieu Cui Ngudjolo.²¹³

As the situation in DR Congo deteriorated the occupying countries saw the potential to exploit its resources. Initially, Rwanda and Uganda squared off with Angola, Namibia, and Zimbabwe, but it was not long before even the allies turned against each other in a fight for primacy over the spoils of their conquest.²¹⁴ During this period Rwanda, which does not produce cobalt (used in the manufacture of cell phones), boasted \$250 million in cobalt exports.²¹⁵ Similarly, Uganda, a country with virtually no mineral wealth, began exporting diamonds while its troops occupied Eastern DR Congo.²¹⁶ The DR Congo brought Uganda's actions to the attention of the International Court of Justice (ICJ) in 1999, claiming that "by . . . providing unlimited aid to rebels in the form of arms and armed troops, in return for the right to exploit the wealth of the Congo for their own benefit, Uganda

207. CHARLES SNYDER, DEPUTY ASSISTANT SEC'Y OF STATE FOR AFRICAN AFFAIRS, U.S. DEP'T OF STATE, THE DEMOCRATIC REPUBLIC OF THE CONGO AND THE GREAT LAKES REGION OF AFRICA (2003), <http://www.state.gov/p/af/rls/rm/20245.htm>.

208. *Id.*

209. UPC CRIMES IN ITURI, *supra* note 198.

210. *Id.*

211. *Id.*

212. *Id.*

213. Letter from Jorge Voto-Bernales, Chairman of the Security Council Committee to the President of the UN Security Council, *Group of Experts on the Democratic Republic of the Congo*, at 11-12, UN Doc. S/2007/423 (July 18, 2007) [hereinafter Letter to UN Security Council].

214. ARVIND GANESAN & ALEX VINES, HUMAN RIGHTS WATCH, ENGINE OF WAR: RESOURCES, GREED, AND THE PREDATORY STATE (2004), <http://hrw.org/wr2k4/14.htm>.

215. AYITTEY, *supra* note 160, at 210.

216. *Id.*

has defied the international community and created a dangerous precedent.”²¹⁷ The ICJ agreed and found:

That the Republic of Uganda, by acts of looting, plundering and exploitation of Congolese natural resources committed by members of the Ugandan armed forces in the territory of the Democratic Republic of the Congo and by its failure to comply with its obligations as an occupying Power in Ituri district to prevent acts of looting, plundering and exploitation of Congolese natural resources, violated obligations owed to the Democratic Republic of the Congo under international law[.].²¹⁸

For almost a decade Eastern DR Congo was stripped of its gold, diamonds, and timber in the race for political primacy in the region.²¹⁹ The feast on DR Congo’s mineral riches by these groups continues unabated, although now the plunder is primarily perpetrated by rebel groups.²²⁰

Although the plunder of DR Congo’s resources is appalling, the most grisly cost of the Congo Conflict is the loss in human life. The International Rescue Committee (IRC) reported that from 1998 to 1999, 1.7 million lives were lost as a result of the conflict, 200,000 of which are directly attributable to acts of violence.²²¹ The deaths not attributable to direct acts of violence were a result of opportunistic diseases, preying on the collapse of health services and scarcity of food supplies.²²² As a result of the conflict, DR Congo is an unchecked incubation zone for disease.²²³ By 2007, the IRC estimated that 5.4 million people died as a result of the Congo Conflict.²²⁴ Forty-seven percent were children.²²⁵

Laurent Kabila’s tenure as leader of DR Congo was short lived: he was assassinated on January 16, 2001.²²⁶ There was little time for a power

217. Application Instituting Proceedings, *Dem. Rep. Congo v. Uganda*, 13 (June 1999), available at <http://www.icj-cij.org/docket/files/116/7151.pdf>.

218. *Dem. Rep. Congo v. Uganda*, 2005 I.C.J. No. 116, ¶ 345 (Dec. 2006), available at <http://www.icj-cij.org/docket/files/116/10455.pdf>.

219. *Id.* ¶ 241.

220. Press Release, UN Mission in DR Congo, *Congo Afraid Bemba is Plotting Rebellion* (Aug. 20, 2007); Press Release, UN Mission in DR Congo, *Rwanda, Uganda Urged to Help End Congo Plundering* (Feb. 16, 2006), <http://www.monuc.org/news.aspx?newsID=9970>.

221. Barbara Crossette, *Death Toll in Congo’s 2-Year War is at Least 1.7 Million*, *Study Says*, N.Y. TIMES, June 9, 2000, <http://query.nytimes.com/gst/fullpage.html?res=9407E7DB113F93AA35755COA9669C8B63>.

222. *Id.*

223. *Id.*

224. COGHLAN ET AL., *supra* note 102, at ii.

225. *Id.* at iii.

226. *The Death of Laurent Desire Kabila*, IRIN NEWS, <http://www.irinnews.org/wespecials/kabila/chronology.asp> (last visited May 30, 2008).

vacuum to develop as Laurent Kabila's son, Joseph, quickly took his father's place.²²⁷ Joseph reversed many negative aspects of his father's rule. Under Joseph's oversight, DR Congo achieved relative stability in the later months of 2003²²⁸ due to the withdrawal of foreign troops in December 2002,²²⁹ and an agreement with the opposition parties for a transitional government and elections.²³⁰ Joseph also oversaw the passage of a new constitution by the Congolese electorate in December 2005.²³¹ The new constitution passed with eighty-four percent of voters' support.²³² The new government also honored its promises and in July 2006 Congolese flocked to the polls for DR Congo's first democratic election.²³³ In November 2006, Joseph Kabila was declared the victor.²³⁴ Despite the first free and fair election in the history of DR Congo, it is unclear if peace is in its near future.²³⁵ Arms continue to flow into Eastern DR Congo from Eastern Europe via Rwanda and Uganda despite an arms embargo, fueling rebel groups and preventing effective control from the Kinshasa-based government.²³⁶

E. U.S. INTERESTS IN DR CONGO AND CONTINUED ARMS TRANSFERS

Despite arms embargos imposed on DR Congo by the UN Security Council in 2003, 2005, and 2006, arms are smuggled, circulated illicitly internally, and embargoed material is stockpiled.²³⁷ Individual soldiers of DR Congo's armed forces routinely sell arms and ammunition to

227. Central Intelligence Agency, *The World Factbook*, Democratic Republic of the Congo, <https://www.cia.gov/cia/publications/factbook/geos/cg.html> (last visited June 1, 2008) [hereinafter *The World Factbook*].

228. *Id.*

229. HUMAN RIGHTS WATCH: DEMOCRATIC REPUBLIC OF THE CONGO (2003), <http://www.hrw.org/wr2k3/africa3.html>.

230. *The World Factbook*, *supra* note 227.

231. *See* Elections in Congo—Kinshasa, African Elections Database, <http://africanelections.tripod.com/cd.html> (last visited May 30, 2008) (discussing the historical political profile of DR Congo).

232. *Id.*

233. In 1970 the DR Congo held its first election. *Id.* It is unlikely that the 1970 election would qualify as free and fair as Mobutu ran unopposed and had prohibited other political parties. *Id.*

234. *Congo on a Knife Edge*, *ECONOMIST*, Nov. 15, 2006, http://www.economist.com/world/mideast-africa/displaystory.cfm?story_id=8166114.

235. *10,000 DR Congo Refugees Enter Uganda*, *VOA NEWS*, Aug. 22, 2007, <http://voanews.com/english/archive/2007-08/2007-08-22-voa41.cfm?CFID=2906779&CFTOKEN=10487538>; *At Least 12,000 Flee Fighting in Eastern DRC in Uganda: Military*, UN Mission to DR Congo, Dec. 6, 2006, <http://www.monuc.org/news.aspx?newsID=13348>.

236. Letter to UN Security Council, *supra* note 213, at 10-12.

237. *Id.* at 10.

supplement their income.²³⁸ Further, there have been reports of UN peacekeepers selling arms for gold in Eastern DR Congo.²³⁹ Enabled by non-existent or corrupt customs authorities, Anatonv planes continue to operate with impunity in violations of the embargos.²⁴⁰

Notwithstanding over a decade of neglect, the United States purportedly views DR Congo as the key to stability in Central Africa.²⁴¹ The policy of the United States is to support the transitional government and encourage peace, prosperity, democracy, and the respect for human rights.²⁴² The United States currently provides aid to DR Congo through the State Department and the U.S. Agency for International Development (USAID).²⁴³ The State Department has requested \$1.1 million in military aid for DR Congo for 2008.²⁴⁴ Most of the requested aid for DR Congo, however, is for institution building and health initiatives.²⁴⁵

The deleterious effects of previous U.S. military assistance and arms sales to DR Congo and other corrupt and brutal governments are ubiquitous throughout the developing world. Yet the United States continues to allow arms sales and provides military assistance to questionable governments, often with egregious human rights violations on their rap-sheets.²⁴⁶ Such arms and military assistance are vital to the stability of the recipient government, affording it the ability to protect itself from internal and external enemies and entrench itself in power.²⁴⁷

A substantive change in U.S. military assistance policy seems unlikely. Congress recently enacted the American Service-Members Protection

238. *Id.* at 29.

239. Xan Rice, *UN Troops in Congo 'Traded Gold and Arms'*, THE GUARDIAN, May 23, 2007, <http://www.guardian.co.uk/world/2007/may/23/congo.international>.

240. Letter to UN Security Council, *supra* note 213, at 25-26.

241. BACKGROUND NOTE, *supra* note 9. According to the note, DR Congo's "dominate position in Central Africa makes stability in the [DR Congo] an important element of overall stability in the region." *Id.* The United States' long term interests in the DR Congo include seeking to "strengthen the process of internal reconciliation and democratization." *Id.*

242. *Id.*

243. The World Factbook, *supra* note 227. Humanitarian development assistance provided via USAID totals over \$100 million per annum. Press Release, UN Mission in DR Congo, *US Ups Development Aid for DR Congo: USAID Chief* (Mar. 17, 2008), <http://www.monuc.org/news.aspx?newsID=16905>.

244. U.S. DEP'T OF STATE, CONGRESSIONAL BUDGET JUSTIFICATION FOR FOREIGN OPERATIONS 206-07 (2008), <http://www.fas.org/asmp/resources/110th/CBJ08.pdf> [hereinafter 2008 BUDGET JUSTIFICATIONS].

245. *Id.*

246. RICHARD GRIMMETT, CRS REPORT TO CONGRESS: CONVENTIONAL ARMS TRANSFERS TO DEVELOPING NATIONS, 1996-2003 27 (2004), <http://www.fas.org/man/crs/RL32547.pdf> [hereinafter GRIMMETT 1996-2003].

247. The importance of arms and military assistance in this context is a general and well-known concept to political scientists.

Act,²⁴⁸ which would cut military aid for any country that became party to the Rome Statute, which is the charter document for the International Criminal Court.²⁴⁹ With very limited exceptions under the Act, military aid is only available for countries party to the Rome Statute which enter into agreements with the United States pursuant to Article 98 (i.e., “Article 98 Agreements”).²⁵⁰ Article 98 Agreements prevent the International Criminal Court from proceeding against U.S. personnel within the country’s borders.²⁵¹ An indicator of the significance of military aid to developing countries is reflected by the large number of Article 98 Agreements entered into with developing countries.²⁵²

Similarly, private market weapon sales to developing countries continue to thrive. Although less than ten percent of U.S. weapons transfer agreements with developing countries are made with African countries, such transfer agreements are crucial to those countries.²⁵³ In terms of absolute numbers, other countries’ weapons sales pale in comparison to U.S. sales. For example, Germany had the largest total number of arms agreements with African countries (15.8%), which totaled \$1.5 billion,²⁵⁴ one-ninth of the value of U.S. arms sales agreements to African countries (\$13.6 billion).²⁵⁵

248. American Service-Members Protection Act of 2002, 22 U.S.C. § 7426 (2008).

249. *Id.* § 7426(c).

250. *Id.*

251. *Id.*

252. Presidential Determination No. 2003-27 (June 30, 2003), available at http://www.access.gpo.gov/nara/cfr/waisidx_04/other_04.html (proceed to document entitled “Waiving Prohibition on United States Military Assistance to Parties to the Rome Statute Establishing the International Criminal Court”). The majority of African countries party to the Rome Statute have entered into Article 98 agreements with the U.S. *Id.* They are: Lesotho, DR Congo, Burkina Faso, Burundi, Djibouti, Liberia, Kenya, Mali, Namibia, Niger, South Africa, Tanzania, Gabon, Sierra Leone, Senegal, Benin, The Gambia, Mauritius, Botswana, Ghana, Malawi, Nigeria, Uganda, Central African Republic, Guinea, and Zambia. *Id.* Many of these countries spend little over \$200 million annually on defense. See, e.g., Library of Congress Federal Research Division, Country Profile: Kenya, <http://lcweb2.loc.gov/frd/cs/profiles/Kenya.pdf> (last visited June 1, 2008) (noting that Kenya expended \$280.5 million on military defense in 2005).

253. GRIMMETT 1996-2003, *supra* note 246, at 24.

254. *Id.*

255. *Id.*

IV. ERRORS EVIDENT FROM THE PROVISION OF MILITARY ASSISTANCE TO DR CONGO

A. LEADERS OF RECIPIENT DEVELOPING COUNTRIES MAY USE CHILD SOLDIERS OR COMMIT OTHER HUMAN RIGHTS ABUSES

Laurent Kabila was known not only for his brief tenure as head of government for DR Congo, but also for his use of child soldiers.²⁵⁶ The FNI, FRPI, and MRC, a few of the numerous rebel groups in DR Congo, consistently recruit and use children within their ranks.²⁵⁷ A number of the leaders of the various rebel groups, which knowingly recruited and retained child soldiers, are now incorporated into DR Congo's armed forces (FARDC).²⁵⁸ There are still an estimated 30,000 child soldiers serving in militias throughout DR Congo.²⁵⁹ A UN Group of Experts on DR Congo found the violation of international laws concerning children in armed conflict to be endemic.²⁶⁰

Use of child soldiers in militias and rebel groups within unstable developing countries is hardly an anomaly. Where AK47s, M16s, grenades, handguns, and pistols are readily available, the only concern is finding someone to use them. During the Liberian civil war, the Liberian government was estimated to have recruited 21,000 child soldiers.²⁶¹ The Lord's Resistance Army (LRA) based in Northern Uganda has also been cited for using child soldiers, who are abducted from their villages and foisted into a life of crime.²⁶²

There are an estimated 300,000 child soldiers worldwide.²⁶³ Use of child soldiers directly contravenes the Convention on the Rights of the

256. HUMAN RIGHTS WATCH, THE USE OF CHILD SOLDIERS IN THE DEMOCRATIC REPUBLIC OF THE CONGO (1999), <http://www.hrw.org/campaigns/crp/congo.htm>. Note that Thomas Lubanga Dyilo, militia leader of the *Forces Patriotiques pour la Liberation du Congo*, has been indicted by the International Criminal Court. Judge Marilyn Kaman et al., *International Legal Developments in Review: 2006*, 41 INT'L LAW. 317, 318 (2007). Lubanga's case is the first where the crime charged is solely for the use of child soldiers. See *id.* (noting that Lubanga's trial is the first time in international criminal law which allows for the participation of victims).

257. Letter to UN Security Council, *supra* note 213, at 11-12.

258. *Id.* at 12.

259. Karen Allen, *Bleak Future for Congo's Child Soldiers*, BBC NEWS, July 25, 2006, <http://news.bbc.co.uk/2/hi/africa/5213996.stm>.

260. Letter to UN Security Council, *supra* note 213, at 10.

261. *Id.*

262. See Amnesty Int'l, *Cote d'Ivoire, Stop the Use of Child Soldiers*, <http://web.amnesty.org/library/Index/ENGAFR310032005?open&of=ENG-CIV> (last visited May 30, 2008) (stating that use of children as soldiers is a war crime).

263. UNICEF Fact Sheet: Child Soldiers, 2003, <http://www.unicef.org/emerg/files/childsoldiers.pdf>.

Child.²⁶⁴ In light of the basic human rights tenets concerning the prohibition of the use of child soldiers, which the United States promulgated and continues to support,²⁶⁵ aiding regimes that use child soldiers violates U.S. principles.

Human rights violations in African countries are almost too numerous for review. The United States provided military assistance and U.S. companies sold arms to the vast majority of these countries.²⁶⁶ Many Sub-Saharan African countries violate their citizens' fundamental political rights. For example, Zimbabwe's 2002 presidential election was set against widespread, politically motivated violence instigated by Mugabe's Zimbabwe African National Union Patriotic Front.²⁶⁷ Predictably, Mugabe was reelected.²⁶⁸ Mugabe went on to oust white farmers, demolish informal housing developments, and restrict the availability of goods.²⁶⁹ Such actions lead to shortages in basic needs amongst the population and served as the impetus for refugee crises.²⁷⁰

Military assistance and arms transfers to human rights violators are not just confined to Africa. Central American end users of arms transfers are notorious for their poor human rights records.²⁷¹ Southeast Asian countries known for human rights violations have also had influxes of M16 rifles.²⁷² Lebanon, home to Hezbollah and other Islamic fundamentalists, received

264. Convention on the Rights of the Child, G.A. Res. 44/25, ¶ 38, UN GAOR, Supp. No. 49, UN Doc. A/44/49 (Nov. 20, 1989), available at <http://www.ohchr.org/english/law/crc.htm>. Article 38(2) obligates states to ensure that any person under fifteen does not take part in hostilities. *Id.* Article 38(3) requires that state parties ensure that children below the age of fifteen are not recruited for hostilities. *Id.* Furthermore, article 9(1) of the Child Convention obligates state parties to ensure that "a child shall not be separated from his or her parents against their will." *Id.* ¶ 9.

265. Bureau of Democracy, Human Rights, and Labor, U.S. Dep't State, Human Rights, <http://www.state.gov/g/drl/hr/> (last visited May 30, 2008).

266. GRIMMETT 1998-2005, *supra* note 1, at 32.

267. 'Climate of Fear' in Zimbabwe Poll, BBC NEWS, Mar. 14, 2002, <http://news.bbc.co.uk/2/hi/africa/1872412.stm>.

268. *Id.*

269. Rachel L. Swarns, *Mugabe Remains Unyielding on Eviction of White Farmers*, N.Y. TIMES, Aug. 13, 2002, at A6.

270. *Zimbabwe: Government Reports 150% Drop in Living Standards*, IRIN, Dec. 6, 2006, <http://www.irinnews.org/report.aspx?reportid=62338>.

271. LORA LUMPE, THE US ARMS CENTRAL AMERICA—PAST AND PRESENT 1 (1999), http://www.nisat.org/publications/us_arms_central_america.htm. From 1982 to 1991, the United States dispensed 33,274 M16 assault rifles through the Excess Defense Articles program to El Salvador. *Id.*

272. In 1997, Thailand received 37,500 M16s. See U.S. STATE DEP'T., BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, BACKGROUND NOTES: THAILAND (2006), <http://www.state.gov/r/pa/ei/bgn/2814.htm> (discussing the financial crisis which led to a loss of confidence in the government). Less than a decade later, the Thai military ousted civilian leaders. *Id.*

38,000 U.S. supplied M16s from 1980 to 1983 alone.²⁷³ U.S. arms transfers also reached the Balkans.²⁷⁴

The FAA is not silent as to arms transfers to human rights abusers. In the U.S. arms transfer schema, Section 2304 of the FAA provides that military assistance may not be provided to any government “which engages in a consistent pattern of gross violations of internationally recognized human rights.”²⁷⁵ However, to determine whether a government consistently violates human rights, Congress requires the President to consider whether the government engaged in or tolerated severe violations of religious freedom.²⁷⁶ Other internationally recognized human rights, such as freedom from torture, genocide, and slavery did not warrant this special consideration.²⁷⁷ Congress reserved the right to request information regarding countries’ human rights practices and the reason why military assistance is continuing to be provided,²⁷⁸ which the State Department has thirty days to produce.²⁷⁹ Section 2304 is rarely invoked to prohibit military assistance or arms sales to human rights abusers.²⁸⁰

B. U.S. ASSISTANCE TO UNSTABLE COUNTRIES UNDERMINES THEIR NEIGHBORS’ STABILITY

There are numerous militias and rebel groups in DR Congo. The use of Eastern DR Congo as a rebel base threatens the security interests of neighboring countries. For example, *Interahamwe* attacks on Rwandan civilians and troops, which are launched out of Eastern DR Congo have provoked the government of Rwanda to respond by sending troops into DR Congo.²⁸¹ Further, the Congolese Liberation Movement (MLC) regularly received military support from Uganda.²⁸² Uganda has also been a longtime

273. LORA LUMPE, FEDERATION OF AMERICAN SCIENTISTS, U.S. POLICY ON SMALL/LIGHT ARMS EXPORTS (1997), <http://fas.org/asmp/library/reports/AAAS.htm>.

274. *Id.* From 1994 to 1996, M60 7.62 machine guns were transferred to Bosnia. *Id.*

275. 22 U.S.C. § 2304(a)(2) (2000).

276. *Id.* § 2304(a)(4)(A).

277. *Id.* § 2304.

278. *Id.* § 2304(c)(1)(A) – (D).

279. *Id.* § 2304(c)(1).

280. DIANNE E. RENNACK & ROBERT D. SHUEY, CRS REPORT FOR CONGRESS, ECONOMIC SANCTIONS TO ACHIEVE U.S. FOREIGN POLICY GOALS: DISCUSSION AND GUIDE TO CURRENT LAW 18-19 (1998).

281. GEORGES NZONGOLA-NTALAJA, THE CONGO FROM LEOPOLD TO KABILA: A PEOPLE’S HISTORY 274 (2002).

282. SAVAGE, *supra* note 119, at 132.

recipient of U.S. military aid.²⁸³ During the Congo Conflict, the MLC controlled Northeastern DR Congo.²⁸⁴

Similar dynamics to those between Rwanda, Uganda, and DR Congo are endemic to the developing world. In 2000, the United Nations was bombarded with claims that West African nations were systematically subverting arms sanctions by smuggling arms across borders in exchange for diamonds, timber, and other natural resources.²⁸⁵ The arms smuggling enabled the embattled Charles Taylor to stay in power in Liberia for a protracted period and to smuggle arms into Sierra Leone for a supporting faction.²⁸⁶ This highly militarized situation resulted in civil wars in both countries. The United States has also provided a substantial amount of weaponry to Ethiopia. From 2005 to 2006, U.S. arms transfers to Ethiopia were valued in excess of \$19 million.²⁸⁷ For 2007, the stated value of arms transfers was \$10 million.²⁸⁸ Ethiopia is now well-equipped for intervention in Somalia and Eritrea. Ethiopia has fought several wars with Eritrea in the past and border disputes continue.²⁸⁹ Ethiopia's relations with Somalia are likewise acrimonious. In January 2007, Ethiopia invaded Somalia with the ostensible purpose of restoring the rightful government, the Transitional Federal Government (TFG), which is pro-Ethiopia.²⁹⁰ Despite the installation of the TFG, Ethiopian troops continue to occupy Somalia.²⁹¹

C. UNSTABLE COUNTRIES ARE LIKELY TO IMplode, THEREBY GIVING SAFE HAVEN TO TERRORISTS

The United States has recognized the inherent danger of failed states.²⁹² Examples of failed states that have provided safe harbor to terrorists include

283. HARTUNG & MOIX, *supra* note 45.

284. *Id.*

285. Barbara Crossette, *Gem Sanctions South by UN are Delayed*, N.Y. TIMES, Dec. 21, 2000, at A18.

286. *Id.*

287. William Church, *Somalia: CIA Blowback Weakens East Africa*, AMERICAN CHRONICLE, Oct. 23, 2006, <http://www.americanchronicle.com/articles/viewArticle.asp?articleID=15236>.

288. *Id.*

289. *Eritrea: Long-Term Refugees in Eastern Sudan Need Durable Solution*, UN NEWS SERVICE, Aug. 22, 2007, <http://allafrica.com/storeis/200708221002.html>.

290. STEPHANIE HANSON & EBEN KAPLAN, COUNCIL ON FOREIGN RELATIONS, SOMALIA'S TRANSITIONAL GOVERNMENT (2007), <http://www.cfr.org/publication/12475>.

291. Joanne Tomkinson, *MEDIAWATCH: Somalia Heads For Crisis*, Reuters AlertNet, Mar. 12, 2008, <http://www.alertnet.org/db/blogs/47985/2008/02/12-155516-1.htm>.

292. *The International Affairs Budget Request for Fiscal Year 2007: Hearing Before the Comm. on Int'l Relations*, 109th Cong. 20 (2006) (statement of Condoleezza Rice, The Sec'y of State, U.S. Dep't of State) [hereinafter *Hearing Before the Comm. on Int'l Relations*]. "The failed state is a real threat to our peace and security." *Id.*

Afghanistan and Somalia.²⁹³ Somalia is a largely militarized country that was taken over by warlords in 1990.²⁹⁴ This fractionalized state now houses al-Qaeda operatives.²⁹⁵ Incidents are on the rise of al-Qaeda and other terrorist groups obtaining arms through illicit deals, posing a direct threat to U.S. forces abroad.²⁹⁶ Although Somalia is under an arms embargo,²⁹⁷ arms continue to pour in.²⁹⁸ From 2005 to 2006 the Central Intelligence Agency funneled hundreds of thousands of dollars to Somali warlords.²⁹⁹ The warlords then used the money to buy weapons and continue to wreak havoc throughout the country.³⁰⁰

D. MORE PROSPEROUS COUNTRIES FOOT THE CLEAN-UP BILL ANYWAY

In the aftermath of the Congo Conflict, the United Nations deployed a peacekeeping force and an observer mission, the United Nations Mission to the DR Congo (MONUC).³⁰¹ MONUC is charged with collecting weapons from civilians, scheduling and supervising the withdrawal of foreign forces, providing protection to displaced persons, and supervising the transition to democracy.³⁰² For calendar year 2007 to 2008, MONUC had a budget of over \$1.1 billion.³⁰³ The same countries that previously provided military assistance or allowed arms sales or transfers from domestic companies to DR Congo now finance MONUC (e.g., the United States, France, and

293. See generally NAT'L COMMISSION ON TERRORIST ATTACKS UPON THE U.S., THE 9/11 COMMISSION REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES 48 (2004) [hereinafter 9/11 COMMISSION REPORT] (providing a comprehensive study on the September 11, 2001 terrorist attacks).

294. U.S. DEP'T OF STATE, BUREAU OF AFRICAN AFFAIRS, BACKGROUND NOTE: SOMALIA (2006), <http://www.state.gov/r/pa/ei/bgn/2863.htm>.

295. Alex Perry, *Somalia's al-Qaeda Link*, TIME, June 21, 2007, available at <http://www.time.com/time/magazine/article/0,9171,1635830,00.html>.

296. MATT SCHROEDER, FED'N OF AM. SCIENTISTS, SMALL ARMS, TERRORISM AND THE OAS FIREARMS CONVENTION 15 (2004).

297. See S.C. Res. 733, ¶ 5, UN Doc. S/RES/733 (Jan. 23, 1992) (implementing an Arms Embargo on Somalia).

298. See UN Doc. S/RES/1474 (Apr. 8, 2003) (reestablishing a panel to investigate violations of arms embargo in Somalia).

299. Mark Mazzetti, *Efforts by C.I.A. Fail in Somalia, Officials Charge*, N.Y. TIMES, June 8, 2006, at A1.

300. *Somalia: Fight for the Capital*, 43 AFR. RES. BULL.: POL., SOC. & CULTURAL SERIES 5 (2006).

301. UN Mission in DR Congo, MONUC Mandate, <http://www.monuc.org/News.aspx?newsID=11529&menuOpened=About%20MONUC>.

302. *Id.*

303. MONUC and the Elections, *supra* note 11, at 1.

Belgium).³⁰⁴ Furthermore, President Bush pledged \$28 million to assist refugees from DR Congo.³⁰⁵

Not only are undemocratic militarized African governments dangerous to their populations and neighbors, they also present a high bill to the world community in terms of peacekeeping efforts and humanitarian assistance once they implode. Publicly funded international institutions (the United Nations), individual countries (the United States), and private entities (e.g., the Red Cross and Save the Children), pour billions of dollars into what appears to be an abyss.³⁰⁶ In light of budgetary considerations, it may prove more efficient to simply stop providing military assistance and allow U.S. arms dealers to sell to African countries with questionable human rights records and a tenuous hold on democracy.³⁰⁷

V. RECOMMENDATIONS

The United States dominates the arms transfer industry.³⁰⁸ The United States asserts that it has the most comprehensive arms transfer regulations in the world.³⁰⁹ With minor alterations, the U.S. system will set the example for other countries as to what comprises a sound regulatory regime. Additionally, as the United Nations attempts to formulate an international arms transfer regime, the United States should not forfeit its leadership position.

As a threshold matter, the U.S. State Department should consider creating a Bureau of Arms and Military Assistance Transfers (BAMAT). Under the new framework any proposed FAA transfer would flow solely through BAMAT before seeking congressional approval. BAMAT would examine reports regarding human rights violations and democratic indicators as they apply to a proposal for military assistance or an arms sale,

304. MONUC Facts and Figures, *supra* note 11.

305. *Id.*

306. As of July 2006, ninety-two peacekeepers had lost their lives while serving MONUC. MONUC and the Elections, *supra* note 11, at 1.

307. International expert on humanitarian issues Francis Deng has noted that developed states appear to be more comfortable footing the clean-up bill than aggressively pursuing political solutions. Sarah E. Hager, *Zimbabwe: Why the United Nations, State, and Non-State Actors Failed to Effectively Regulate Mugabe's Policy of Internal Displacement*, 37 CAL. W. INT'L L.J. 221, 233 (2007) (quoting Bemba Donkoh, *A Half-Century of International Refugee Protection: Who's Responsible, What's Ahead?*, 18 BERKELEY J. INT'L L. 260, 265 (2000)).

308. *Arms Trade Key Statistics*, BBC NEWS, Sept. 15, 2005, <http://news.bbc.co.uk/2/hi/business/4238644.stm>. In the United States alone, arms deliveries by private persons were valued at \$18.5 billion in 2004. *Id.* The leading competitor, Russia, accounted for a mere \$4.6 billion. *Id.*

309. U.S. DEP'T. OF STATE, BUREAU OF POLITICAL-MILITARY AFFAIRS, BACKGROUND PAPER: THE U.S. APPROACH TO COMBATING THE SPREAD OF SMALL ARMS (2001), <http://www.state.gov/t/pm/rls/fs/2001/3766.htm>.

which would ideally remedy inconsistencies between State Department Human Rights Reports and Budget Justifications.³¹⁰ Moreover, BAMAT would be the point of contact between the Commerce Department and the State Department. Better coordination may lead to, at minimum, a more consistent policy toward recipient countries. Preferably better coordination would lead to improved control over which countries receive military aid and assistance and ensure that those on the receiving end will use such resources appropriately. The following statutory and treaty recommendations would operate most effectively under BAMAT.

A. AMEND THE FOREIGN MILITARY ASSISTANCE ACT OF 1961

The Foreign Military Assistance Act of 1961 should be amended to require that the President find, in his or her Presidential Justifications, that the recipient countries are democratic.³¹¹ Democratic countries are less likely to go to war, largely due to the need for leaders to convince their constituencies that war is in their best interests.³¹² Democratic countries also are unlikely to routinely commit grave human rights violations.³¹³ For these reasons and others, promoting the democratization of developing countries has been a consistent U.S. policy goal.³¹⁴ Congress may guide

310. U.S. DEP'T OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, HUMAN RIGHTS, <http://www.state.gov/g/drl/hr/> (last visited May 30, 2008) [hereinafter HUMAN RIGHTS]. The Under-Secretary for Democracy and Global Affairs is responsible for country reports on human rights practice, while the Deputy Secretary of State for Resource Management is responsible for the Congressional Budget Justification for Foreign Operations. *Id.*

311. Pillars of democracy include: sovereignty of the people, government based upon the consent of the governed, majority rule, minority rights, guarantee of basic human rights, free and fair elections, equality before the law, and due process of law. U.S. DEP'T OF STATE, DEFINING DEMOCRACY, <http://usinfo.state.gov/products/pubs/whatsdem/whatdmz.htm> (last visited Aug. 2, 2008).

312. Secretary-General Kofi A. Annan, Cyril Foster Lecture at Oxford University: Why Democracy Is an International Issue (June 19, 2001).

313. Jeane J. Kirkpatrick, The 2002-2003 Peltason Lecture at the University of California, Irvine: Democracy and Human Rights—The Essential Connection (July 1, 2003).

314. HUMAN RIGHTS, *supra* note 310.

Because the promotion of human rights is an important national interest, the United States seeks to . . . [p]romote greater respect for human rights, including freedom from torture, freedom of expression, press freedom, women's rights, children's rights and the protection of minorities, [p]romote the rule of law, seek accountability and change cultures of impunity.

Id.

[D]emocracy is more than a single election, or even a succession of them. It is a way of life for a nation embracing its life and institutions, and all their complexity and embraced in turn by its people and their actions, thoughts and beliefs. . . . [We] should not readily believe that without an enduring American presence, democracy can be so easily implanted and nourished in societies where history and experience suggest it is quite alien.

this determination by setting statutory factors for the President to consider. For a country to qualify as democratic it should have at least five years of experience with democratic government or at least one election cycle, whichever is the later. Although five years is not a substantial period of time, it generally is enough time for democratic institution building to begin. The present FAA requirement that recipient countries do not violate or condone serious human rights abuses should be extended to a look-back period of five years. By amending the FAA, the State Department could no longer request military aid funding for human rights violators or countries with poor democratic track records. If such changes are implemented, neighbors of countries engaged in open conflicts in developing countries will most likely not qualify for military assistance.³¹⁵

B. AMEND THE ARMS EXPORT CONTROL ACT³¹⁶

The AECA should be amended to mirror the proposed changes to the FAA. The same process for determining the democratic status of a country should be used in the FAA and AECA. Likewise, there should be the same look-back period of five years to determine if a country has had serious human rights violations.

Under the AECA, when deciding whether to issue an export license for sale to a foreign government, the State Department should additionally examine the country of residence of a private buyer. When examining the recipient country or to where the articles on the Munitions List are destined, the State Department should prohibit export to countries that are not considered democratic and/or have had serious human rights violations in the past five years. When examining the export of articles on the Munitions List, the State Department should consider the additional factors of whether the articles would be used in committing human rights abuses and whether they would prejudice the development of bilateral or multilateral arms control, including light weapons control, nonproliferation, or other arrangements.

Hearing Before the Comm. on Int'l Relations, supra note 292, at 7-11 (statement of Henry Hyde, Chairman of the Comm. on Int'l Relations), http://commdocs.house.gov/committees/intlrel/hfa26078.000/hfa26078_0.htm. See also President George W. Bush, Address at Inaugural Ceremony (Jan. 20, 2005) (“[I]t is the policy of the United States to seek and support the growth of democratic movements and institutions in every nation and culture, with the ultimate goal of ending tyranny in our world.”).

315. See generally HUMAN RIGHTS WATCH, DOCUMENT BY COUNTRY, <http://hrw.org/countries.html> (select the DR Congo’s neighbors) (chronicling human rights violations and country conditions). All of DR Congo’s neighbors—Uganda, Zambia, Angola, Republic of the Congo, Central African Republic, Sudan, Rwanda, and Burundi—consistently violate human rights or are not considered democratic. *Id.*

316. 22 U.S.C.A. § 2778 (West 2008).

C. SUPPORT, SIGN, AND RATIFY AN ARMS TRADE TREATY

Small arms are increasingly the weapons of choice in modern day warfare.³¹⁷ Small arms and light weapons (SA/LW) have played significant roles in conflicts in Angola, Burundi, DR Congo, Eritrea, Ethiopia, Liberia, Republic of Congo, Rwanda, Sierra Leone, and Sudan.³¹⁸ The availability and use of SA/LW adds to the causes of conflict and generates a vicious circle in which greater insecurity further increases the demand for, and use of, these weapons.³¹⁹

The international community does not have a treaty regime to regulate the traffic in SA/LW (e.g., an arms trade treaty).³²⁰ To address the myopia, in 2001, the United Nations convened a conference on Illicit Trade in Small Arms and Light Weapons in All Its Aspects.³²¹ The conference convened in New York on July 9, 2001.³²² Participants at the conference agreed on a Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.³²³ Attendees pledged to improve or implement measures in their countries, to communicate with other countries on the issue, to designate a national agency to address illicit arms trafficking, and to criminalize trafficking in illicit arms.³²⁴

The U.S. representative at the conference, John Bolton, indicated a willingness only to discuss regulation of military arms.³²⁵ He was

317. Elise Keppler, *Preventing Human Rights Abuses by Regulating Arms Brokering: The U.S. Brokering Amendment to the Arms Export Control Act*, 19 BERKELEY J. INT'L L. 381, 385 (2001). Conflicts are increasingly intrastate, waged by non-state actors such as armed militias, insurgents, and criminal gangs. *Id.*

318. See Michael Fleshman, *Small Arms in Africa: Counting the Cost of Gun Violence*, 15 AFRICA RECOVERY 1, 1 (2001), available at <http://www.un.org/ecosocdev/geninfo/afrec/vol15no4/154arms.htm> (stating that small arms are killing Africans in increasing numbers).

319. Owen Greene, et al., *Light Weapons and Peacebuilding in Central and East Africa*, in INT'L ALERT REPORT 31 (1998).

320. See Report of the Ad Hoc Committee on the Elaboration of a Convention Against Transnational Organized Crime on Work of Its Twelfth Session, G.A. Res. 383, ¶ 33, UN GAOR, 55th Sess., UN Doc. A/55/383/Add.2 (2001), http://www.unodc.org/pdf/crime/final_instruments/383ale.pdf (summarizing the progress of the international community towards an international agreement on SA/LW). There are fifty-five state parties to the Protocol. *Id.* The United States has not signed this Protocol, nor has it ratified the underlying treaty on the Transnational Crime Convention. *Id.*

321. See UN GAOR, 54th Sess., 80th Plen. Mtg. at 40-43, UN Doc. A/RES/54/54 (Dec. 15, 1999) (deciding to convene the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects).

322. Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, July 9-20, 2001, ¶ 1, UN Doc. A/CONF.192/15.

323. *Id.* at 7.

324. *Id.* at 10.

325. John R. Bolton, U.S. Statement at Plenary Session Under Secretary of State for Arms Control and International Security Affairs, UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (July 9, 2001), available at http://www.un.int/usa/01_104.htm.

unwilling to discuss SA/LW.³²⁶ Bolton cited U.S. controls via the AECA and ITAR as the benchmark in regulating SA/LW.³²⁷ He stated that the AECA and ITAR are sufficient to address the problem for the United States.³²⁸ Bolton further elaborated that the United States does not support any course of action that constrains the legal trade and manufacture of small arms.³²⁹

In the seven years following the initial conference, several events of international significance occurred. The United States was attacked by a transnational terrorist group on its own soil;³³⁰ the United States invaded Afghanistan;³³¹ and the United States invaded Iraq.³³² In each of these situations, U.S. forces faced (and continue to face) guerilla combatants/insurgents using SA/LW on an unprecedented scale.³³³ Perhaps in recognition of the significant role SA/LW play in conflicts, the State Department has equivocated in its position on an arms trade treaty.

Evidence of the undulation in U.S. policy regarding an arms trade treaty may be seen in speeches given by State Department officials. In an April 12, 2005 speech to the Organization of American States SA/LW meeting, Ambassador Robert Loftis remarked that the United States supports all aspects of the 2001 UN Program of Action on Illicit Trade of Small Arms and Light Weapons.³³⁴ Ambassador Loftis said that the July 2006 biennial meeting of states on SA/LW should focus on finalizing an international instrument that will facilitate the monitoring of arms trafficking.³³⁵ He further remarked that the United States sees an arms trade treaty

326. *Id.*

327. *Id.*

328. *Id.*

329. Harold Hongju Koh, *A World Drowning in Guns*, 71 *FORDHAM L. REV.* 2333, 2347-48. Professor Koh termed Bolton's caveats to a Small Arms Treaty as "Bolton's Do Nots." *Id.* The "Do Nots" include:

We do not support measures that would constrain legal trade. . . . [We] do not support the promotion of international advocacy. . . . We do not support measures limiting trade in SA/LW solely to governments. . . . The United States will not support a mandatory Review Conference. . . . The United States will not join consensus on a final document that contains measures abrogating the Constitutional right to bear arms.

Id.

330. 9/11 COMMISSION REPORT, *supra* note 293, at 48.

331. *Id.*

332. *Id.*

333. John Diamond, *Insurgents Give U.S. Valuable Training Tool*, *USA TODAY*, Jan. 25, 2006, http://www.usatoday.com/news/world/iraq/2006-01-25-insurgent-videos_x.htm.

334. Ambassador Robert G. Loftis, Acting Deputy Assistant Secretary of State for Political-Military Affairs, U.S. Dep't of State, Remarks to the Organization of American States Small Arms/Light Weapons Meeting (Apr. 12, 2005), <http://www.state.gov/t/pm/rls/rm/44625.htm>.

335. *Id.*

as facilitating the timely, reliable identification and tracing of illicit small arms and light weapons.³³⁶

Despite such untoward indications regarding an arms trade treaty, on October 27, 2006, the United States was the lone country out of 164 to vote against a proposal to draft an arms trade treaty in the Disarmament and International Security Committee.³³⁷ From a statement given by Richard Grenell, a spokesperson for the U.S. mission to the United Nations, it appears that U.S. policy has returned to that promulgated by Ambassador Bolton in 2001. Mr. Grenell cited higher U.S. standards than what an arms trade treaty would likely contain as the central reason for U.S. opposition.³³⁸ Mr. Grenell stated that all countries should have to agree on an international standard regarding an arms treaty before drafting may commence.³³⁹ Mr. Grenell did not mention the reasons why the United States is forgoing the opportunity to assist in setting the standard for an international regime. Further, Mr. Grenell did not clarify why a lower standard would prevent the United States from becoming a state party to the treaty. Logically, by ratifying a treaty with lower standards than our current regime, the United States would not have to go through the onerous process of executing the treaty,³⁴⁰ and a possibly contentious ratification process.³⁴¹

Notwithstanding U.S. resistance to an arms trade treaty, other countries have continued to pursue the matter. The UN General Assembly passed a resolution regarding a comprehensive arms trade treaty in December 2006.³⁴² The United States abstained from the vote.³⁴³ More recently, in a call for country views on an arms trade treaty, ninety-four countries

336. *Id.* A SA/LW treaty is a tool for tracing illicit SA/LW, and presents a problem for earlier U.S. policy objections to registration requirements. Tracing of illicit weapons will only be accomplished through a registration requirement. *INTERPOL Anniversary Highlights Cooperation With UN to Fight Terrorism*, INTERPOL, Nov. 4, 2005, <http://www.interpol.int/Public/News/2005/UNanni20051104.asp>.

337. Irwin Arieff, *UN Panel Backs New Treaty on Global Arms Trade*, REUTERS, Oct. 26, 2006, http://today.reuters.com/News/CrisesArticle.aspx?storyId=N26250543&WTmodLoc=IntNewsHome_C4_Crises-6.

338. *UN Arms Control Resolution Approved*, MWC NEWS, Oct. 27, 2006, <http://mwcnews.net/content/view/10459/51/>.

339. *Id.*

340. *Flores v. S. Peru Copper Corp.*, 343 F.3d 140, 163 n.34 (2d Cir. 2003).

341. U.S. CONST. art. II § 2.

342. *See* UN GAOR, 61st Sess., UN Doc. A/C.1/61/L.55 (Oct. 12, 2006) (deciding to include an agenda “[t]owards an arm trade treaty: establishing common international standards for the import, export and transfer of conventional arms”).

343. *UN Assembly Adopts ATT Resolution*, IANSA, Dec. 2006, <http://www.iansa.org/un/2006/GAvote.htm>.

submitted their views before the June 20, 2007 deadline.³⁴⁴ The United States did not submit its view.

The U.S. experience in implementing a comprehensive set of arms regulations, which include monitoring conditions in end-user countries and activities of domestic arms dealers, may provide valuable insight in drafting an arms trade treaty. Additionally, assisting in drafting an arms trade treaty would further the current U.S. policy objective of transformational diplomacy.³⁴⁵

VI. CONCLUSION

This article focused on the inconsistencies and counter-productiveness of the current U.S. arms export regime. This article demonstrated the danger of continuing to provide military assistance and allowing arms sales to unstable, undemocratic countries that violate human rights. The danger centers on the likelihood that the military assistance and arms will be used to commit human rights violations. Depending on the scale of the violations, the United States and other western countries pay the onerous clean-up bill. Furthermore, military assistance and arms sales to developing countries with a large number of anti-American extremists may increase the threat to U.S. national security interests.

To prevent the mistakes of the past from recurring, lessons must be learned. The Congo Conflict serves as a reminder that the provision of military aid and arms to unstable leaders, even those aligned with U.S. interests, may lead to gross human rights abuses, failed states, and an expensive clean-up bill. Negative effects from U.S. arms transfers may be avoided through procedural and substantive changes to the FAA and AECA. Further, amending the FAA and the AECA, coordinating regulatory efforts from one bureau within the State Department, BAMAT, and joining the international community in an arms trade treaty will allow the United States to meet its stated foreign policy objectives.

344. *More Success for the Arms Trade Treaty Campaign*, IANSA, June 29, 2007, http://www.iansa.org/campaigns_events/move_att_success.htm.

345. Secretary Condoleezza Rice, U.S. Dep't of State, Testimony Before the Senate Foreign Relations Committee: Realizing the Goals of Transformational Diplomacy (Feb. 15, 2006), <http://www.state.gov/secretary/rm/2006/61209.htm>. Secretary Rice defined the objective in transformational democracy as working "with our many partners around the world to build and sustain democratic, well-governed states that will respond to the needs of their people and conduct themselves responsibly in the international system." *Id.*