

Sergio Finardi, Peter Danssaert, Brian Johnson-Thomas

Ambushed in Bangkok?

*The U.N. Panel on North Korea
and the case of the IL-76 "4L-AWA"*

----- Пересылаемое сообщение -----

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Тема: Urgent

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International Peace Information Service and TransArms-Research



October 2013



Ambushed in Bangkok?

Editorial

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INTERNATIONAL PEACE INFORMATION SERVICE - TRANSARMS-RESEARCH

Ambushed in Bangkok?

The U.N. Panel on North Korea and the case of the IL-76 "4L-AWA"

Sergio Finardi, Peter Danssaert, Brian Johnson-Thomas

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Executive Summary

The UN's last North Korea Panel report¹ accuses three people of being complicit in the organization of an illegal arms flight from North Korea using an Il-76 plane with registration number 4L-AWA.

The authors of this report have analyzed the information presented by the Panel as evidence that supports its claim against the three individuals. Regrettably, the conclusion is that those accusations are not supported by facts, but based on a misalliance of wrong and misleading information gleaned both about the aircraft itself and the entities involved, together with erroneous interpretations of standard aviation practices. In particular, the Panel's report on the 4L-AWA case includes faulty and/or misleading information on:

- *The aircraft history and its presumed involvement in arms trafficking (§2.1);*
- *Some of the companies that operated the aircraft and their presumed involvement on arms trafficking (§2.2);*
- *Aviation practices related to flight plans (§3.1) and ACMI contracts (§3.2);*
- *The route followed by the aircraft (§3.3);*
- *Companies involved in this case (§3.4, 3.5, 3.6);*
- *Scheduled and chartered cargo flights from/to North Korea (§3.7);*
- *The origin of certain Panel information and documents (Annex 1).*

Moreover, after more than three years from the discovery of the illegal flight, the Panel has not reported any valuable information on the three main issues that have arisen from the 4L-AWA case:

- *Who the organizers of the illicit arms transfer were, i.e. who was behind Union Top Management;*
- *Who the North Korean "partners" that provided the weapons were;*
- *Who paid the estimated US\$16/18 million the arms were worth.*

These authors - who cooperated with the Panel in 2010 - posed the same questions in their 2009 and 2010 reports on the 4L-AWA case. **These important questions remain unanswered.** Finally, the UN Panel alleges (S/2013/337: §10) that it followed the recommendations and best practices set out by the *Informal Working Group on General Issues of Sanctions*². The major recommendation made by the Informal Working Group was the right of reply to individuals, entities and States. We were informed that Panel never contacted the three individuals they plan to designate.

¹ UN report S/2013/337, 13 June 2013.

² S/2006/997, 22 December 2006.

1 - The IPIS/TransArms inquiries and the reports by UN Panel on DPRK

On Saturday 12 December 2009, Thai authorities, acting on information received from the US intelligence and in concert with Ukrainian Security Service (SBU)³, seized an aircraft at Bangkok's Don Mueang Airport.⁴ The Ilyushin-76 (registered in Georgia as 4L-AWA) had stopped on 11 December in Bangkok, apparently to refuel, while en-route from Pyongyang Sunan (North Korea)⁵ to Gostomel (Ukraine).⁶ The aircraft was due to fly onwards to Tehran's Mehrabad airport⁷ (Iran) after a re-adjustment of the cargo in Gostomel, and to then end its journey in Podgorica.

The plane, Thai authorities discovered, was carrying neither "spare parts for oil drilling equipment" as stated in shipping documents prepared before the departure of the aircraft from Ukraine, nor "mechanical parts", as stated in the airway bill prepared by Air Koryo in North Korea for the return flight. Instead, the cargo was composed of 35 tons of arms and ammunition. The weapons were not of the type covered by a UN arms embargo against Iran,⁸ but the shipment from Pyongyang was in itself in breach of the UN arms embargo against North Korea.⁹ News of the seizure of the arms cargo in Bangkok and the arrest (on 12 December) of the IL-76 crewmembers was widely reported.¹⁰

³ UNIAN News Agency, Kyiv, 17 December 2009, "Ukrainian security chief tells of preparations for arms plane seizure", *BBC Monitoring*, 18 December 2009.

⁴ The International Civil Aviation Organization (ICAO)'s airport code for Mueang is VTBD. The aircraft flight plan and the airway bill that was prepared in Pyongyang actually indicated Bangkok's Suvarnabhumi International (ICAO: VTBS) as the refuelling stopover in Thailand. The change was apparently requested en-route by the Thai authorities.

⁵ ICAO code: ZKPY.

⁶ ICAO code: UKKM (also spelled Hostomel).

⁷ ICAO code: OIII.

⁸ Security Council Resolution 1737 (2006), 23 December 2006; SC Resolution 1747 (2007); Resolution 1803 (2008), 3 March 2008. See for the list of materials: United Nations S/2006/815 and 814, 13 October 2006.

⁹ Security Council Resolution 1718 (2006) and 1874 (2009), 12 June 2009.

¹⁰ "Tons of weapons seized from plane at Thai airport", *AP*, 12 December 2009; "Thai authorities impound airplane carrying weapons", *Deutsche Presse-Agentur*, 12 December 2009; "Plane with arms cache detained in Thailand was bound for Ukraine", *RIA Novosti*, 13 December 2009; "Thailand detains plane carrying N.Korean weapons", *South Korea States News Service*, 13 December 2009; Weerawong, A., "5 charged after NKorean weapons seized in Thailand", *AP*, December 13, 2009; "Huge N Korea arms cache seized", *Bangkok Post*, 13 December 2009; Fuller, T., N. Pojanamesbaanstit, "Murky saga unfolds as Thais seize arms plane; Crew denies knowledge of arsenal after itinerary included North Korea", *IHT*, 14 December 2009; Shevchenko, L., "Thailand Play, IL-76: truth about the voyage, FLOT2017", 15 December 2009; Barta, P., E. Ramstad, D. Michaels, "Thailand Traces Path of North Korea Arms", *WSJ*, 15 December 2009; "Seized North Korean weapons likely destined for Iran", *Kviv Post (Reuters)*, 16 December 2009; Michaels, D., M. Coker, "Arms Seized by Thailand Were Iran-Bound", *WSJ*, 21 December 2009; Frangos, A., D. Michales, J. Cheng, "Weapons Probe Hits Aircraft's Lease Firm", *WSJ*, 22 December 2009; Ngamkham, W., "Police fails to link Bout to seized arms. Inquiry continues into 5 plane crew suspects", *Bangkok Post*, 22 December 2009.

Soon after the seizure of the cargo plane, the International Peace Information Service vzw (IPIS, Antwerp) and TransArms-Research (TA-R, Chicago) published two widely quoted¹¹ reports on the case. These reports included about two dozen original documents in support of their claims (**December 2009 and February 2010**).¹² On 8 October 2010, the two organizations published a final account of the case,¹³ later included in their report "The Arms Flyers".¹⁴

In On 13 June 2013, the UN Panel of Experts on the Democratic People's Republic of Korea (D.P.R.K.) published its report on the violations of sanctions that had been imposed on D.P.R.K. by the UN Security Council due to Resolution 1874 (2009).¹⁵ The report included an account (§75-79) and an Annex (XIII, A. 1-15, documents B-K) on the case of the 4L-AWA, seized in Bangkok on 12 December 2009. A previous report published in October 2010 also included two paragraphs on the case (§74-75). The Panels' reports do not make any mention of IPIS/TransArms reports, despite the fact that several information and documents the Panels used and presented came from those reports.¹⁶

1.1 Summary of the case¹⁷

The shipment was requested by a company called "Union Top Management Ltd" (UTM, incorporated in Hong Kong). In November 2009 this company asked an aviation broker, SP Trading (incorporated in New Zealand and with an operation base in Kyiv, Ukraine), to organize five flights to transport various pieces of equipment. SP Trading leased an IL-76 cargo plane from Air West (registered in Georgia) on wet-lease terms (ACMI), as is customary for an aviation broker that receives an offer for multiple flights in an more than one-month long period. Contrary to what the Panel has said, the lease was not in contravention of any rule related to ACMI contracts.¹⁸

In December 2009 and early 2010, the authors of this report consulted a variety of sources to obtain documentation related to the case, including asking SP Trading managers to provide a) their version of the story and b) evidence to support their claims. The authors obtained a

¹¹ By, among others, the Wall Street Journal, Associated Press, Agence France Press, Times Online, and practically every other important newspaper in Asia, Russia, and Europe.

¹² See: Finardi, S., P. Danssaert, and B. Johnson-Thomas, *From Deceit to Discovery*, International Peace Information Service (IPIS) and TransArms-Research, 21 December 2009 and 10 February 2010, www.ipisresearch.be.

¹³ Danssaert, P., S. Finardi, B. Johnson-Thomas, *Mapping the Labyrinth: more on the strange weapons flight of 4L-AWA*, IPIS/TA-R- October, 2010, www.ipisresearch.be.

¹⁴ See: Danssaert, P., S. Finardi, *The Arms Flyers – Commercial Aviation, Human Rights, and the Business of War and Arms*, 8 October 2010, IPIS vzw and TransArms-Research Center for the Logistics of Arms Transfers, www.ipisresearch.be.

¹⁵ S/2013/337, dated 13 June 2013.

¹⁶ See Annex 1.

¹⁷ For a detailed history of the case, see the "*Mapping the Labyrinth: more on the strange weapons flight of 4L-AWA*, IPIS/TA-R- October, 2010.

¹⁸ See §3.2 below; see UN report S/2013/337, 13 June 2013, p.87.

first set of documents and testimonies that aided an understanding of the course of events. Later on, the authors obtained the correspondence between UTM and SP Trading on the issue, as shown further in this report, and interviewed Mr. Lunev and Mr. Zykov.

According to documents and emails obtained by the authors, the first flight requested by UTM's contact person "Natalia Sabantseva" or "Natasha" (with phone and fax numbers in Hong Kong) was for a transport of "telecommunication equipment" from Dnepropetrovsk (Ukraine)¹⁹ to Bangkok – a request that was later cancelled. The second request came just after the cancellation of the first flight and was for an urgent transport of "oil drilling equipment" along the Pyongyang-Bangkok-Tehran route. This was the flight that the Thai authorities, tipped by US intelligence, ended with the seizure of the aircraft and its cargo. Allegedly, two individuals, "Oleg" and "Igor" (the latter described as a UTM's executive based in Switzerland) represented UTM during two visits to SP Trading in Kyiv in early December 2009. Allegedly, the security cameras recorded the entrance of the two individuals in the office building. The UTM managers disappeared the same day that the aircraft was impounded.

¹⁹ The city was one of the former USSR's "closed" cities and a base of nuclear and conventional arms factories.

2. Faulty information on the aircraft, aircraft history, and aircraft owners

In Annex XIII of the 13 June 2013 report, the Panel states:

"1. The Ilyushin 76 involved (Manufacturer's Serial Number 3426765) has a long record of being used for illicit arms transfers. Since 1997, the aircraft had been operated by various companies designated for sanctions by the Liberia Committee. (Panel's note: These companies are Central African Airlines, Air Pass and Air Cess)

Contrary to the Panel's assertion, there is no evidence whatsoever that this aircraft (whose manufacturer's number is, more precisely, 0003426765²⁰) was used for "illicit arms transfers", neither when it was managed by the above-mentioned companies, nor when it flew for other companies. The authors of this report believe that the Panel's statement is baseless but invite the Panel to show evidence of "illicit arms transfers" performed by this aircraft.²¹ Some details may help to further clarify the matter:

- a) There is **no (public) evidence** of any kind to prove that this aircraft transported arms illegally, even when it was in service - as noted above - with the UN-sanctioned companies Air Pass (as 3D-RTA) and Centrafrican Airlines (as TL-ACY);
- b) The Panel reports an incomplete history of past owners and operators of the aircraft to create the impression of a "continuity" between past and present operators and operations, despite the absence of any evidence of business connections among the various aircraft operators;
- c) The history of this aircraft's operators and lessees - not present in the Panel's report - includes the US military in Iraq (2003), the South Africa National Defense Forces (2003), the United Nations (2003-2004), and the International Security Assistance Force in Afghanistan (2007-2008). Are these services, too, part of the "long record of being used for illicit arms transfers"?²²

²⁰ 00=certified in the 1980-1989 decade; 0=1980 year of certification; 34=the factory code, actually 84; 26765=line/batch numbers. Source: Soviet Transports.

²¹ The Panel reconstruction of the aircraft history and operators follows all the faulty information provided by Mr. Hugh Griffiths (SIPRI, Stockholm International Peace Research Institute) when he was interviewed by Guisnel, J., "L'avion bloqué à Bangkok spécialisé dans les trafics d'armes pour l'Afrique", *Le Point*, 15 December 2009. The wrong connection and explanation of the case has been repeated in SIPRI's KnowledgeBase, *Supporting conflict-sensitive humanitarian logistics and ethical procurement*, EthicalCargo, SIPRI, 2010.

²² IPIS and TA-R have already shown to which incongruities and mistakes the use of the ill-conceived Asset Operating History (AOH) criterion used by SIPRI - a source of the Panel report - may lead to. See: "The Arms Flyers", 2010, *quoted*, Chapter 13.

2.1 The aircraft's history²³

2.1.1 - As CCCP-86846

The aircraft was manufactured for the Soviet Air Force at Tashkent-Vostochny in 1980 as an IL-76M (the military version that has some five tons of body armor) and on 18 April 1980 it received the civilian registration CCCP-86846. According to two sources²⁴ the aircraft was then transformed in an IL-76T (presumably by the removal of armor plating) and officially exported to Malaysia. However the Russian Avialinii Veteran²⁵ and Zenith Air²⁶ leased/operated the aircraft between mid-1992 and 1997, as RA-86846. According to one source, Avialinii Veteran actually bought the plane on 24 February 1995.²⁷ On 15 September 1997 the aircraft was leased to Air Pass (registered in Swaziland) and the registration changed in 3D-RTA.

2.1.2 – As 3D-RTA

As noted in a 2011 IPIS and TA-R report,²⁸ under the registration 3D-RTA, the aircraft performed five flights from/to Kigali (Rwanda), Entebbe (Uganda), and Goma (DRC), between 20 August and 25 August 1998. The five flights – whose cargo is not known – were part of a massive logistic bridge between Kigali, Entebbe, and (mostly Eastern) Congolese airports during the II Congo War (1998-2003).²⁹ The air bridge included a total of 2,681 round flights centered on the Entebbe airport, performed by 92 different aircraft belonging to no less than 54 airlines during the period August 1998 and February 2002. The airlines that operated the aircraft used in the DRC's occupied zones included several main cargo companies in addition to local operators.³⁰

²³ Based on information from Soviet Transports, AVSOFT's ACAS database, AeroTransport Databank, JP Airline Fleets, photographic evidence of registrations, reports by UN Group of Experts and Panels on Sanctions, and media accounts.

²⁴ Soviet Transports (www.scramblemagazine.nl) and Aerotransport Databank (www.aertransport.org).

²⁵ ICAO: VTN, a subsidiary of Veteran Airlines, Crimea, Ukraine, ICAO: VPB.

²⁶ Based in Nigeria 1992-1993, no ICAO code.

²⁷ AVSOFT's ACAS database.

²⁸ See: "The Arms Flyers", quoted 2011, Chapter 4, pag. 51.

²⁹ Uganda, Rwanda and their proxy rebel groups invaded the DRC to remove Laurent-Désiré Kabila (1939-2001) from power with the support of the United States and other "Western" powers. See: "The Arms Flyers", quoted 2011, Chapter 4.

³⁰ Among them, the first company for number of flights (377) to and from DRC's occupied zones was the Goma-based and Belgian-owned TMK (Transports et Messageries au Kivu). Another Belgian-owned company, Sabena Airlines, transported hundred of tons of cassiterite, coltan, gold, and diamonds originating from Congo rebels-held areas from Entebbe to European destinations between 1998 and 2000. Neither TMK nor Sabena were ever sanctioned or held responsible for their contribution to the pillage of Eastern Congo commodities.

2.1.3 – As TL-ACY

On 1 March 2000, the aircraft was bought by Centrafrican Airlines (CAR, UAE) and was re-registered as TL-ACY. There is no record that the aircraft was used for “illicit arms transfers” under this registration.³¹

2.1.4 – As UN-76007; UN-76011; UP-17622; UP-17635

Centrafrican Airlines went out of business in 2001 and the aircraft ownership passed from the UAE, Ras Al Khaimah-based, company Wing Air Services,³² to the UAE, Sharjah-based, company Shield System International FZC.

The Il-76 UN-76007 photographed in Baghdad, July 6, 2003



IrishAirPics.com
Credit: Freightdog, IrishAirPic.com

Shield leased the aircraft to GST Aero³³ in April 2003 and the aircraft was registered in Kazakhstan as UN-76007. Under this registration the aircraft was leased to the United Nations in 2003/2004 and then to the Libyan air cargo company Buraq Air (El-Buraq

³¹ The Panel, or its source, has possibly mistaken the TL-ACY with another Il-76 with registration number TL-ACLU, also in service with Centrafrican Airlines, which was involved in a complex event related to the transport of weapons and helicopters to Liberia in 2000 and 2001, as stated in the UN report S/2001/1015 and S/2000/1195).

³² A US diplomatic cable dated 7 January 2010 and published by Wikileaks links Wing Air Services to Victor Bout, who owned Centrafrican Airlines with Ronald De Smet.

³³ GST Aero (ICAO: BMK) was founded in 1999 and based in Almaty, Kazakhstan. In 2003, its head was Viktor M. Kolomytsev. In 2004, GST Aero aircraft performed various flights from Plovdiv (Bulgaria) to Baghdad, in support of the US-led occupation of Iraq (IPIS/TA-R database).

Transport Inc.) in 2004.³⁴ As UN-76007, the IL-76 landed in Baghdad on 6 July 2003, at which time the airport was strictly at the exclusive disposition of the US and allied troops. On July 2003, the aircraft also flew for the South Africa National Defense Forces,³⁵ transporting military equipment between Waterkloof and Bujumbura.

In November 2006, Shield sold the aircraft to a Russian company that, in September 2007, re-sold it to the Kazakhstan-based air cargo company East Wing,³⁶ successor of GST Aero. With East Wing, the aircraft was registered as UN-76011. When Kazakhstan changed its aviation country code from UN- to UP-, East Wing re-registered the aircraft as UP-I7622 (May 28, 2008). On 10 April 2009 East Wing passed the aircraft to a newly formed Kazakh airlines, Beibars CJSC, which re-registered the aircraft as UP-I7635 (May-August 2009). The property of the aircraft was transferred to Overseas Cargo FZE (Sharjah).

IPIS/TA-R database includes a partial list of 310 flights performed by the IL-76, from 11 January 2004 to 12 December 2009. Reviewing the list of destinations, it is sufficiently evident that the aircraft was mostly used to serve "regional" hubs in Central Asia, Middle East, and Eastern Europe, with a handful of flights to Egypt (Luxor and Aswan), Uganda (Entebbe), and Burundi (Bujumbura).

Tab. 1 – Partition of the 310 flights by operator

REG	OPERATOR	OP CODE	YEAR/S	N
UN76007	BURAQ (LIBYA)	BRQ	2004	15
UN76007	GST AERO	BMK	2004/2005/2006	51
UN76011	EAST WING	EWZ	2007/2008	124
UN76011	ISF (ISAF CALL SIGN)*	ISF	2007/2008	5
UPI7622	EAST WING	EWZ	2008/2009	94
UPI7622	ISF (ISAF CALL SIGN)	ISF	2008	1
UPI7635	BEIBARS AVIA COMPANY	BBS	2009	15
4L-AWA	AIR WEST	AWG	2009	3

Source: IPIS/TA-R database on official flight logs. *International Security Assistance Force in Afghanistan

The six flights performed for the International Security Assistance Force in Afghanistan served the route Plovdiv-Kabul (as UN-76011: 17 January 2007, 5 July 2007, 27 December 2007, and 17 June 2008; as UP-I7622: 4 December 2008) and Baku-Sofia (as UN-76011: 5 January 2008).

³⁴ Buraq Air (ICAO: BRQ) was founded in 2000 and based at Mitiga airport (Tripoli).

³⁵ IPIS/TA-R database, SA FOP F/N 91/2003, July 2003: "Carriage of equipment for the SANDF" by IL-76 UN-76007, Bujumbura-Waterkloof-Bujumbura.

³⁶ ICAO: EWZ, founded in October 2006 (AeroTransport Databak) by A. Ivanovich, head P. Saitov and Aleskandr V. Zykov as commercial director.

Tab. 2 – Origin/Destinations of 310 flights performed by the IL-76, 2004-2009

CODE	COUNTRY	CITY	CODE	COUNTRY	CITY
ESGG	SWEDEN	GOTEBORG	OMAA	UAE	ABU DHABI
EYKA	LITHUANIA	KAUNAS	OMFJ	UAE	FUJAYRAH
HBBA	BURUNDI	BUJUMBURA	OMRK	UAE	RAS AL KHAIMAH
HELX	EGYPT	LUXOR	ORBI	IRAQ	BAGHDAD
HESN	EGYPT	ASWAN	ORER	IRAQ	ERBIL
HLLB	LIBYA	BENGHAZI	ORSU	IRAQ	SULAIMANIYAH
HUEN	UGANDA	ENTEBBE	OSDI	SYRIA	DAMASCUS INT
LATI	ALBANIA	TIRANA	OYHD	YEMEN	AL HUDAYDAH
LBBG	BULGARIA	BURGAS	UACC	KAZAKHSTAN	AQMOLA/ASTANA
LBDP	BULGARIA	PLOVDIV	UADD	KAZAKHSTAN	ZHAMBYL
LBSF	BULGARIA	SOFIA	UAIJ	KAZAKHSTAN	SHYMKENT
LKPD	CZECH R.	PARDUBICE	UARR	KAZAKHSTAN	URALSK
LKTB	CZECH R.	BRNO	UBBB	AZERBAIJAN	BAKU
LLBG	ISRAEL	TEL AVIV	UBBI	AZERBAIJAN	NASOSNAYA
LRCK	ROMANIA	COSTANTA	UBBN	AZERBAIJAN	NAKHCHEVAN
LSZH	SWITZERLAND	ZURICH	UGKO	GEORGIA	SAMTREDIA
LTBA	TURKEY	ISTANBUL AT.	UGTB	GEORGIA	TBILISI
LTFJ	TURKEY	ISTAMBUL KO.	UKBB	UKRAINE	KYIV BORYSPIL
LYNI	SERBIA	NIS	UKKM	UKRAINE	HOSTOMEL
LYPG	MONTENEGRO	PODGORICA	UKOO	UKRAINE	ODESSA
OAKB	AFGHANISTAN	KABUL	UMMG	BELARUS	HRODNA
OIII	IRAN	TEHERAN	UTAA	TURKMENISTAN	ASHGABAT

Source: IPIS/TA-R database on official flight logs.

2.1.5 – As 4L-AWA

In September 2009 the IL-76 started to be operated by a Georgia-registered company, Air West³⁷, based at Kopitnari International airport (Georgia). The aircraft was re-registered as 4L-AWA on 24 September 2009. Prior to the flight to North Korea, on 8 October 2009 the 4L-AWA flew (AWG732) from Nasosnaya (UBBI) to Podgorica (LYPG), where it loaded military equipment worth €108,423 (officially exported to Burundi by Montenegro³⁸) and on 10 October it flew (AGW731) from Podgorica to Bujumbura (HBBA), where it arrived at noon (12:00) UTM time.³⁹

³⁷ ICAO: AWG, with Operator Certificate obtained 6 June 2009 from Georgia CAA. According to one source (Aerotransport Databank), the company was however already in business in mid-2008 when it received an AN-12, r/n 4L-BKN (m/n 5343203) and an AN-26, r/n 4L-BKL, m/n 67303709, both presently active with the company.

³⁸ See: Montenegro Ministry of Economy, *2009 Annual Report on Foreign Trade in Controlled Goods*, p. 33, Podgorica, 2010. According to Montenegro, the military equipment consisted of: a) 15,080 pieces of 7,62 mm 30-round receiver for AR; 12,7mm submachine gun; 7,62x54mm with a tripod and accessories (manufactured in Serbia and Albania); b) 115,510 pieces of ammunition 12.7x108mm APIT (manufactured in Montenegro); and c) 34 pieces of air-dropped bombs fab-100 with a stabilizer and one fuse AUFK m91 (manufactured in Serbia). See Also Contrade, Montenegro's export declarations, 2009, HS codes 930119, 930591, for a total value of US\$111,521.

³⁹ IPIS/TA-R database, official flight logs.

2.2. Past shipments by GST Aero and East Wing

In Annex XIII, the Panel further states: "[1...In 2003, [the aircraft] was transferred to GST Aero, renamed East Wing around 2006 after being banned from flying into the EU (March 2006). Both names are well known to other UN Sanctions Panels (2). Note 2 reads:

"In May 2007, an aircraft with GST Aero markings was observed unloading what were believed to be arms and ammunition in Chad (see S/2007/584, paragraph 135). In April 2008, pick-up vehicles suspected of being intended for one of Darfur's rebel groups were seized on board an East Wing Il-76 (See S/2008/647, paragraph 298)]."

Annex XIII continues:

"Only a few weeks before the flight was impounded in Bangkok, its ownership was transferred to Overseas Cargo FZE, an entity based in the UAE and headed by Svetlana Zykova, Aleksandr Zikov's wife. This entity is also known to other UN Sanctions Panels (3)." Note 3 reads: "GST Aero and Overseas were already part of a complex chain of ownership of an aircraft which delivered weapons to Somalia in 2006 (See S/2006/913, paragraphs 43-53 and annexes VII and VIII)."

The reader is induced to believe that GST Aero and Air West were involved in something illegal, as implied by the phrase "are well known to other UN Sanctions Panels". What did those reports actually say?

2.2.1 Deliveries to Chad in 2007

The UN report on Sudan S/2007/584, paragraph 135 reads:

"135. During a visit to the airport in Abéché, Chad, the Panel observed cargo being unloaded from an AN-12 aircraft (registration No. UN-11006). The Panel believed the cargo to be arms and ammunition. Sources working in the area described such unloadings as a routine event and noted that that particular aircraft had been flying into and out of the Abéché airport for several weeks. Weapons arriving in Abéché have a great potential to enter Darfur, as there is no border control in the area. On 22 June 2007, a letter was sent by the Panel to the Republic of Kazakhstan, the country of registry. Correspondence received in response to that letter on 21 August 2007 from the Government of Kazakhstan stated that GST Aero had ceased its activities as of 30 November 2006 and no longer appeared in the list of active airlines of the Republic of Kazakhstan. Ownership of the AN-12 with State registration and identification mark UN-11006 was transferred to the company Aviakom of the Russian Federation. Aviakom re-registered the aircraft on 11 December 2006, and it

was given the registration and identification mark UN-11007. From 21 December 2006 to the present, the aircraft has been operated by the company East Wing, of the Russian Federation. In the light of this new information, the status of UN-11007 and UN-11006 must be clarified with the Russian Federation since an AN-12 aircraft with a Republic of Kazakhstan registration and the identification mark UN-11006 and GST Aero marking was observed by the Panel at Abéché airport in Chad on 25 May 2007."

The 25 May episode was never clarified by subsequent UN reports, despite the fact that the Panel said that further investigation was needed (in particular because, for example, East Wing was not a Russia Federation company and because the change to the UN-11007 registration never took place)⁴⁰, not least because the connotation of East Wing as a Russian company was wrong and because the UN-11007 registration number never took place.

In addition, the Panel was apparently unaware that in the period of the deliveries to Chad the UN-11006 was leased to the Chad Air Force (*Force Aérienne Tchadienne*), according to Aerotransport Databank⁴¹. In the first months of 2007, Abéché (airport ICAO: FTTC) was the center of relief operations⁴² for refugees from Sudan and of military operations by the Chadian Army against various Chadian rebel groups and Sudanese Janjaweed fighters.⁴³ In those years Abéché was also the base of a French garrison and a French air base. In 2007, Chad received weapons at least from the following countries: France, Portugal, United Kingdom, and United States.⁴⁴ Arms deliveries to Chad, including Abéché airport in those

⁴⁰ See further below.

⁴¹ See "UN-11006 frame", www.aerotransport.org

⁴² See: World Health Organization, *RAPPORT D' ACTIVITE HEBDOMADAIRE EHA/HAC*, Sous Bureau OMS d'Abeche - Est du Tchad Periode : 24 au 30 mai 2007; Periode : 17 au 23 mai 2007; "*Corridors humanitaires au Darfour: un défi logistique considérable (experts)*", Agence France Presse, 31 May 2007: "*A Abéché, ce soutien (santé, hébergement, transport...) s'exerce au profit d'un poste de commandement de secteur et des observateurs de l'Amis chargés de veiller sur le cessez-le-feu au Darfour.*"; "House wants to upgrade airfield in Chad for relief missions in Darfur," *Inside the Pentagon*, 24 May 2007; unhas-hcr_chad_flight-schedule-2007.pdf.

⁴³ See: http://en.wikipedia.org/wiki/2007_in_Chad. See also : World Health Organization, *RAPPORT D' ACTIVITE HEBDOMADAIRE EHA/HAC*, Sous Bureau OMS d'Abeche - Est du Tchad Periode : 24 au 30 mai 2007; Periode : 17 au 23 mai 2007; "Libya puts troops on Chad-Sudan border to head off UN plan", *The Guardian* (London), 14 April 2007: "The brutal raids on the two Chadian border villages, Tiero and Marena - carried out on 31 March by Arab Janjaweed militia, possibly with the help of a Chadian rebel faction - killed between 200 and 400, and added 10,000 to the ranks of homeless"; see also the *Interim report of the Panel of Experts established pursuant to resolution 1591 (2005) concerning the Sudan, submitted pursuant to resolution 1713 (2006)* - 16 March 2007, 07-27380, pag. 9: "...C. Relations between Chad and the Sudan: "Violence associated with rebel activities, particularly of armed rebel movements seeking to overthrow the Government in Chad, continues to impede and undermine the peace initiatives in the region. ...However, soon after that agreement [Tripoli Agreement] the atmosphere changed, as Chadian armed opposition groups reportedly entered Chad from the Sudanese side and captured the eastern Chadian town of Abéché. The Chadian armed forces, however, succeeded in recapturing the town."

⁴⁴ Including armored vehicles AML 90 in March from France (see: Les frères Erdimi à l'offensive...", *La Lettre du Continent*, 29/09/2006; "Des blindés belges au Tchad !", *Le Soir en ligne*, 7 February 2008;

months, were legal and intended for the Chadian Army, no matter what the Chadian Army may have used them for.

The Sudan Panel-reported change in registration to UN-11007 in December 2006 made the UN-11006 registration, spotted in May 2007, appear irregular. However, Aerokom LLC's change of registration was evidently aborted and, apparently, the Kazakhstan authorities never recorded such a change. The aircraft continued to be registered with East Wing (based in Kazakhstan) as UN-11006 (manufacturing number 01347909, delivered in 2002 to GST Aero)⁴⁵ until it was re-registered by East Wing as UP-AN207 when Kazakhstan changed its aviation country code from UN- to UP-. The AN-12 registered as UN-11007 (manufacturing number 9346509) was destroyed 31 March 2005 after an aborted take-off in Dubai.⁴⁶ No other aircraft was registered as UN-11007.

The Sudan Panel, in its final 2007 recommendations, stated: "*The Panel recommends that an aviation ban be imposed on Ababeel Aviation, AZZA Transport, Badr Airlines, Juba Air Cargo, Trans Attico and United Arabian Airlines*". It is important to note that the Sudan Panel made no such recommendation in respect of East Wing. The issue was later abandoned. The reference to the Sudan Panel's 2007 report is therefore baseless.

2.2.2 Deliveries to Chad in 2008

The UN Panel 2008 report stated:

"295. In April 2008, the Government of the Sudan brought to the attention of the Panel two consignments of a total of 17 vehicles and various consignments of general goods that Sudanese customs had impounded during a technical stop of two airplanes at Khartoum airport. The two aircraft had arrived in Khartoum from the Fujairah International Airport in the United Arab Emirates and were en route to N'Djamena. The Government of the Sudan later decided to return the general goods to their rightful owners but impounded the vehicles. The reason given was that the vehicles were going to N'Djamena as part of a supply chain organized by a local businessman with suspected strong

Amnesty International, *Blood at the Crossroads: Making the case for a global Arms Trade Treaty*, AI Index: ACT 30/011/2008, in cooperation with IPIS, Omega Foundation, and TransArms); firearms and ammunition, aircraft equipment, and electronic equipment, all from France (see: EU, Tenth Annual Report According to Operative Provision 8 of the European Union Code of Conduct on Arms Exports (2008/C 300/01; UN Comtrade database for 2007, HS codes 9303310 and 930630); aircraft equipment from Portugal (see: EU, Tenth Annual Report; military ground vehicles from the United Kingdom (see: EU, Tenth Annual Report); and military training equipment from the United States (see: Report by the Department of State Pursuant to section 655 of the foreign assistance act of 1961, as amended. Direct Commercial Sales Export Authorizations for Fiscal Year 2007).

⁴⁵ See: Eurocontrol, PRISME FLEET, frame 01347909.

⁴⁶ Soviet Transport Database <http://www.scramblemagazine.nl/soviet-database?view=default>; Aerotransport Databank <http://www.aerotransport.org>; JP Airline-Fleets International, various years.

links to JEM and that they would eventually be provided to JEM who would in turn transform them into "technicals". 296. The Panel investigated these two shipments and the individuals involved with the following results. Shipment No. 1. 297. The first was organized by Goldstar Cargo and Clearing based in Dubai, which is controlled by Barcai Mohamed Abdel Karim. Mr. Karim stated to the Panel that he had organized approximately 20 shipments of similar vehicles as well as general goods to N'Djamena. He identified as recipients in the Chad Société Golden Star Tchad, with the General Manager being Hassan Adam Kissine and the Deputy Manager, Mahamat Hamid Kona. Witnesses have explained to the Panel that the ultimate recipient however is a relative of the Minister of Defence of Chad." 298. The shipment was made using flight "East Wing registration No. UN-76011", which arrived in the early morning hours of 5 April in Khartoum, refuelled, took off in the direction of N'Djamena but returned 40 minutes later due to technical difficulties. Upon landing, the airport authorities in Khartoum seized goods and vehicles identified in the shipping manifest in the following manner: [9 Toyota pickup and cruiser]."

The cargo was not a military cargo requiring authorization. The destination was not under embargo of any type. The carrier had no responsibility whatsoever for what a legal recipient of a legal cargo could do with said cargo after its delivery. The reference to the Sudan Panel 2008 report is therefore baseless.

2.2.3 The "chain of ownership" for a Somalia arms delivery in 2006

In Annex XIII, the Panel also suggested that GST Aero and Overseas Cargo FZE were also somehow involved in an episode of weapons delivery to Somalia: *"GST Aero and Overseas were already part of a complex chain of ownership of an aircraft which delivered weapons to Somalia in 2006 (See S/2006/913, paragraphs 43-53 and annexes VII and VIII)."*

In the context of that "chain of ownership", the Somalia Panel wrote:

"The case of Eriko Enterprise, Asmara. 43. On 26 July 2006, at 0745 hours an Ilyushin 76 (IL-76) aircraft containing an arms shipment for ICU arrived at Mogadishu International Airport. Also on board the aircraft were 10 senior Eritrean military officers. The Eritrean officers were lodged in the Ramadaan Hotel, owned by Abukar Omar Adani, who is a financier of ICU. 44. The IL-76 departed from Assab, Eritrea, indicating a flight plan designating a destination of Hargeisa (Somaliland), but the aircraft went to Mogadishu. The IL-76, using the call sign LFT-1221, has the flag of Kazakhstan painted on the tail, and the registration number on the fuselage of the aircraft starts with the prefix UN, which is the code for Kazakhstan. "...45. ...The security of the area and the offloading of the arms shipment were coordinated by the leader of the Hizbul Shabaab, Sheikh Mukhtar Roboow "Abu-Mansuur.

"46. On 28 July 2006 two IL-76 cargo aircraft landed — the first of them at 0700 hours — at Mogadishu International Airport. Both aircraft contained arms shipments for ICU. [...] 47. The arms were offloaded onto lorries and, escorted by a security detail...

"49. On 7 August 2006 an Ilyushin 76 aircraft operated by Eriko Enterprises, using flight call sign LFT-3756, departed Assab, Eritrea, for Mogadishu International Airport.

"50. The Monitoring Group sent letters to the Government of Eritrea on 9 August 2006 and 1 September 2006 and to the Government of Kazakhstan on 15 August 2006 requesting their responses concerning four IL-76 flights reported to have variously taken place on 26 and 28 July and 7 August 2006. The Monitoring Group also sent letters on 19 September 2006 to Aerolift Company, based in South Africa, and to the Government of South Africa requesting their responses in regard to the above information.

"...19 September 2006 the Government of Kazakhstan provided information on the IL-76 in question indicating that the aircraft belonged to Aerolift (annex VII), and (c) on 29 September 2006 Aerolift provided information that indicated that the same IL-76 had been sold to Eriko Enterprise, an Eritrean company, before the flights to Mogadishu took place (annex VIII). Accordingly, the Chairman of the Monitoring Group made several attempts to establish contact with Eriko during the first two weeks of October 2006. Eriko could not be reached for comment."

What did the arms shipments to Mogadishu have to do with Overseas Cargo FZE and GST Aero? Nothing.

On page 56 [Annex VII] the Panel reported the answer by the Kazakhstan authorities:

"On 24 July 2006 ...an aircraft manned by a GST Aero crew, using a certification of registration with the State Aircraft Registry of Kazakhstan, an airworthiness certificate and other previously issued documents, as well as identifying markings of the Kazakh company, carried out a technical flight from the city of Fujairah (United Arab Emirates) to Massawa (Eritrea) to transfer the aircraft to a new owner. The same day, following the transfer, the aircraft's documents were removed, as were the identifying national and registration markings. What happened to this aircraft after that is not known. Although the symbol "UN" is indeed the code symbol of Kazakhstan, there was no image of the flag of Kazakhstan on the tail of the above-mentioned aircraft. Furthermore, the LFT call sign is not used by Kazakh airlines."

An IL-76 landing in Mogadishu, 26 July 2006



Credit: Mohamed Sheikh Nor, AP, File 06072604138 : "The Ilyushin-76 plane landing at Mogadishu airport," Wednesday 26 July 2006.



Credit: Mohamed Sheikh Nor , AP, File 06072604174: "Somalis in Mogadishu look from a distance at the Ilyushin-76 plane which landed at Mogadishu airport, Wednesday, July 26, 2006"

On page 57 [Annex VIII] the Panel reported the answer by Aerolift's owner:

"1. AEROLIFT company purchased IL-76 aircraft REG: UN-76496 from "Overseas Cargo FZE" (UAE) for purpose to resale it to Eritrean company "ERIKO ENTERPRISE". 2. "ERICO ENTERPRISE" and AEROLIFT company agreed that during lease-purchase period "ERIKO ENTERPRISE" will operate under Eritrean AOC (Aircraft Operators License) and may use AEROLIFT call sign "LFT" until they will get their own ICAO call sign. 3. The conditions "ERICO ENTERPRISE" using AEROLIFT call sign aircraft will not transport drugs, arms and will operate under ICAO regulations. 4. AEROLIFT suspended agreement with "ERICO ENTERPRISE" at the moment. 5. AEROLIFT sent copy's of Your letters to "ERICO ENTERPRISE" and requested them to provide information you need a.s.a.p....With regards, Evgueny Zakharov."

In that chain of "ownership" there was nothing complex in relation to GST Aero and Aerolift. The complexity of the case was about something else and had nothing to do with GST Aero. In *Amnesty International's Blood at the Crossroads: Making the case for a global Arms Trade Treaty* report (2008)⁴⁷ the case is fully explained:

"In November 2006, the UN Monitoring Group on Somalia reported on the delivery of arms by an Ilyushin-76 transport aircraft (call sign LFT 1221) on 26 July 2006 to the ICU. Three additional arms flights to Mogadishu followed, two on 28 July 2006 and one on 7 August 2006. An Eritrean company, Eriko Enterprises, operated the latter flight using a "call sign" LFT 3756 according to the UN Monitoring Group. The International Civil Aviation Organisation [ICAO] airline call sign⁴⁸ LFT belongs to a South African based airline company named Aerolift. Although Aerolift is registered in the British Virgin Islands, the company is managed out of an office in the Johannesburg suburb of Sandton.

"Following the publication of a report by the UN Monitoring Group on Somalia on 22 November 2006,⁴⁹ Amnesty International visited South Africa in January 2007 to interview the air operator Aerolift. The managing director of Aerolift told a researcher in detail, and with supporting documents⁵⁰ (Contract of Sale and Purchase, Registration Certificate, Certificate of Airworthiness and Noise Certificate) how he claims he was deceived by the Eritrean military into allowing 'his' aircraft to be used to make at least three clandestine arms deliveries to the Union of Islamic Courts. He stated that early in July 2006, Aerolift was approached by a high ranking officer of the Eritrean Peoples' Defence Force, who offered to pay US\$1.5 million for the IL-76TD aircraft,

⁴⁷ AI Index: ACT 30/011/2008. In cooperation with IPIS, Omega Foundation, and TransArms.

⁴⁸ A unique code to identify each airline operator. Usually the telephony designator of the aircraft operating agency. The telephony designator can also be followed by the flight identification. This is referred to as the flight number.

⁴⁹ S/2006/913, op cit.

⁵⁰ Interviews conducted in South Africa by Brian Johnson Thomas, 20-25 January 2007.

registration UN-76496 (s/n 073410303), which at that time was operated by Aerolift. Since the aircraft's actual value was in the region of US\$1 million, Aerolift accepted the offer, even though the aircraft was not his property, and then contacted the actual owner GST Aero in Tashkent. Aerolift agreed to pay GST Aero US\$1.2 million, thus leaving Aerolift with a notional profit of US\$300,000.

"A contract was then drawn up between Aerolift and an Eritrean company called Eriko Enterprise, represented by a Mr. Kelati Haile.⁵¹ Unusually, the contract does not specify the payment to be made for the aircraft sale, saying merely "payment conditions will be enclosed with contract forms", but Aerolift says that they received a first, and only, 'progress' payment of US\$250,000 on signing the contract in Moscow on 25 July 2006.⁵² As well as providing for confidentiality (the contract was to be kept secret by the parties to it), Aerolift explicitly agreed that the Eritrean company could use the Aerolift ICAO call sign (LFT) for a period "not exceeding three months" whilst a fresh ICAO call sign was being allocated, adding that "the Buyer is obliged to not perform flights under Sellers call sign on runways not registered in Jeppesen, military flights or flights with arms on board, to transport prohibited cargo".

"The aircraft was reportedly delivered to Massawa airport on 25 August 2006, whereupon the representative of the Eritrean military assumed operational control. According to the Eritrean Civil Aviation Authority documentation, the aircraft was registered as E3-AAF with registered owner Skyroute Aviation (Asmara, Eritrea).⁵³ So far as Amnesty International is aware, the Eritrean registration E3-AAF was never actually applied to the surface of the aircraft, which remained pure white except for the Kazakhstan registration UN-76496. The aircraft then made, according to Aerolift, at least three flights from Massawa to Somalia - of which only one was to a 'registered runway' at Mogadishu - reportedly carrying arms and ammunition to the ICU militias. According to the Aerolift manager, the cargo consisted of "used AK47's [assault rifles] in bags - six or seven to a bag - and boxes of ammunition to go with them. Also they had backloads of people in uniform - Arabian men with masks. I had lent a crew to the Eritreans while they were still using my call sign, but after three flights my crew wanted to leave, even though they were paid a cash

⁵¹ *Contract of Sale and Purchase 25 July 2006.*

⁵² The Eritreans had reportedly failed to make the subsequent progress payments owed under the contract and the aircraft owners back in Tashkent were apparently also restless. It was agreed therefore that the aircraft would be returned to the owners for disposal, both Aerolift and the Eritreans would pay US\$50,000 each for a joint dry-lease, while Aerolift would keep the US\$250,000, less a refund of US\$86,000 to Eritrea for landing and handling, parking and ATC fees. (Interviews Aerolift, Johannesburg, 20-25 January 2007).

⁵³ Certificate of Registration, E3-AAF (s/n 073410303), Eritrean Civil Aviation Authority, 1 August 2006; Noise Certificate, E3-AAF (s/n 073410303), Eritrean Civil Aviation Authority, 1 August 2006; Certificate of Airworthiness, E3-AAF (s/n 073410303), Eritrean Civil Aviation Authority, 5 August 2006.

bonus of US\$5,000 per man per flight. The later flights were to GPS co-ordinates in southern Sudan, I don't know exactly where".

The authors of this report provided a report to the Somalia Panel about possible candidates of the "26 July 2006 flight" in August 2006.⁵⁴ The report included an analysis of all Kazakhstan-registered aircraft that could have played a role in the deliveries. The conclusion was that there was not exact match, but one candidate could be close: the aircraft UN-76374, operated by Berkut State Air Company. After the publication of the Somalia Panel's report in November 2006 and the annexed letter by the Kazakhstan authorities (stating that in 2006 only two aircraft were allowed to bear the Kazakhstan flag on tail, precisely the UN-76374 and the UN-76371), TransArms released a new analysis based on the availability of new photographs. TransArms concluded that:

- Neither the UN-76374 nor the UN-76371 planes could be the ones landed in Mogadishu on 26 July;
- The former GST Aero/Aerolift plane UN-76496 could not be a candidate either;
- The identity of the plane that landed in Mogadishu on 26 July was still a mystery.

In fact, if the flag on the tail of the plane that landed in Mogadishu on 26 July is compared with the flag on the tail of the UN-76374, it is evident that the flag on the former is darker and in a different position on the tail, actually very similar to the flags painted on Kazakhstan planes in the 1990s and early 2000s.

The GST Aero/Aerolift UN-76496, photographed on 28 January 2004 and on 21 January 2005, did not have any flag on the tail.

In order to make the UN-76496 aircraft look like the aircraft that landed in Mogadishu on 26 July, someone would have needed to paint the Kazakhstan flag on the tail – and a similar one to the flag used in the 1990s. For neither GSTAero nor Aerolift would such a move have made sense. On the contrary, it would have been illogical. The Panel improperly used the "chain of ownership" to suggest that GST Aero was in some way involved in the Mogadishu episode. That suggestion is baseless.

⁵⁴ Communications dated 8 August 2006 to the Somalia Panel chairman Bruno Schiemyky.

The IL-76 aircraft that landed in Mogadishu on 26 July 2006



Credit: AP, File 06072604138

The IL-76 aircraft UN-76374 at Brno, 1 September 2006



Credit: Andreas Zeitler, Flying Wings. Airliners.net

The UN-76442, Zurich, 13 August 1997



Credit: Don Ewin, <http://www.abpic.co.uk>

GST Aero's UN-76496 at Sharjah, 28 January 2004



Credit: Reinhart Losch, <http://www.skybird-ev.de>

GST Aero's UN-76496 at Dubai, 21 January 2005



Credit: Konstantin von Wedelstaedt, <http://www.planepictures.net>

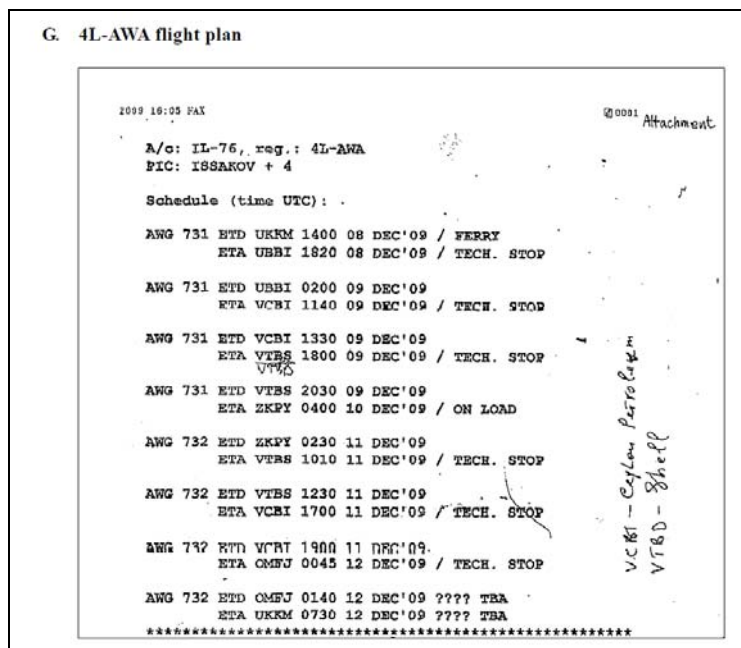
3. Faulty information and considerations on the flight plan and the route

3.1 - The "official" flight plan

In Annex XIII, the Panel states:

"10. The official flight plan submitted to Thai authorities (see annex XIII, sect. G) does not indicate that the aircraft was supposed to immediately continue its route towards Mehrabad International Airport (Iran) after the stopover in Ukraine as required in the contract between UTM and SP Trading (see annex XIII, sect. F). **This is a common clandestine delivery technique** where aircraft land ostensibly in a declared delivery State but immediately depart that State using another flight plan to transfer the shipment to the real destination.

Section G



In order to understand whether the above-mentioned Panel's statement is correct, one needs to understand (a) what the document in Section G (and in the related Section J) really means; (b) which aviation rules for filing flight plans apply to the case; (c) what the Air Koryo waybill found on the 4L-AWA by Thai authorities means.

Section J

J. Landing request submitted to the Thai civil aviation authorities

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*** INPUT *** MON 7 DEC 2009 08:20 ***
ZCZC BR0055 070021
GG VTBAYAYX VTBAYAYD.
041608 UKKKCPFX
FROM : ATS/PLANNING AND PROVIDING CENTRE
SITA:TEVCPXH AFTN:UKKKCPFX E-MAIL:AEROTECH.MAIL(AT)GMAIL.COM
FAX:++38-044-236-99-19 TEL:++38-044-2380322, 2372790

SUBJ : REQ TECH LAND PERM

A/CO : AIR WEST (AWG - ICAO CODE)
POST : KAZBEGI STR.,21, BATUMI, GEORGIA
ACFT : IL-76 REG: 4L-AWA ACAS-II
CREW : ISSAKOV + 4, ALL UKRAINIAN
PURP : EMPTY FERRY FLIGHT VCBI-VTBS-ZKPY
      TRANSPORT OIL INDUSTRY SPARE PARTS.ZKPY-VTBS-VCBI
CNOR : KOREAN GENERAL TRADING CORPORATION
CNEE : AEROTRACK LTD, KIEV, UKRAINE

SKED : UTC
09 DEC'09 AW6731 ETD/VCBI0030 ETA/VTBS0600 - TECH LAND
09 DEC'09 AW6731 ETD/VTBS1700 ETA/ZKPY0030

10 DEC'09 AW6732 ETD/ZKPY0630 ETA/VTBS1310 - TECH LAND
11 DEC'09 AW6732 ETD/VTBS0100 ETA/VCBI0530

ROUTE: VIA ATS ROUTES AND CURRENT NOTAMS
    
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3.1.1 - What documents G and J are about

The document the Panel defines as the "official" flight plan (Document G) was sent from an entity the document does not show, and the Panel does not mention, to an entity the Panel describes as "Thai authorities". The document does not include the other sections that identify a "flight plan", including the originator⁵⁵, the date, the destination addresses, as well as all the other ICAO mandatory information for flight plans.⁵⁶ Among the documentation gathered by the authors, there are two other similar documents, discussed in the next paragraphs. The landing request (Document J) in Bangkok was instead dated 7 December, one day before the actual flight. The originator of the landing request was an aviation

⁵⁵ "Originator" means "a person or organisation submitting flight plans and any associated update messages to the IFPS, including pilots, operators and agents acting on their behalf and ATS [Air Traffic Services] units." Eurocontrol, Draft implementing rule on Initial Flight Plan, *ENPRM/04-008/RUL/EDITION 1.0*, October 2004.

⁵⁶ Such as "aircraft identification; aerodrome of departure; estimated off-block date; estimated off-block time; destination aerodrome; route excluding terminal procedures; cruise speed(s) and requested flight level(s); aircraft type and wake turbulence category; flight rules and type of flight; aircraft equipage – equipment and all related information." Eurocontrol, Draft implementing rule on Initial Flight Plan, *ENPRM/04-008/RUL/EDITION 1.0*, October 2004.

services provider⁵⁷ called Aerotech.⁵⁸ Aerotech is identified in the message as the ATS (Air Traffic Services) Planning and Providing Centre, with SITA⁵⁹ as TEVCPXH, and AFTN⁶⁰ as UKKKCPFX (i.e. based at Zhuliany airport in Kiev). The destinations of the request were, correctly, "VTBAYAYX"⁶¹ and "VTBAYAYD"⁶² in Thailand.

Landing request, detail

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*** INPUT *** MON 7 DEC 2009 08:20 ***
ZCZC BRA055 070821
GG VTBAYAYX VTBAYAYD.
041608 UKKKCPFX
FROM : ATS/PLANNING AND PROVIDING CENTRE
SITA:TEVCPXH AFTN:UKKKCPFX E-MAIL:AEROTECH.MAIL(AT)GMAIL.COM
FAX:++38-044-236-99-19 TEL:++38-044-2380322, 2372790

SUBJ : REQ TECH LAND PERM

A/CO : AIR WEST (AWG - ICAO CODE)
POST : KAZBEGI STR.,21, BATUMI, GEORGIA
ACFT : IL-76 REG: 4L-AWA ACAS-II
CREW : ISSAKOV + 4, ALL UKRAINIAN
PURP : EMPTY FERRY FLIGHT VCBI-VTBS-ZKPY
TRANSPORT OIL INDUSTRY SPARE PARTS. ZKPY-VTBS-VCBI
CNDR : KOREAN GENERAL TRADING CORPORATION
CNEE : AEROTRACK LTD, KIEV, UKRAINE

SKED : UTC
09 DEC'09 AWG731 ETO/VCBI0030 ETA/VTBS0600 - TECH LAND
09 DEC'09 AWG731 ETO/VTBS1700 ETA/ZKPY0030

10 DEC'09 AWG732 ETO/ZKPY0530 ETA/VTBS1310 - TECH LAND
11 DEC'09 AWG732 ETO/VTBS0100 ETA/VCBI0530

ROUTE: VIA ATS ROUTES AND CURRENT NOTAMS
    
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⁵⁷ Airlines that could not afford to maintain their own aviation services department use aviation services providers such as Aerotech. The provider is responsible for filing and communicating all requests related to an international flight and mandated by ICAO to relevant aviation authorities.

⁵⁸ "aerotech.mail@gmail.com", fax: 38-044-236-9919, Tel: 38-044-238-0322.

⁵⁹ Societe Internationale de Telecommunications Aeriennes, an IATA telex system.

⁶⁰ *Aeronautical Fixed Telecommunication Network*, used for communications between ATC and Government aviation entities.

⁶¹ "Director of Air Transport Control, Department of Civil Aviation", Bangkok; and "President of Airports of Thailand Public Company Limited, Bangkok (for airport charges), AIP Thailand, GEN 1.1-1, 18 NOV 10. National Regulations and Requirements.

⁶² "Department of Civil Aviation, Air Transport Regulatory Bureau", Bangkok. Guidelines on air cargo charter flight", www.dca.aviation.go.th

3.1.2 - Aviation rules for filing initial flight plans

According to ICAO,⁶³ "*flight plan' means specified information provided to ATS units [Air Traffic Services units], relative to an intended flight or portion of a flight of an aircraft.*"

All flight plans filed before certain events (described below) are, so to speak, "preliminary" and part of the "initial flight plan" (IFP). They are related to the "pre-flight phase".

"The initial flight plan results from the filed flight plan amended with all accepted pre-flight changes, if any, brought about by subsequent modifications initiated by the aircraft operator...or any ATS unit directly affected by the flight."

The event/s that end the 'pre-flight phase' and transform an IFP in a Current Flight Plan (CFP) are defined as follows:

a) "*Engine start-up, call for start or push back at aerodrome of departure within the airspace of application*"; b) "*First ATC [Air Traffic Control] activation at aerodrome of departure within the airspace of application*"; "*First delivery of ATC clearance.*"⁶⁴

In a multi-leg international flight plan, the aviation services provider - Aerotech in this case - forwards the various requests (overfly permissions, landing permissions, etc.) to the relevant authorities in the various countries and verifies acceptance. The information for filing the flight plan comes from the air operator (AO) (in this case Air West). In turn, the AO receives instructions from the shipper (here, UTM) or the broker (here, SP Trading).

The captain of the flight has the right to change the initial flight plan(s) for whatever reasons he deems necessary (for example lack of available fuel in a certain airport, as it was the case for Nasosnaya) until departure and, in certain cases, also en route, provided that proper communication has been established with all affected FIR authorities. It is not necessary and it is not mandatory that the flight plan forwarded to the aviation authorities of a certain country affected by the flight should include the entire route if this route goes far beyond the Flight Information Region/s (FIR) that includes or are adjacent to that country, as in many multi-leg flights. All requests forwarded by the aviation services provider are filed on standard forms and formats, on the base of ICAO suggestions. Each country indicates in details what it considers mandatory information that must be provided by the AO. For

⁶³ See: ICAO Annex 2 (Rules of the Air), Ch. 3, Paragraph 3.3 - Flight plans; ICAO PANS-ATM Doc. 4444 (Ch. 4, § 4, Flight plan; Ch. 11, § 11.4.2.2, Filed flight plan messages and associated update messages; Appendix 2, Flight plan); Eurocontrol, Draft implementing rule on Initial Flight Plan, *ENPRM/04-008/RUL/EDITION 1.0*, October 2004. All quotations from these sources.

⁶⁴ "*An authorisation for an aircraft to proceed under conditions specified by an air traffic control unit.*" Draft implementing rule on Initial Flight Plan, quoted, 2004.

Thailand, the Aeronautical Information Publication⁶⁵ - based on "Annex 15 to the ICAO Convention and the guidance material in the Aeronautical Information Service Manual (Doc 8126-AN/872)" - states for non-scheduled flights:

"§Gen 1.2-1, 1.2 "Entry, Transit, and Departure of Aircraft, 3. Non-scheduled flights, 3.1 Procedures, 3.1.1 *Subject to the observance of the terms of the Convention on International Civil Aviation, application must be made and prior approval obtained from the Thai Department of Civil Aviation for all aircraft of the Contracting States of the Convention on International Civil Aviation desiring to carry out non-scheduled flight into, in transit non-stop across Thailand, or to make stops for non-traffic purpose in Thailand. The application must contain the following particulars:*

1. *Name, address and business connection with the aircraft of the informant;*
2. *Owner, type, nationality and registration mark of the aircraft;* 3. *Name of operator;* 4. *Purpose of flight;*
5. *Routing, including aerodromes before/after the Kingdom of Thailand;* 6. *Names of aerodromes to land in the Kingdom of Thailand; and;* 7. *Dates and times of its arrival and departure at each aerodrome."*

In the case of the 4L-AWA, Thailand was just a technical stop and, in addition to the landing permit request, Aerotech should have reported the airport of departure (Pyongyang), the airport of the technical stop in Thailand (Bangkok Suvarnabhumi, VTBS), the airports of next technical stops (Bandaranaike, Sri Lanka, VCBI and Fujairah, UAE, OMFJ). All those elements were reported in both the Panel's "official flight plan" document and in the landing permit request. Tehran airport as destination of the cargo was actually included in the Air Koryo airwaybill, one of whose copies was on board the aircraft (see further below). Therefore, the document ("official flight plan") the Panel has chosen to present has nothing to do with a "common clandestine delivery technique".

3.1.3 - Other 4L-AWA preliminary "flight plans"

Unfortunately, the Panel ignored the reconstruction of the sequence of flight schedules that the authors made in their report dated 8 October 2010. In that report, it was clearly shown, not only that the flight schedules changed during the time (because of requests by UTM and the non-availability of fuel at Nasosnaya in Azerbaijan), but that Kyiv (UKKM or UKBB) and Tehran (OIII) were clearly included as points of loading and unloading, before the last leg to Podgorica. Those flight schedules are in a format that is clearly identical to the Panel's "official flight plan".

As explained in our previous reports on 4L-AWA, the first initial flight plan (included in the air charter agreement between UTM and SP Trading) was soon changed - see emails below - and

⁶⁵ Aeronautical Information Publication, November 88, 2010.

a second initial flight plan still indicated Gostomel as the departing point but Nasosnaya (Azerbaijan), instead of Baku, as a refueling point. The sequence was as follows: Gostomel to Nasosnaya (technical stop, TS), Colombo (TS), Bangkok (TS), Pyongyang (loading point) and Pyongyang to Bangkok (TS), Colombo (TS), Fujairah (TS), Gostomel (loading), Tehran (offloading), and back to Nasosnaya for the return flight. The departing date was stated as 7 December.

Doc. 1 - "Originally planned route"

<p>ИЗНАЧАЛЬНО ПЛАНИРУЕМЫЙ МАРШРУТ</p> <p>A/c: IL-76, reg.: 4L-AWA</p> <p>PIC: ISSAKOV + 4</p> <p>Schedule (time UTC):</p> <p>AWG 731 ETD UKKM 0730 07 DEC'09 / FERRY ETA UBBI 1040 07 DEC'09 / TECH. STOP</p> <p>AWG 731 ETD UBBI 1420 08 DEC'09 ETA VCBI 2300 08 DEC'09 / TECH. STOP</p> <p>AWG 731 ETD VCBI 0030 09 DEC'09 ETA VTBS 0500 09 DEC'09 / TECH. STOP</p> <p>AWG 731 ETD VTBS 1700 09 DEC'09 ETA ZKPY 0030 10 DEC'09 / ON LOAD</p> <p>AWG 732 ETD ZKPY 0530 10 DEC'09 ETA VTBS 1310 10 DEC'09 / TECH. STOP</p> <p>AWG 732 ETD VTBS 0100 11 DEC'09 ETA VCBI 0530 11 DEC'09 / TECH. STOP</p> <p>AWG 732 ETD VCBI 0700 11 DEC'09 ETA OMFJ 1245 11 DEC'09 / TECH. STOP</p> <p>AWG 732 ETD OMFJ 0140 12 DEC'09 ETA UKKM 0730 12 DEC'09 / ON LOAD</p> <p>AWG 731 ETD UKKM 1000 12 DEC'09 ETA OIII 1400 12 DEC'09 / OFF LOAD</p> <p>AWG 732 ETD OIII 1600 12 DEC'09 / FERRY ETA UBBI 1710 12 DEC'09 / TECH. STOP</p> <p>CARGO: OIL INDUSTRY SPARE PARTS, 35T</p> <p>C-NOR: Korean General Trading Corporation Mailto: 403hsd@co.chesin.com Tel: +850 2381 8344 Fax: +850 2381 4416</p> <p>C-NEE: Aerotrack Ltd Address: Kiev 254080, 19-21, Frunze Str., Ukraine Tel.: +38 (095) 5336136 Fax: +38 (044) 2348148 Victoria Doneckaya</p> <p>BRGRDS, OPS</p>
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Source: Air West

The second schedule was again modified and a third one indicated the following sequence: Nasosnaya to Fujairah, Bangkok, and Pyongyang (loading point); Pyongyang to Bangkok, Colombo, Fujairah, Kyiv Borispol (loading point for other spare parts), Tehran (offloading); eventually Podgorica. Some problems developed in Nasosnaya and the aircraft refuelled at Fujairah.

Doc. 2 - "Change in route due to lack of sufficient quantity of fuel/lubs in UBBI."

ИЗМЕНЕНИЕ МАРШРУТА ИЗ-ЗА ОТСУТСТВИЯ НЕОБХОДИМОГО КОЛИЧЕСТВА ГСМ В UBBI (НАСОСНАЯ)

A/c: IL-76, reg.: 4L-AWA

PIC: ISSAKOV + 4

Schedule (time UTC):

AWG 731 ETD UBBI 1400 09 DEC'09
ETA OMFJ 1700 09 DEC'09 / TECH. STOP
AWG 731 ETD OMFJ 1900 09 DEC'09
ETA VTBS 0430 10 DEC'09 / TECH. STOP
AWG 731 ETD VTBS 0700 10 DEC'09
ETA ZKPY 1330 10 DEC'09 / ON LOAD
AWG 732 ETD ZKPY 0230 11 DEC'09
ETA VTBS 1010 11 DEC'09 / TECH. STOP
AWG 732 ETD VTBS 1230 11 DEC'09
ETA VCBI 1700 11 DEC'09 / TECH. STOP
AWG 732 ETD VCBI 1900 11 DEC'09
ETA OMFJ 0045 12 DEC'09 / TECH. STOP
AWG 732 ETD OMFJ 1300 12 DEC'09
ETA UKBB 1930 12 DEC'09 / ON LOAD
AWG 731 ETD UKBB 2200 12 DEC'09
ETA OIII 0200 13 DEC'09 / OFF LOAD
AWG 732 ETD OIII 0500 13 DEC'09 / FERRY
ETA LYPG 0930 13 DEC'09 / TECH. STOP

CARGO: OIL INDUSTRY SPARE PARTS, 35T

C-NOR: Korean General Trading Corporation
Mailto: 403hsd@co.chesin.com
Tel: +850 2381 8344
Fax: +850 2381 4416

C-NEE: Aerotrack Ltd
Address: Kiev 254080, 19-21, Frunze Str., Ukraine
Tel.: +38 (095) 5336136 Fax: +38 (044) 2348148
Victoria Doneckaya

BRGRDS,
OPS

Source: Air West

3.1.4 - The Air Koryo airway bill

In Annex XIII, the Panel states:

"10... It can safely be assumed that a chartered cargo aircraft whose flight plan would have directly connected the DPRK to Iran, two embargoed countries, would have attracted higher levels of scrutiny along its route."

If the absence of Tehran airport from the schedule/flight plan sent to the Thai aviation authorities was an evidence of a "common clandestine delivery technique", it made no sense to have on board one of the seven mandatory copies of the Air Waybill (AWB) that was later

seized by the Thai authorities. The AWB, prepared in Pyongyang by Air Koryo clearly showed not only Tehran as the final destination of the cargo, but also a consignee called "Top Energy Institute". If the carrier (Air West) and the broker (SP Trading) were co-conspirators of the shipper (UTM), as the Panel states (Anne XIII, 15), and wanted to hide the Tehran destination from the scrutiny of authorities along the route, why let Air Koryo prepare such an AWB for the first technical stop in Bangkok? As stated in the previous paragraph, the origin of the flight (Pyongyang) was surely sufficient for "attracting" attention in an airport such as Bangkok.

The panel further states:

"14 [...] another set of more genuine shipping documents was found by Thai authorities in the plane (see annex XIII, sects. K and L). Worse, the information contained in these documents is completely different. An Air Koryo air waybill (see annex XIII, sect. L) provides the name of a different DPRK shipper (Korea Mechanical Industry Co. Ltd) and an intended recipient located in Iran (Top Energy Inst.). This last document is also inconsistent by indicating that the destination of the flight was Bangkok." [The panel is referring to previous documents it believes were "less genuine". Those documents will be discussed in the next paragraph].

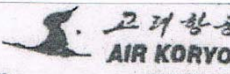
As far as the Air Koryo AWB is concerned, the fact that the consignor and the consignee do not correspond to the consignor and consignee of previous documents (documents provided by UTM to SP Trading) does not mean that the inconsistencies have something to do with a conspiracy between UTM and SP Trading. On the contrary, if a conspiracy had taken place, one would expect the sequence of all documents to have been formally perfect and with the fewest possible differences.

Who instructed Air Koryo in Pyongyang to change the consignor and the consignee previously indicated in the packing lists sent by UTM to SP Trading? What was the purpose of exchanging the denomination of the cargo from "oil drilling equipment" to "mechanical parts"? Did that change make the cargo described in the B/L less suspicious, or the new consignee (Top Energy Institute) less unlikely than "National Iranian Oil Industry"? Not at all.

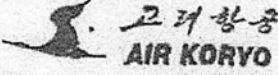
The Air Koryo AWB was a *simple* AWB,⁶⁶ whose main elements were: a regular 11-digit number (120 [Air Koryo]-0018-853-2 [the final "2" is the so-called "check digit"]); a consignor (Korean Mechanical Industry Ltd, but without the mandatory address or contact numbers); the consignee (Top Energy Institute at Mehrabad, misspelled Mahrabad, airport in Tehran); the destination airport given as Bangkok; no visible signatures (in the Panel's reproduction of the AWB).

⁶⁶ IATA new AWB effective 17 March 2008. The *simple* AWB includes only one shipment in one bill versus the Master AWB for consolidated cargo from multiple shippers.

Doc. 3 - Air Koyo AWB

Shipper's Name and Address KOREA MECHANICAL INDUSTRY CO. LTD.		Shipper's Account Number	Not Negotiable Air Waybill		 Member of International Air Transport Association	
Consignee's Name and Address TOP ENERGY INST. MR. DASHTI TEL: 00989121079041 FAX: 0098221 88736689 AIRPORT MAHRABAD		Consignee's Account Number	Issued by AIR KORYO PYONGYANG INTERNATIONAL AIRPORT GUMMAN DISTRICT, PYONGYANG, DPR OF KOREA TEL: 00989121079041 FAX: 0098221 88736689			
Agency IATA Code		Account No.	Copies 1, 2 and 3 of this Air Waybill are identical and have the same validity			
Place of Origin and Requested Routing PHONGYANG/MAHRABAD		Reference Number	Accounting Instructions CASH			
To EKK By First Carrier AIR KORYO		By	By	By	By	
Origin BANGKOK		AWB No. AWG732/11DEC	Class KP	Rate AWB	Remarks	
Traveling Information		Insurance XXX				
For U.S.A. use only: These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to E.O. 12812 prohibited.						
No. of Pieces PUP	Gross Weight	Rate Class	Chargeable Weight	Rate / Charge	Total	Name and Quantity of Goods (incl. Dimensions or Volume)
143	33824.5	K Q	33824.5			MECHANICAL PARTS
145	33824.5					
Prepaid		Collect		Other Charges		
0.00				AWC 760.00		
Total Prepaid		Total Collect		Total Other Charges		
760.00				760.00		
Total Prepaid		Total Collect		Total Other Charges		
760.00				760.00		
Currency Conversion Rates		CC Charges in Base Currency		HDCOM PHONGYANG AIRPORT		
				120-0010 8532		

Doc. 3A - Air Koyo AWB detail - Consignor/Consignee

Shipper's Name and Address KOREA MECHANICAL INDUSTRY CO., LTD.		Shipper's Account Number	Net Weight Air Waybill	 AIR KORYO Member of International Air Transport Association
Consignee's Name and Address TOP ENERGY INST. MR. DASHTI TEL: 00989121079041 FAX: 0098221 88736639 AIRPORT MAHRABAD		Consignee's Account Number	Issued by AW KORYO PYONGYANG INTERNATIONAL AIRPORT SOHAE DISTRICT, PYONGYANG, DPR OF KOREA TEL: 854-2-0691111 064-2-0614111 064-2-0614111	
Copies 1, 2 and 3 of this Air Waybill are original and have the same validity				

Doc. 3B - Air Koyo AWB detail - Airports and Flight #

Agent's IATA Code PYONGYANG	Account No.	Reference Number	Optional Shipping Information
From: PYONGYANG To: BANGKOK By: AW KORYO		Date: 11 DEC Flight: AW732	Insurance: XXX Remarks: AWK732/11DEC

Doc. 3C- Air Koyo AWB detail - Cargo description

No. of Pieces Pkgs	Gross Weight	Rate Class	Chargeable Weight	Rate / Charge	Total	Nature and Quantity of Goods (incl. Dimensions or Volume)
143	35824.5	Q	3582.5			MECHANICAL PARTS
143	35824.5					
Prepaid: 0.00 Collect: AWC700.00						

The panel, without specifying the reason, wrote that the AWB was "also inconsistent by indicating that the destination of the flight was Bangkok." The Panel replicated a consideration we made in our 8 October 2010 report: "...it should also be noted that in the Air Koryo air waybill the given destination for the flight was Bangkok and not Gostomel, as it should have been according to the flight plans prepared by SP Trading for the 4L-AWA..."⁶⁷

⁶⁷ "Mapping the Labyrinth: more on the strange weapons flight of 4L-AWA, IPIS/TA-R- October, 2010

It is not known why Air Koryo indicated Bangkok as the destination airport for the 4L-AWA return flight, but it could either be a practice taken from other types of AWBs,⁶⁸ or an instruction received by the shipper/consignor. In fact, the 11 December 2009 flight - AGW732 from Pyongyang - had Bangkok as the first destination. The AWB is issued by the carrier or its agent (in this case Air Koryo), and by the shipper/consignor at the airport of departure. Its correctness was therefore the responsibility of Air Koryo and the Korean company that was mentioned in the AWB as the consignor (Korea Mechanical Industry).

3.1.5 - The two inspections in Bangkok

If the "conspirators" were using a "*common clandestine delivery technique*" by hiding Tehran as the "final" destination of the flight in documents destined for the Thai authorities, *having on board* an AWB with Tehran and Top Energy Institute as destination/consignee was an "*exceptionally poor technique*" even for inexperienced traffickers, not to mention for the people that the Panel accuses of being seasoned arms traffickers. The Air waybill is the main and most checked document issued by the carrier or its agent⁶⁹ and the aircraft's captain could easily have foreseen an inspection of the aircraft documents and cargo after landing in Bangkok from an origin such as Pyongyang.

According to SP Trading managers⁷⁰ and the captain's communications, the inspection was in fact carried out, and the aircraft was cleared for departure some twenty minutes before another team of Thai law enforcement officials - tipped by the US intelligence, according to media accounts - intervened and seized the aircraft.

"After landing in Bangkok the Captain called to inform that around 20 people checked cargo documents and took photographs of the cargo. They said that they have no questions and that the flight can be continued. Then in approximately 20 minutes the Captain called again saying that around 50 people came. They started opening the packages and the captain saw weapons (shot shells). The aircraft was offloaded and the crew went to the hotel. The next day the crew was arrested by police. When the aircraft landed in Bangkok Ms. Natalia Sabantseva was also in the country and the crew gave her local mobile number to the Thailand authorities."

According to the Chicago Convention,⁷¹ and therefore ICAO and IATA rules, the crew does not have a right to open and verify the cargo and is not held responsible if what the documents

⁶⁸ In other types of AWBs the destination airport can be the first leg of the flight as a portion of the final destination airport.

⁶⁹ The AWB describes the condition of carriage and, among other functions, may be used for Customs clearance.

⁷⁰ E-mail from Mr. Lunev, dated 26 October 2010. The authors have been in regular contact with Mr. Lunev and Mr. Zykov in regard of this case since 18 December 2009.

⁷¹ ICAO, Convention on International Civil Aviation, 2006 version, Doc. 7300/9.

list do not match what is actually inside the cargo containers, crates, and boxes. The carrier has the right, however, to refuse the cargo if it is evident that the cargo does not match what the document say. According to ST Trading managers,

"The crew was instructed to check the compliance of the cargo to the airway bills data according to the cargo. In case the airway bills do not match the actual cargo not to load the aircraft. At night the Captain called Mr. Lunev and reported that the cargo packages confirm the air way bills and there is nothing suspicious."

According to the flight schedule reported by the Panel, the aircraft was expected to land in Pyongyang on 10 December at 4 am UTC time and was expected to depart 11 December at 2:30 am UTC time. For the 10 December 2009 expected arrival, the local time⁷² in Pyongyang was (Thursday) 10 December at 1:00 pm. The expected departure was December 11 at 11:30 am (in local time). The crew had barely 22 hours for Customs formalities, transport back and forth to the airport, rest, and preparation of the aircraft (refueling, preparation of documents, technical inspections, etc.). Was a more careful inspection of the external appearance of the cargo possible? Could it have revealed something suspicious? To answer these questions it would be necessary to have the real timeline of each operation in Pyongyang, but anyway the schedule was very tight. According to SP Trading managers, the Air Koryo AWB was issued "40 minutes prior departure". Unreported by the Panel, "in February 2010, a Thai court freed all the arrested crew members of the 4L-AWA plane without any criminal charges. On February 12, all the crew members of 4L-AWA departed from Bangkok at 5:40 pm aboard Astana Airlines's flight KC93263 and arrived the same day in Almaty (Kazakhstan)."⁷³ After set free, the crew never faced any charges in Kazakhstan or anywhere else.

3.1.6 - The informal "Air waybill"

In Annex XIII, the Panel also states:

"12. The various documents relating to the cargo reveal multiple irregularities and contradictions. The air waybill (see annex XIII, sect. H) supplied by SP Trading is so deficient that the Panel can only conclude that it has no commercial or legal value. It is not numbered; shows no issuing carrier's name and address; no signatures or stamps; and no date or place of execution, as required by IATA relations to authenticate it as genuine. Further, it contains no information about the aircraft, the flight number or its operator."

⁷² Daylight saving time was not in effect.

⁷³ Danssaert, P., S. Finardi, B. Johnson-Thomas, *Mapping the Labyrinth*, quoted, 8 October 2010.

Doc. 4 - The informal air waybill sent by UTM

The Panel does not further clarify the meaning of "supplied by SP Trading". Supplied to whom? When? That informal AWB was in fact supplied, but it was not "supplied" by SP Trading, it was supplied to SP Trading by UTM.⁷⁴ If the Panel had taken the time to interview SP Trading managers when one of its representatives visited Ukraine, it would have received the following explanation: the handwritten AWB was never used as an AWB. The handwritten AWB was just sent by UTM managers to relate the information that the carrier and its

⁷⁴ The informal AWB was published by these authors in the Annexes of their December 2009 reports.

aviation services provider had to reproduce in a properly prepared AWB. SP Trading managers - who requested the information to UTM - accompanied their claim with the copy of the e-mail received from UTM and reproduced below. The email between SP Trading and UTM included texts in both English and Russian. The attached AWB was the one reproduced above.

Doc. 5 - E-mail between UTM and SP Trading

Пересылаемое сообщение -----
От кого: "dario cabreros" <union_top@operamail.com>
Кому: UZH <uzh@i.com.ua>
Копия: lub2009@mail.ru
Дата: Суббота, 5 декабря 2009, 9:16 +01:00
Тема: Re: Fw: COPY KOREA REQ
Уважаемый Юрий,
Доброе утро :) Прошу прощения за то что мешаю в выходные. Прилагаю AWB и отредактированный PL.
Жду окончательную версию контракта для подписи.
С уважением Наташа

[Translation by the authors:
December 5, 2009
Dear Yury,
Good morning :) Sorry for bothering you on the weekend. Attached please find the AWB and amended PL.
I'll be waiting for the final version of the contract for signing. Best regards, Natasha].

3.2 - Incorrect information on the SP Trading/Air West contract

Another irregularity the Panel found in the documents it examined was the contract between Air West and SP trading for the wet-lease of the Il-76. The Panel states that:

"Only two legally registered air carriers can agree on a lease under Aircraft Crew Maintenance Insurance (ACMI) conditions. However, there is no evidence that SP Trading was a legally registered air carrier, as also suggested by the fact that the flight was undertaken using Air West's call sign (4L-AWA)."

Unfortunately, the Panel's assertions are incorrect. Notwithstanding the right of ICAO member States to regulate the issues otherwise, there are no general prohibitions that restrict Air Charter Brokers that are non-air operators - i.e. are not airlines - from stipulating agreements for the lease of aircraft from an air operator on ACMI terms.

The contract between SP Trading and Air West was legal and did not violate any rule. If there was something problematic in that agreement was actually the price set per block-hour: US\$900, a price hardly fitted to even cover the general operational costs of the aircraft. However in the depressed business environment of the cargo industry in 2008 and 2009, that price per block-hour in the context of an ACMI agreement could seem less strange.⁷⁵

⁷⁵ In an ACMI agreement, fuel and airport fees, as well as crew's expenses during the voyage, are paid by the lessee. In 2009, fuel accounted in average for nearly half of an aircraft direct operational costs, due to a surge in aviation fuel prices (see: Air Freight: A Market Study With Implications For Landlocked Countries, *World Bank*, Transport Papers TP26, August 2009).

3.3 - The "circuitous route" and the cargo

In Annex XIII, the Panel also stated:

"11. Further, a more direct flight route would have saved considerable mileage on both legs and therefore greatly reduced the shipping costs. This circuitous route was probably chosen to avoid airports which pose higher risks of detection."

This statement is surprising: Bangkok airports, for example, are (for several security reasons, including high risks of heroin trafficking and terrorism) among the world's most guarded and scrutinized hubs. As the location for a refueling stopover with a cargo of 35 tons of clandestine weapons from North Korea, Bangkok was likely the worst possible place an arms trafficker could choose.

In a written interview to the authors,⁷⁶ Mr. Lunev answered a question about the "circuitous route" by stating that SP Trading received the following explanation by UTM representatives:

1) *"To advise transportation advisability as overhead costs were too high: Igor replied that he won a tender for the supply of this equipment which was bought earlier and was not used, that's why its cost is so low."*

2) *"The reason why the Customer requested not to overfly China: Igor explained that 'it's a big Contract and if the Chinese side find out what the Company supplies they will compete with him' (with Igor)."*

3) *"The reason why the Customer requested not to fly directly to Iran: Igor said that as this equipment was produced in USA, it should be brought to Ukraine first for handling. The handling had to be done by the following company: Aerotrack Ltd, Address: Kiev 254080, 19-21, Frunze str., Ukraine, tel. : +38 (095) 5336136, fax: +38 (044) 2348148, Victoria Doneckaya."*

As for the choice of Nasosnaya airport as one of the refueling airports, and the landing in Bangkok's Don Mueang instead of Suvarnabhumi International (as indicated in Air Koryo's AWB)⁷⁷ are concerned, Mr. Lunev stated:

"Nasosnaya was used on multiple occasions for refueling (due to the low cost of fuel and aircraft service). For example, service costs for IL-76 aircraft in Eldar Aliev airport (Baku) reach up to \$10,000. In Nasosnaya airport it is \$4,000. UBBi airport call sign was provided directly by the flight coordination center of Azerbaijan's dispatcher air navigation service." ...

⁷⁶ Dated 26 October 2010.

⁷⁷ IATA code BKK.

"When a request was submitted to Thailand's flight coordination center for obtaining a permission for a technical landing in Bangkok Suvarnabhumi International, it was rejected because this airport does not receive cargo aircraft. They recommended Don Mueang. The Captain did not make a decision on landing point change. These instructions were given by Thailand's flight coordination center."

Finally, the copies of e-mails provided by SP Trading to the authors and reproduced further below may support - if genuine⁷⁸ - SP Trading's claims. They also demonstrate that, if SP Trading managers had established UTM as a cover for smuggling the weapons from North Korea to Iran, or whatever other destination, the sequence of their communications does not make any sense, including the alternate use of English and Russian. **Either they were fabricated ad hoc to create a smokescreen in case of discovery of the cargo (which after closer inspection of the emails seems far-fetched), or they cannot be explained in terms of the conspiracy or complicity the Panel indicate in its accusations.**

As far as the cargo is concerned, in Section I of the Appendix XIII the Panel showed a Packing List "*supplied by SP Trading*" and made some comments on its content. Once again the Panel did not further clarify the meaning of "*supplied by SP Trading*". In fact, that Packing List was the first (n. 787) of the two Packing Lists (n. 789) supplied to SP Trading not by SP Trading. The "supplier" was actually UTM.⁷⁹ The cargo included in the Packing List 787 was only loosely related to the oil industry business. In fact, the listed items were, as noted in our previous reports, "*87 boxes said to contain 'Geothermal rigs MTec 6'... for a machine recently produced by the British firm Dando Drilling International... and usually intended for*" drilling boreholes for water wells, geothermal drilling, and geotechnical works." "*In addition, [the Packing List included] 40 boxes [that] were indicated as containing spare parts for the 'Rotary drilling rig Watertec6,' a machine intended for conventional*" open hole drilling using water, mud, air, water flushing techniques," *produced by the same Dando firm, and* "ideal for accessing remote locations... for well drilling." *Also on the list was the Buffalo 3000 drilling rig, offered by Dando as a "cost effective percussion drilling rig favored by NGOs and funding agencies for installing hand-pumped waterwells." Dando also manufactured the Mintec 12.8 (for which the supposed cargo included 1 box of valves), "designed for exploration on open cast mine prospects," for example, coal mines."*

3.3.1 Flight route and cargo in SP Trading/UTM correspondence

Some of the SP Trading copies of the e-mails included headers and the sender's location. The e-mails were exchanged between a UTM's "Dario Cabrerros" e-mail always signed by

⁷⁸ The authors have carried out some investigations on the email addresses, headers and routing and the emails seem to be authentic at the level of scrutiny available to non-law enforcement information providers.

⁷⁹ The two packing lists were both published by the authors in their reports in 2009 and 2010.

"Natasha" and SP Trading's Yurii Lunev. It is not in the power of the authors to ascertain their authenticity and to provide an explanation for the different places - sometimes in the same day - from where the non-existent "Dario Cabrerros"⁸⁰ sent some of the e-mails.

Tab. 3 - Summary of e-mail December 1 - December 5, 2009

FROM	TO	DATE	TIME
union_top@operamail.com	lub2009@mail.ru	01 DEC	15:15
lub2009@mail.ru	union_top@operamail.com	02 DEC	11:40
union_top@operamail.com	lub2009@mail.ru	02 DEC	11:08
union_top@operamail.com	lub2009@mail.ru	02 DEC	12:35
lub2009@mail.ru	union_top@operamail.com	02 DEC	19:07
union_top@operamail.com	lub2009@mail.ru	03 DEC	08:20
union_top@operamail.com	lub2009@mail.ru	03 DEC	09:42
union_top@operamail.com	lub2009@mail.ru	03 DEC	11:57
lub2009@mail.ru	union_top@operamail.com	03 DEC	12:17
union_top@operamail.com	lub2009@mail.ru	03 DEC	16:05
union_top@operamail.com	lub2009@mail.ru	03 DEC	16:18
union_top@operamail.com	lub2009@mail.ru	03 DEC	17:46
union_top@operamail.com	uzh@i.com.ua, lub2009@mail.ru	05 DEC	09:16
lub2009@mail.ru	union_top@operamail.com	08 DEC	16:52
union_top@operamail.com	lub2009@mail.ru	08 DEC	15:49
union_top@operamail.com	lub2009@mail.ru	09 DEC	13:21
union_top@operamail.com	uzh@i.com.ua	09 DEC	20:18

Source: Elab. on e-mail provided by SP Trading

1 December 2009 15:15 +0100
 "dario cabrerros" <union_top@operamail.com <mailto:union_top@operamail.com>> 01 Дек 2009 15:15:28 AUSTRIA WIEN WIEN 48.2 16.367 - +01:00

-Original Message-----
 From: "dario cabrerros" <union_top@operamail.com>
 To: lub2009@mail.ru
 Date: Tue, 1 Dec 2009 15:15:28 +0100
 Subject: shipment details
 ATTACHMENT: application/octet-stream (Image0001.trb)
 Юрий Лунев
 Dear Yurii,
 Sorry for delay.
 Please find order details (packing lists for all the legs will be sent tomorrow)
 8 Dec - Kiev - Ganca (cargo load)
 9 Dec - Ganca - BKK (cargo unload)
 10 Dec - BKK - FMG (pyong yang) (cargo load)⁸¹
 10 Dec - FMG- Kiev - Tehran
 Ganca - BKK cargo
 Telecommunication equipment app 33MT
 FMG cargo
 Oil industry spare parts - 35MT
 All documentation will be sent tomorrow.
 Yurii, beginning from Wednesday I will stay in touch with you as I am going to reach my office and call you from my mobile phone.
 I would also like to get the following information:

- Aircraft registration number
- Crew team
- Route

⁸⁰ See: *Mapping the Labyrinth*, quoted, 8 October 2010.

⁸¹ Erroneous airport code for Pyongyang, later on corrected.

• Pricing

Best regards,
Natasha Sabantseva
Union Top Management Ltd.
Tel: [+852 2749 3804](tel:+85227493804)
Fax: [+852 2789 3362](tel:+85227893362)

2 December 2009 11:40 +0300

Original Message -----

From: "Юрий Лунев" <lub2009@mail.ru>
To: "dario cabrerros" <union_top@operamail.com>
Subject: Re: shipment details
Date: Wed, 02 Dec 2009 11:40:45 +0300

Наталья добрый день!

вчера получил Ваше письмо и у меня сразу вопрос? Что такое GANCA?
Если это Азербайджан, то надо что бы отправляющая сторона согласовала разрешение на вывоз груза грузинским или казахским бортом. Пожалуйста, если это все серьезно, сбросьте отправляющие-встречающие стороны, пакинг листы на груз, для того, чтобы я мог подать заявки по маршруту на получение разрешений, заключить контракт на перевозку, получить от Вас деньги до вылета. В соответствии с Вашим графиком движения-времени на все перечисленные процедуры мало.

С ув.

Ю. Лунев

[Translation:

Natalia, good morning!

I received your letter yesterday and I have a question right away. What is GANCA?

If that is Azerbaijan, than the shipping party would have to coordinate the permission for the removal of cargo by Georgian or Kazakh aircraft. Please, if all this is a serious matter, advise me about shipping and receiving parties, packing lists for the freight so that

I could file route requests for obtaining permissions, sign a transportation contract, receive the funds from you prior to the departure. According to your moving schedule, there isn't much time for all aforementioned procedures.

Regards,

Yu. Lunev]

2 December 2009 11:08 +0800

dario cabrerros" <union_top@operamail.com <mailto:union_top@operamail.com>> 02 Дек 2009 11:08:01 HONG KONG HONG KONG (SAR) HONG KONG 22.283 114.15 - +08:00

----- Пересылаемое сообщение -----

От кого: "dario cabrerros" <union_top@operamail.com>

Кому: "Юрий Лунев" <lub2009@mail.ru>

Дата: Среда, 2 декабря 2009, 11:08 +01:00

Тема: Re: shipment details

Дорогой Юрий,

Спасибо за mail, мой мобильный +85297083405 . Я позвоню вам примерно через пол часа в любом случае. Ganca аеропорт в Азербайджане. Все согласовано. Обсудим все остальные вопросы по телефону.

С уважением

Наташа

[Translation:

Dear Yuri, Thank you for your mail, my mobile 85297083405. I'll call you in about half an hour anyway. Ganca Aeroport in Azerbaijan. All agreed. We discuss all other issues on the phone. Regards, Natasha]

2 December 2009 12:35 +0800

"dario cabrerros" <union_top@operamail.com <mailto:union_top@operamail.com>> 02 Дек 2009 12:35:03 HONG KONG HONG KONG (SAR) HONG KONG 22.283 114.15 - +08:00

dario cabrerros to lub2009@mail.ru

Subject: Re: shipment details.

Dear Yuriy, Following our conversation, kindly note the following: Ganca airport code and the first destination is KVD. (KBP-KVD-BKK-FNJ-KBP-THR). Please advise whether you have a shipment booking form similar to the one attached, so that we can submit it. Packing List - will be sent later today. Shippers/Cnees will be advised later today or tomorrow morning. Please advise the price, board number, flight number and route. Dear Yuriy, do not hesitate to call me for any inquiry. Best Regards, Natasha

2 December 2009 19:07

lub2009@mail.ru to dario cabreros

Subject: Re[2]: shipment details.

Наташа, я не правильно написал в E-mail трехбуквенный код С..Кор - правильный код FNJ, жду от Вас актин лист. С ув. Юрий.

[Translation]:

Subject: Re[2]: shipment details. Natasha, I wrote an incorrect three-letter code С..Кор in the email - the correct code is FNJ, I'm waiting for you to send me the list. Regards, Yury

3 December 2009 8:20

"dario cabreros" <union_top@operamail.com> <mailto:union_top@operamail.com>> 03 Дек 2009 08:20:11 UNITED STATES CONNECTICUT OLD GREENWICH 41.032 -73.568 06870 - 05:00

dario cabreros to lub2009@mail.ru

Dear Yuriy, Noted. The PL will be sent ASAP. In case you cannot reach me at my mobile, you can also call +85298204534. Warm Regards, Natasha

3 December 2009 9:42

"dario cabreros" <union_top@operamail.com> <mailto:union_top@operamail.com>> 03 Дек 2009 09:42:48 HONG KONG HONG KONG (SAR) HONG KONG 22.283 114.15 - +08:00

dario cabreros to lub2009@mail.ru

From: "dario cabreros" <union_top@operamail.com>

To: "Юрий Лунев" <lub2009@mail.ru>

Date: Thu, 3 Dec 2009 09:42:48 +0100

Subject: Re: Re[2]: shipment details

Уважаемый Юрий,

Прошу см. прилагаемый предварительный PL на первое место назначения.

Экспедитор и получатель будут присланы сегодня вместе с окончательным PL .

Уважаемый Юрий, авансовый платеж будет доставлен к вам сегодня (в соответствии с нашим вчерашним разговором).

Вместе с этим мы хотели бы обсудить возможные скидки на окончательную цену.

Пожалуйста, сообщите, как мы можем сократить расходы.

Пожалуйста, не стесняйтесь позвонить в любое время.

С уважением

Наташа

[+85298204534](tel:+85298204534)

ATTACHMENT: application/msword (Union Top PL.doc)

[Translation:

Dear Yuriy, How are you? Kindly see the attached preliminary PL for the first destination. The forwarder and the consignee will be designated later today. Dear Yuriy, the advance payment will be delivered to you today (as per our conversation yesterday). We would like to discuss a possible discount for the final price. Please advise how we can cut the costs. Please do not hesitate to call at any time. Warm Regards, Natasha +85298204534]

3 December 2009 11:47

"dario cabreros" <union_top@operamail.com> <mailto:union_top@operamail.com>> 03 Дек 2009 11:57:38 UNITED STATES CONNECTICUT OLD GREENWICH 41.032 -73.568 06870 - 05:00

dario cabreros to lub2009@mail.ru

Dear Yuriy, Noted. In process. Warm Regards, Natasha

3 December 2009 12:17

----- Original Message -----

From: "Юрий Лунев" <lub2009@mail.ru>
To: "dario cabreros" <union_top@operamail.com>
Subject: Re[4]: shipment details
Date: Thu, 03 Dec 2009 12:17:36 +0300

Наталья добрый день! авансовый платеж сегодня не нужен-нужен будет на кануне вылета. На сегодня нужен контракт и данные для заявки о которых я говорил. С ув. Ю.Лунев

[Translation:

Good day, Natalya! The advance payment is not needed today, it'll be required one day prior to the departure. As of today, we need a contract and the information for the requests that I've already mentioned. Regards, Y. Lunev]

3 December 2009 16:05

"dario cabreros" <union_top@operamail.com> <mailto:union_top@operamail.com>> 03 Дек 2009 16:05:13 HONG KONG HONG KONG (SAR) HONG KONG 22.283 114.15 - +08:00
dario cabreros to lub2009@mail.ru

----- Пересылаемое сообщение -----

От кого: "dario cabreros" <union_top@operamail.com>

Кому: "Юрий Лунев" <lub2009@mail.ru>

Дата: Четверг, 3 декабря 2009, 16:05 +01:00

Тема: Urgent

Уважаемый Юрий,

Поступили изменения:

Т.е. первые груз KVD-BKK откладывается после Рождества по требованию клиента.

Мы должны сосредоточить сейчас, на втором т.е. груз GML-FNJ-GML-THR

- на этот раз не терпит отлагательства.

Самолет должен прибыть в FNJ 10 декабря.

Выплата аванса будет представлена завтра.

Просьба сообщить цену за эту партию.

Пожалуйста, см. прилагаемую PL.

Конечного грузополучателя (после транс отгрузки в Киеве) детали

будут предоставлены как можно скорее, а отдельный PL будет

предоставлен

В ожидании вашего ответа

Warm Regards

Наташа

[Translation:

The first shipment i.e. KVD-BKK is postponed to after Christmas due to customer request. We have to concentrate right now at the second shipment i.e. GML-FNJ-GML - this one is urgent. Please book the flights for the following route GML-FNJ-GML-THR. GML-FNJ (empty), FNJ-GML (cargo load), GML-THR (paper amendment - transit shipment). The plane should arrive in FNJ on Dec 10th.

The advance payment will be submitted tomorrow (50K). Please advise the price for this shipment. Please see the attached PL. The final consignee (after trans shipment in Kiev) details will be provided as soon as possible, while a separate PL will be sent. Awaiting your reply, Warm Regards Natasha]

3 December 2009 16:18/16:34

"dario cabreros" <union_top@operamail.com> <mailto:union_top@operamail.com> 03 Дек 2009 16:18:55 HONG KONG HONG KONG (SAR) HONG KONG 22.283 114.15 - +08:00
dario cabreros to lub2009@mail.ru

ATTACHMENT: application/msexcel (Copy of Booking Form - Air.xls)

----- Пересылаемое сообщение -----

От кого: "dario cabreros" <union_top@operamail.com>

Кому: "Юрий Лунев" <lub2009@mail.ru>

Дата: Четверг, 3 декабря 2009, 16:18 +01:00

Тема: Re: Ref[6]: shipment details

Дорогой Юрий, Нам необходимы детали в соответствии с прилагаемым документом в

целях информирования конечного
грузополучателя и грузоотправителя в FNJ.

"dario cabreros" <union_top@operamail.com <mailto:union_top@operamail.com>> 03 Дек
2009 16:34:31 HONG KONG HONG KONG (SAR) HONG KONG 22.283 114.15 - +08:00

Dear Yuriy,

Kindly send us the details as per the attached document in order to inform
the consignee and the shipper in FNJ. Awaiting your reply, Warm Regards
Natasha

3 December 2009 17:46

-----Original Message-----

From: "dario cabreros" <union_top@operamail.com>

To: "Юрий Лунев" <lub2009@mail.ru>

Date: Thu, 3 Dec 2009 17:46:19 +0100

Subject: Re: Re[8]: shipment details

Dear Yuriy,

How are you?

Please send us the details ASAP.

Please send us the price and the contract template.

Our company details:

Union Top Management Ltd

CEO: Dario Cabreros

Awaiting your reply

Warm Regards

Natasha

5 December 2009 9:16

Пересылаемое сообщение -----

От кого: "dario cabreros" <union_top@operamail.com>

Кому: UZH <uzh@i.com.ua>

Копия: lub2009@mail.ru

Дата: Суббота, 5 декабря 2009, 9:16 +01:00

Тема: Re: Fw: COPY KOREA REQ

Уважаемый Юрий,

Доброе утро :) Прошу прощения за то что мешаю в выходные. Прилагаю AWB и
отредактированный PL.

Жду окончательную версию контракта для подписи.

С уважением Наташа

[Translation:

Dear Yuriy,

Good morning :) Sorry for bothering you on the weekend. Attached please find the AWB and
amended PL. I'll be waiting for the final version of the contract for signing. Best regards,
Natasha].

8 December 2009 16:52

----- Original Message -----

From: "Юрий Лунев" <lub2009@mail.ru>

To: "dario cabreros" <union_top@operamail.com>

Subject: Re[2]: Fw: COPY KOREA REQ

Date: Tue, 08 Dec 2009 16:52:05 +0300

Natasha, good day,

I am awaiting signed agreement from you.

Regards,

Yurii

8 December 2009 15:49 +0100

-----Original Message-----

From: "dario cabreros" <union_top@operamail.com>

To: "Юрий Лунев" <lub2009@mail.ru>

Date: Tue, 8 Dec 2009 15:49:25 +0100

Subject: Contract/Transit PL

Dear Yurii,

The agreement is attached.

Yurii, please send me the flight plan.

There will be two more boxes, 1000 kg total. I will send you its dimensions once I receive them.

Warm Regards

Natasha

9 December 2009 13:21

-----Original Message-----

From: "dario cabrerros" <union_top@operamail.com>

To: "Юрий Лунев" <lub2009@mail.ru>

Date: Wed, 9 Dec 2009 13:21:40 +0100

Subject: PL - 4 more boxes update

Dear Yurii,

How are you? We are still waiting for the flight plan.

Updated PL is attached – plus 4 boxes, total weight approx.300 kg.

Warm Regards

Natasha

9 December 2009 20:18

From: dario_cabrerros

To: UZH

Sent: Wednesday, December 09, 2009 8:18 PM

Subject: Contract - confirmed

Yurii,

The signed agreement is attached.

Have a nice evening

Natasha

(attached IMG.pdf, IMG_001.pdf)

4. Ignored traces and facts

4.1 - No investigation on UTM, the main mystery in the case

In addition to the three different Hong Kong phone numbers (+852 2749 3804; +852-9820-4534; and +852-9708-3405) and the fax number (+852 2789 3362) provided by "Natasha", the SP Trading managers stated in an interview with the authors that they received another contact number by UTM manager "Oleg": the Ukrainian number +380-6-6244-2128, evidently a cell phone, and Oleg's email: kventino@mail.ru.

According to SP Trading, Mr. Lunev met "Oleg" in early December 2009 and, on 5 December 2009, he also met "Igor", a supposed head of UTM "from Switzerland". *"After further telephone communication with SP Trading, [Natasha] and the other UTM managers allegedly vanished the same day the plane was impounded in Bangkok."*⁸²

Why did the Panel, in a three-year investigation, not attempt to gather information on UTM from the people who had been in contact and in a business relationship with its managers? This, despite reports that clearly indicate UTM to be the originator of the shipment and the "owner" of the cargo. Why did the Panel exclusively focus on a broker and a carrier. Why did neither the Panel nor the Ukrainian authorities (publicly, at least) carry out any inquiries on those phone/fax numbers and on the "man from Switzerland" that may have entered the country in early December?

4.2 - Lack of information on who paid what to whom

In Annex XIII, the Panel notes:

"7. Investigations of UTM show that it is a shell company created days prior to the flight (see annex XIII, sect. D) whose purpose was to hide the identity of the parties involved... Further, the Panel found no evidence of payments having been made by UTM to SP Trading prior to the flight as required by the contract, nor documentary evidence that SP Trading even communicated the necessary banking information to UTM.

"9. Changes to the initial financial arrangements also raise suspicions. On 10 November 2009, they both [Air West and SP Trading] agreed that SP Trading would direct payment to the aircraft owner, Overseas Cargo, another indication that Air West was only to act as a ghost operator. In any event, the Panel's

⁸² *Mapping the Labyrinth*, quoted, 8 October 2010.

investigations established that SP Trading made no payment to Air West or Overseas Cargo from the bank account specified in the contract. SP Trading however had dealings suggestive of money laundering with a British Virgin Island-registered company."

It is difficult to understand what the Panel intended to say with the above-mentioned considerations.

First of all, how could the Panel state that the purpose of the people who set up UTM was "*to hide the identities of the parties involved*"? On which base and which parties? The Panel - for its own admission - did not find anything on UTM beyond the documents it reproduced from these authors' previous investigation. Neither the previous 2010 report, nor the 2013 report, provides any clues on how the Panel arrived at "discovering" UTM or on what the Panel/s knew about the company. Therefore which parties were UTM supposed to hide? It was precisely SP Trading that "revealed" the existence of UTM to the crew's lawyers and authorities in Thailand, as well as to these authors.

Secondly, the Panel states that "changes" in financial arrangements (the Addendum 3 the Panel show in the Appendix as Section E) "*also raise suspicions*". Had the Panel acquired a better knowledge of aviation practices, no suspicions could have risen from those new arrangements.

In fact, a plane owner may provide his or her property (the plane) to any airlines in exchange for compensation. In turn, the airlines can register the plane in its country and then lease it to any aviation brokers under the airline call sign. Therefore, lease payments can be made either by the broker or by the air company to the plane owner.

It seems that the Panel did not try to ask the people involved in the deal why there was no proof of any financial transactions. According to statements made by SP Trading managers to these authors, no payments were made through the stated bank accounts for two reasons: a) UTM "managers" disappeared without paying the lease and b) the advance payments were arranged in cash for reasons explained in the interview:

"According to UTM, 5 flights were planned (each week) and in order to rule out a possibility for losing a contract for oil and gas equipment supply, they were asking to do the first flight as soon as possible. "Since the payment for the flight was not going to arrive to the bank account prior to departure, the flight was carried out on the condition of a deposit, which had to be returned once the funds are received on the company's account, less incurred expenses for the flight... Igor was told that the flight could be done only after 100% prepayment.

"As the meeting was on the weekend before the flight [5 December 2009 was a Saturday], Igor was asked to give minimum prepayment sum which he would give in cash and it would allow to start the flight. He promised that remaining amount would be transferred on SP Trading account not later than December, 9, 2009. The advanced payment in the amount of 75.500 Euro and 50.000 US Dollars was received from Igor in cash in the SP Trading office in the morning on December 8, 2009.

"The amount 162.000 US Dollars was given to the crew of the aircraft (AC) for payment for fuel and AC service in Azerbaijan and Korea airports and also the remaining amount for coming back to UAE if money were not transferred to the account."... "No payments were made to Overseas FZE or Air West". [...] "The total price for the round flight was 620,000 dollars and the estimated margin was 18,000 dollars."

SP Trading's version of the events could not be verified by these authors, but the above-reported exchange of emails make it sufficiently credible. The Panel had all the means to explore the credibility of the SP Trading version if only it have asked for it.

4.3 - The "address connection" and Aerotrack

In Annex XIII, the Panel notes:

"8. SP Trading was registered in New Zealand in July 2009 in the names of nominee directors at the request of a UK agent. The London-based company formation agent was acting on behalf of Iurii Lunov and Igor Karev-Popov. SP Trading operated out of an office located in Ukraine (19-21 Frunze Street, Kiev).

Nowhere in the report did the Panel show any piece of evidence or a source related to SP Trading's office being located at that address. The Panel repeats the indication in the comments on the informal AWB sent by UTM to SP Trading.

13. ...[the document in] sect. J provides the name of a consignee in Ukraine, Aerotrack Ltd, supposed to be located at the exact same Kiev address as SP Trading, but nowhere to be found by Ukrainian authorities in their official registries.

Doc. 6 - Informal AWB sent by UTM to SP Trading

The image shows a complex form with multiple sections. A red callout box on the left contains the text: "Consignee in Ukraine (same Kiev address as SP Trading)". Red arrows point from this box to the 'Consignee' field in the top right section of the form. The 'Consignee' field contains the following handwritten text: "Aerotrack Ltd", "Kiev (Ukraine) 254 080, 19-21 Frunze Str.", "Tel: +38 (095) 5336136". Other handwritten text includes "SP Trading Ltd" and "Tel: +38 (095) 5336136". The bottom section of the form contains "Shipper: Aerotrack Ltd", "Notify: Aerotrack Ltd", and "Tel: +380 95 5336136".

Source of comments: Panel's report

The "address connection" is not further commented and, due to the fact that the Panel says Aerotrack was "nowhere to be found by Ukrainian authorities in their official registries", it is not clear who the Panel believes could "substitute" Aerotrack as consignee at Gostomel airport... In fact, Aerotrack was indicated as consignee in Gostomel not only on the informal AWB, but also on the Packing lists (787 reproduced by the Panel and 789) sent by UTM to SP Trading – documents that became part of the flight and cargo documentation,as well as part of our previous reports.

Doc. 7 - First and Second Packing List sent by UTM to SP Trading

PACKING LIST No.: 20091201/787 Date: 3/12/2009	
Consignee: Aerotrack Ltd Address: Kiev 254080, 19-21, Frunze Str. Tel: +38(095) 5336136 Ukraine	Shipper: Korean General Trading Corporation Mailto: 403hsd@co.chesin.com Tel: +850 2381 8344 Fax: +850 2381 4416
Tel.: +38 (095) 5336136 Fax: +38 (044) 2348148	
Notify: Victoria Doneckaya Tel.: +38 (095) 5336136	

PACKING LIST No.: 20091201/789 Date: 3/12/2009	
Consignee: National Iranian Oil Industry Hafez Crossing, Ghani Avenue, Tehran	Shipper: Aerotrack Ltd Address: Kiev 254080, 19-21, Frunze Str. Tel: +38(095) 5336136 Ukraine
Tel.: TBA Fax: +TBA	
Notify: TBA Tel.: TBA	

Source: IPIS/TA-R database

The Panel seems satisfied by the "discovery" that the Ukrainian authorities stated that Aerotrack could not be found in their official registries. The **Panel seems to ignore what that information meant**: the aircraft landing in Gostomel from Pyongyang had on board a cargo with a consignee in Ukraine (PL 987) and **only that consignee or its legally authorized representatives could take formal possession of the cargo, Customs-clearing it, signing the necessary documents and authorize the shipping of the cargo (PL 789) to Iran**. UTM representatives insisted with SP Trading upon having the cargo "consigned" in Ukraine before departing to Tehran, for the reasons explained above (§3.3, point 3).

If Aerotrack was in 2009 - as it was - a non-existent company who could have legally received/cleared the cargo in Gostomel? If UTM - or, according to the Panel, its co-conspirators - had the real intention to ship that cargo to Tehran, why did it indicate two non-existent companies as consignee, one in Gostomel and one in Tehran? Why did it not just indicate a "friendly", existing, entity in both airport? A possible answer is that UTM did not care, because it knew that the cargo would have never arrived either in Gostomel or in Tehran. In fact, a false consignee in both Gostomel and Tehran implies that UTM or its supposed co-conspirators needed to bribe officials, at least in Gostomel, for no reasons.

As already noted in this chapter, according to SP Trading, UTM first asked them to perform a flight by following the route:⁸³

"Dneprovetrovsk (empty) - Gyandzha (loading 35 tons of computer equipment) - Bangkok (off-loading) - Pyongyang (loading oil drilling equipment) - Bangkok (refueling landing) - Sri Lanka - Fujairah - Dnepropetrovsk (embarkation of 4 persons, cargo attendants) - Tehran (off-loading).

"We suggested that the cargo attendants should fly directly to Iran using regular airlines (it didn't make any sense to fly all the way to Ukraine to pick up the cargo attendants), but they refused. So we thought they wanted the cargo to look like it came from Ukraine (it may happen when, for instance, UAE buys something from Israel but the buyer wants the cargo to look like it was brought from some other country, so they attend this country and re-register the documents).

"The 4 cargo attendants that were supposed to come onboard in Dneprovetrovsk allegedly worked for Aerotrack. We did not even attempt to get any further information... SP Trading holds responsibility for freight preservation only"

⁸³ Communication between the authors and SP Trading.

Did Aerotrack exist? And why it was said to be located at the "same" Frunze street address where SP Trading had an office? **If Aerotrack was a decode used by the conspirators, why use the "same" address of one of the parties involved? The Panel seems to have ignored basic elements that contradict its conclusions.**

Unfortunately, the Panel failed to report even the information that was already available in 2010⁸⁴ on both Aerotrack and the Frunze building. According to Ukrainian past and present business directories⁸⁵ the Frunze Street 19/21 address - a nine-store building - hosted the headquarters of about twenty companies between 2007 and 2012, including a company called Aerotrack Aviation.

Doc. 8 - Screenshots of a directories naming Aerotrack Aviation

http://www.budim.biz/firms.php?passport=1&firms_id=22&ln=1

Home Qualifier Search Login Add en

« The passport of the enterprise »

AEROTRACK AVIATION, International air carrier, corporation

Ukraine > Kiev 254080, 19-21, Frunze Str.
Phone: +38 (044) 4625574

air carriage

Date of creation / registration of firm:
Annual turnover in year:
Quantity of staff:
Contact person:
Language of dialogue: Russian,Ukrainian

Additional data on firm are absent.

Qualifier:

- Scheduled air transport
- Non-scheduled air transport

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If you had already registered on our server the information on your enterprise will be accessible through Google Yahoo! Aport Rambler Yandex Sympatico Lycos Earthlink AltaVista HotBot MSN AOL NetScape Excite ASK Mamma All! Copyright © 2001-2013 «BudimYG» All rights reserved.

Name	AEROTRACK AVIATION
ZIP	254080
City	Kyiv
Country	Ukraine
Address	Frunze 19-21 str
Phone	044/4625574
Description	Air carriage

to Directory of transport and freight forwarding

⁸⁴ Mapping the Labyrinth, quoted, 8 October 2010.

⁸⁵ See: <http://www.gmdn.net/join-43-join-18-p1.html>;
<http://www.mfa.gov.ua/usa/en/publication/content/42243.htm>; <http://mapia.ua/en/kyiv/addresses/str-frunze-1921>; <http://www.budim.biz/index.php>;
http://www.budim.biz/firms.php?passport=1&firms_id=22&ln=1;
http://www.budim.biz/firms.php?passport=1&firms_id=22&ln=1;
http://partnersroad.com/en/AEROTRACK_AVIATION/22231/Firm_details.aspx

As these authors wrote in 2010:

"The packing list indicated that someone called "Victoria Doneckaya" was a representative of AeroTrack. The authors of this report as well as journalists attempted to contact AeroTrack and Ms. Doneckaya at the indicated phone number and address (19/21 Frunze St., Kyiv) but to no avail.

In January 2010, the Associated Press reported that "security guards and secretaries there [at the AeroTrack stated address] said there had never been a company with that name at that address." However, the security guards' statement seems to be contradicted by an on-line business directory for CIS countries, which listed - from December 2007 to May 2008 - an air carriage company, AeroTrack Aviation, as located at 19/21 Frunze St., with a phone number that was different from the one indicated in UTM's packing lists.

At the 19/21 Frunze Street's building were also domiciled the "State Service for Export Control of Ukraine", the "Scientific and Technical Center for the Export and Import of Special Technologies, Hardware and Materials", the "Center for Army Conversion and Disarmament Studies", the "Security and Nonproliferation Journal" and various important Ukrainian firms such as "CJSC Ukrainian Helicopters".⁸⁶

Even the famous Ukrainian Cargo Airways was located at Frunze 19-21 until 2002.

Doc. 9 - Screenshot of an aviation database reporting the address of UCA.⁸⁷

UKRAINIAN CARGO AIRWAYS - UCA = UKS			
Ul. Frunze 19-21, 254080 Kiev, Ukraine ☎ (44) 417 73 35 Fax: (44) 463 70 05 Email: n/a SITA: n/a			
F: 1998 *** n/a Head: n/a ICAO: CARGOTRANS Web: n/a			
<input type="checkbox"/>	UR-UCK	Antonov 12B	
<input type="checkbox"/>	UR-UCN	Antonov 12BK	00347604 UR-11303 0070

Source: see note.

Evidently, UTM "managers" had used business directories to find a company whose name and address could sound credible, counting on the fact - as reported above - that between the communication of the packing lists and the flight (three days on a week-end) there was not the time or the interest to verify.

According to SP Trading, "an investigation carried out by the authorities showed that a company with a similar name (Antonov AeroTrack) was actually located during the period 2007-2008 at 19-21 Frunze Str." Curiously an "Antonov AeroTrack of America Ltd" is based in

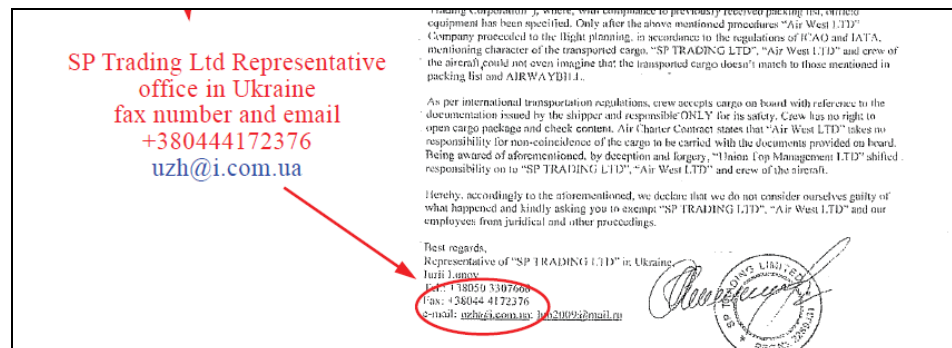
⁸⁶ Mapping the Labyrinth, quoted, 8 October 2010.

⁸⁷ JP Airline-Fleets International 2001-2002. UCA was banned from European skies for safety reasons but regain access in 2009: "Three Ukrainian airlines regain right to conduct flights to EU", Kyiv Post, Nov. 27, 2009.

Bellevue (Washington State, US)⁸⁸ and do business as an air courier. It is not known if the latter had a relationship with the former. Moreover, an "Antonov Aerotrack" company is mentioned in the curriculum vitae of an official of the Accounting Chamber of Ukraine, who states to have been its deputy general director in 1994-1995.⁸⁹

UTM "managers" actually visited the 19/21 Frunze Street building between 3 and 5 December 2009 to meet Mr. Lunev. According to an interview with the latter, Mr. Lunev received "Igor" and "Oleg" in meeting room #911, where he had a temporary office. Ukrainian incorporating documents obtained by the authors show that the office belonged to a company called GST-Ukraine.⁹⁰ Apparently, the surveillance cameras of the building recorded the entrance of "Igor" and "Oleg", but the records were allegedly seized by a Ukrainian law enforcement agency.⁹¹

Mr. Lunev, an Ukrainian citizen, further declared that he had held a manager position at GST-Ukraine and the company had allowed him to use one of its offices and faxes while waiting for the long process of registering his company in Ukraine to be completed (according to him, the process could take more than six months). The fax number given by Mr. Lunev to the diplomatic mission of Kazakhstan in Bangkok - as showed in the Panel's document 13.3 "C. *Extract of official register of airlines published by the Russian Federation and SP Trading letter*" - was the one Mr. Lunev used at the office and "shared" with Air West as a business contact point in Ukraine.



Mr. Lunev provided these authors with the aforementioned contact details of SP Trading in Ukraine, including the GST-Ukraine fax number.⁹²

⁸⁸ <http://www.airunion.us/company-antonov-aerotrack-america-in-bellevue-wa-25233>

⁸⁹ <http://www.ac-rada.gov.ua/control/main/en/publish/article/233773>.

⁹⁰ Registration certificate for GiEsTi Ukraine.

⁹¹ The authors have not the means to verify this information.

⁹² 380-44-457-5221, +380-44-238-8597, fax: +380-44-417-2376.

Doc. 10 - The 19/21 Frunze Street's building in Kyiv



Source: (Google Street View)

As far as GST-Ukraine is concerned, when asked to confirm or deny the Panel's statement that it "*has reason to believe*" that the company "*is related to Zykov*", Mr. Zykov replied that he had no legal connection with GST-Ukraine.

4.4 - Charter/Scheduled flights and "risk indicators"

In the main text of its 2013 report, the Panel states:

"118... Regular cargo services charge lower rates than chartered flights. They use both passenger and scheduled cargo flights to and from major hubs. While these flights are more cost-effective, they are also subject to higher levels of security regulations. Using such flights thus depends on whether the cargo can withstand enhanced scrutiny. Weapons and ammunition would not, but more innocuous items, including arms related materiel, could."

"120. As demonstrated by the weapons seizure in Bangkok and the attempted export of man-portable air defence systems (see paras. 75 and 92), the use of non-scheduled or chartered cargo flights is reserved for the transport of the more sensitive and valuable items or commodities that justify the increased flight cost. Each of these shipments' value was estimated at over US\$ 16 million. The Panel considers that careful scrutiny should be applied to all non-scheduled flights to or from the Democratic People's Republic of Korea, in particular if undertaken by military-type transport aircraft (IL-76 and similar)."

The Panel asked the Stockholm International Peace Research Institute to assist *"its understanding of movements of cargo to and from the Democratic People's Republic of Korea, in particular through chartered cargo flights."* Reporting on the findings of that research (for the period 2005-2012), the Panel stated:

"124. ... owing to a lack of cooperation on the part of most civil aviation authorities approached... [the] Institute was able to confirm only a very limited number of chartered cargo or passenger flights to or from the Democratic People's Republic of Korea during the entire 2005-2012 period, of which three appear to have been humanitarian aid shipments to the Democratic People's Republic of Korea and two were related to the seizure in Bangkok ..."

If the understanding of *"movements of cargo to and from the Democratic People's Republic of Korea, in particular through chartered cargo flights"* was limited to *"only a very limited number of chartered cargo or passenger flights"* in a seven-year period), on what evidence does the Panel base its conviction that *"the use of non-scheduled or chartered cargo flights is reserved for the transport of the more sensitive and valuable items or commodities that justify the increased flight cost."*?

The Panel's statements raise two issues.

The first concerns what kind of "regular" [scheduled] cargo services (by either passenger or cargo airplanes) serve North Korea. Are they fitted for being an alternative to non-scheduled chartered flights? If one imagines that the 4L-AWA cargo was really 35 tons of oil equipment, how could it have reached Tehran by scheduled cargo flights?

The (above quoted) paragraph 124, and paragraph 123 (quoted below) indirectly provide an answer to the first set of questions on available scheduled services for North Korea:

"123. [...] Between 2005 and 2012, only two carriers operated scheduled flights to and from the Democratic People's Republic of Korea, Air China and Air Koryo."

... *Air China operated regular flights between Pyongyang and Beijing (twice a week in 2013)*

... *At present, Air Koryo operates flights between Pyongyang and five international destinations (fewer flights than scheduled most likely actually take place): Beijing (three times a week); (b) Shenyang, China (twice a week); (c) Kuala Lumpur (twice a week); (d) Vladivostok, Russian Federation (once a week); and (e) Bangkok (once a week)."*

The Panel acknowledges that there are no Air Koryo scheduled cargo flights from/to Pyongyang, whereas Air China Cargo (a joint venture of Air China and Cathay Pacific) serves several international destinations⁹³ but has no scheduled flights to and from Pyongyang. Air China serves Pyongyang to and from Beijing only,⁹⁴ with two passenger Boeing 737s that have a cargo capacity of two to three tons and 21 or 24 cubic meters – not fitted to serve substantial cargo shipments. No other companies offer scheduled cargo flights to and from North Korea, leaving Korean or foreign shippers with little choice of how to send or receive cargo, other than with non-scheduled/chartered flights.⁹⁵

Lacking any real data on what is going on in Pyongyang in terms of cargo flights means that it is practically impossible to ascertain how much cargo is transferred to, or received from, abroad by a) the few Air Koryo and Air China scheduled passenger flights and 2) non-scheduled/chartered flights. However, it is likely that the limited cargo capacity of passenger aircraft makes the non-scheduled/chartered flights the only kind of service used by cargo shippers. The recommendation that "*scrutiny should be applied to all non-scheduled flights to or from the Democratic People's Republic of Korea, in particular if undertaken by military-type transport aircraft*" it is equal to saying that all of North Korea's in-bound and outbound cargo must be scrutinized, due to the fact that no other type of services are available for shipping from or to North Korea. As a "risk indicator" the chartered versus "regular" services the Panel and SIPRI point out serves no purpose, regardless of whether is true that real-world scheduled services are less expensive than chartered flights:

⁹³ Air China Cargo Company Ltd, Timetable, <http://www.airchinacargo.com>.

⁹⁴ Air China Timetable, www.airchina.com.

⁹⁵ It is possibly useful to note that the destination of the "*Unscheduled flight by Air Koryo IL-76 landing in a foreign airport (July 2012)*" in Figure XXIII of the Panels' report (p.49) was a flight to Chkalovsky Airport (ICAO: UUMU), a military airport base near Shchyolkovo (31 km northeast of Moscow) that "*provides air support for Star City, Russia, Yuri Gagarin Cosmonauts Training Center, and other elements of the Soviet space program and Russian Federal Space Agency. It is also a major transport base, with the 8th Special Purpose Aviation Division (since 2009-10, the 6991st Air Base)*" [Wikipedia]. The flight occurred the day after (July 17, 2012) a major reshuffle in North Korea's military leadership. See: Kim, J., "North Korean leader cements control over army", 17 July, 2012, *Reuters*; *North Korea newsletter* no. 219 (July 19, 2012), Yonhap News Agency.

Table 4
Summary of risk indicators

<i>Indicator</i>	<i>Risk factor</i>	<i>Screening questions that Member States should ask</i>
Chartered flights	Chartered flights are significantly more expensive than scheduled flights, suggesting more valuable or sensitive cargo.	Could the cargo have been transferred through scheduled rather than chartered services?

The second issue concerns the cost of chartered, non-scheduled services. Are they really more expensive than the "regular" cargo services, therefore "*suggesting more valuable or sensitive cargo*"?

First of all, in terms of costs per block-hour (and therefore prices for the customers), the distinction made by the Panel/SIPRI between "scheduled" and "chartered" flights is not pertinent. The differences in operating costs are primarily between *scheduled or chartered cargo services* and *passenger services with a cargo capacity*, not between *scheduled* and *chartered* flights. Secondly, there are differences in operating costs between types of cargo services, for example between *scheduled and chartered cargo services*

The first and main difference between the types of services (scheduled/chartered cargo services and passenger services with a cargo capacity) stems from the different cost structures affecting the price of cargo transported on cargo services, and the price of cargo transported on passenger services.

"The average unit cost per ton-kilometer for freight transport depends on the type of operation, the route and load factor. All cargo carriers offering scheduled and charter operations include both the capital and direct operating costs in their calculation of the costs for cargo transport, whereas for passenger airlines the transport costs for cargo carried as belly cargo is generally limited to the incremental cost for ground handling and fuel."⁹⁶

However, if for example the aviation fuel price is high (see above the reason regarding why Air West had planned a stopover in Nasosnaya), the transport cost advantage may be lost, in particular if the schedule of the passenger flight includes stopovers between the point of origin of the cargo and its point of destination, due to "*fuel consumed per trip for taxiing, climbing, descending and waiting in holding patterns*".⁹⁷ In addition, other elements, such as the load factor (higher on chartered and scheduled cargo) and the uncertainty on cargo space availability, may affect or completely offset the passenger flight advantage.

⁹⁶ Air Freight: A Market Study With Implications For Landlocked Countries, World Bank, Transport Papers TP26, p. 34, August 2009.

⁹⁷ Ibidem.

Furthermore, there is a difference between scheduled and chartered cargo services, where the load factor in favor of chartered flights can make the latter's operating costs less expensive and therefore less costly for the customers where there is sufficient competition.

"... Load factor is important in determining average unit cost not only because there is a significant portion of fixed costs but more importantly because fuel consumption varies with the total weight of the aircraft. Since charter flights have higher load factors than scheduled air cargo services, they tend to have lower average unit costs for a similar number of operating hours."⁹⁸

In addition (and in opposition to scheduled cargo services that usually operate from large and costly airports), chartered cargo services may take advantage of lower fees by operating in less busy and expensive airports. In the present market conditions, however, there is an increasing trend of integrating scheduled and chartered cargo services in order to better serve a customer whose cargo could not be served solely by either a scheduled or a chartered flight.⁹⁹

In conclusion, with the exception of perishable or extremely urgent deliveries for emergency and other contingency factors, the choice of a chartered cargo service by a shipper has, most of the time, nothing to do with a *"more valuable and sensitive cargo."* This is particularly the case in situations such as North Korea's, where other kinds of services are simply not available. Pricing strategies by aviation service providers are so complex and related to such contingent factors that general rules have little applicability in the contemporary transport environment. Such rules, therefore, cannot function as "risk indicators". On the contrary, "risk indicators" can function in the same manner as "racial profiles": focusing the attention of law enforcement officials to certain aircraft, operators, or people no matter the evidence, meanwhile other potential offenders are overlooked.

⁹⁸ Ibidem, p. 34.

⁹⁹ For example, a shipper may need to send a cargo from point A to point C, but a convenient scheduled service only goes from point A to point B. Scheduled cargo services are now offering to transport the cargo to point C by an associated chartered service. See for example, Solomon, A. "Charter and scheduled cargo carriers pair up", *Air Cargo World*, 28 August 2013 (Chapman Freeborn and Lufthansa Cargo).

5. Conclusions

Apparent lack of expertise on aviation issues and forced and misleading interpretations of documents and events have marred the Panel's treatment of the 4L-AWA aircraft case.

Moreover, in the Panel's report there is no mention of any contact with the individuals it accuses. Why the Panel did not contact Mr. Zykov, Mr. Lunev, and Mr. Karev-Popov or listen to what they had to say on the issue? It is a fundamental principle – even if often neglected – that panels of experts should give those suspected of sanctions violations an opportunity to voice their side of the case before recommending sanctioning to the Security Council. Furthermore, had the Panel contacted those individuals – as IPIS and TA-R have done – they could have obtained additional information and original documents. These could shed a light on various issues that the Panel has dealt with in the wrong way.

The Panel has also ignored main issues related to the case. Moreover, the Panel has left unacknowledged the work of researchers who thoroughly investigated this case and provided the previous Panel with all of their findings.

In summary, these authors consider the Panel's conclusion that "*Mr. Aleksandr Viktorovich Zykov, Iurii Lunov and Igor Karev-Popov... were highly complicit in this illicit transfer*" to be unsupported by the information and documents provided by the Panel.

The authors.

Antwerp, Chicago, and Port Nelson, October 2013

ANNEX 1 - The authors and the Panel

1.1 "Who thoroughly investigated this case and shared information with the Panel"¹⁰⁰

The reports by Panel of Experts on D.P.R.K. do not include any mention of IPIS/TransArms reports, despite the cooperation provided to the Panel between February and October 2010¹⁰¹ and despite the reproduction of information and part of the documents originally published by IPIS and TA-R¹⁰² and passed to the Panel in March 2010. The Panel has used expression such as "According to documents which surfaced after the seizure in Bangkok..."; "Investigations of UTM show that it is a shell company created days prior to the..."; "SP Trading was registered in New Zealand in July 2009 in the names of nominee directors at the request of a UK agent". "Documents" do not "surface" spontaneously. Neither do "investigations". The Panel decided to ignore the authors' contribution to the inquiry while mentioning "a journalist who thoroughly investigated this case and shared information with the Panel". The journalist is Simon Shuster, who wrote an article, "Shadowy Arms Deal Traced to Kazakhstan"¹⁰³, on the case, focusing on crew and family of the aircraft and its owner and operator.

On February 4, 2010, the Associated Press issued a "clarification" on Shuster's article (published, among others, by the *Washington Post*):

"The Associated Press, Thursday, February 4, 2010; 7:53 AM, MOSCOW - In a Jan. 20 story, The Associated Press reported on the crew, cargo and routing of a plane carrying North Korean arms that was detained in Thailand in December.... The story should have noted, however, that the documents were first posted on the Web by analysts at the not-for-profit arms monitoring group TransArms, based in Chicago, and the International Peace Information Service, or IPIS, based in Antwerp, Belgium. The documents were reported on by the Wall Street Journal on Dec. 21."

When the authors received excerpts from the Panel's report, they offered to meet the Panel and provide information on the mistakes and misinterpretation included in the report. The Panel declined the offer and published the report.

¹⁰⁰ UN report S/2013/337, 13 June 2013, p.86

¹⁰¹ Last communication dated 21 August 2010. One of the authors of this report, Sergio Finardi, was invited to meet two Panel members, Mr. Young Wan Song and Mr. Victor Comras, in New York, 10 March 2010.

¹⁰² See Annex 1.

¹⁰³ Associated Press 20 January 2010.

1.2 - Documents originally published by the authors

1. Companies

- **SP Trading - Certificate of Incorporation, 22 July 2009**
- **SP Trading - Shareholders**
- SP Trading - Certificate of Directors
- Union Top Management - Memorandum of Association, 1 September 2009
- **Union Top Management - Certificate of Incorporation, 2 November 2009**
- Union Top Management - Change of Address
- Union Top Management, Returns of Allotments, 10 November 2009
- Easy Development Ltd, founding member of UTM
- Easy Development, Secretary: Team Victoria
- Easy Development, Shareholders: Global King Ventures Ltd
- Easy Time Development - Resignation as Director of UTM
- Team Victoria shareholder
- Team Victoria - Resignation as Secretary of UTM
- **Air West - Operator's Certificate, 6 June 2009**

2. Cargo:

- Packing lists prepared by UTM: **Packing list 787**, Packing list 789

3. Aircraft, route, flight plans:

- **The IL-76 history of registrations and operators**
- **4L-AWA Certificate of Registration, 24 September, 2009**
- **Agreement between Air West and SP Trading, 5 November, 2009**
- **Addendum 1 and 2 to the Agreement between SP Trading and Air West - Hourly cost of 4L-AW (ACMI terms)**
- **Air Charter Agreement between SP Trading and UTM, 4 December, 2009**
- **First informal Airwaybill**
- 4L-AWA, actual and planned route
- 4L-AWA route in SP Trading and UTM Agreement
- 4L-AWA "originally planned route"
- 4L-AWA "changes in route"
- Military aircraft at UBBI, with the dates of satellite and aerial images (DigitalGlobe) for UBBI in 2009: 27 October; 4 November; 27 November; 10 December.
