

RHETORIC OR RESTRAINT?

Trade in military equipment under the EU transfer control system
A Report to the EU Presidency

NOVEMBER 2010

Edited by An Vranckx, Conflict Research Group University of Ghent

Published with generous support of

Belgian Federal Service of Foreign Affairs, Peace-building department
Joseph Rowntree Charitable Trust



KINGDOM OF BELGIUM
Federal public service
**Foreign Affairs,
Foreign Trade and
Development Cooperation**

Academia Press, Gent



**ACADEMIA
PRESS**

Printed by Academia Press, Gent (Belgium)

ISBN 978 90 382 1693 5

U 1522

D/2010/4804/242

Cover design by Studio Kmzero, Firenze

www.studiokmzero.com

All rights reserved. No part of this book may be reproduced in any form by any electronic or mechanical means (including photocopying, recording, or information storage and retrieval) without permission in writing from the publisher or the author.

Executive Summary

More than two decades ago, EU Member States began developing a common framework to ensure their decision-making on military exports took into account political and moral concerns that were being raised in their constituencies. The Code of Conduct for European Union countries' exports of military technology and equipment, which was put into place in 1998, represented a major milestone in that process. A decade later, the EU Code was cast in concrete when it was transformed into a legally-binding Common Position.

While the system is a distinct improvement on what went before, and the level of control exercised in the EU is in many ways setting the global lead, the EU system is still far from perfect. In some cases this would appear to be because licensing authorities are not applying the rules with sufficient rigour; in others because the rules themselves are inadequate to the task. This report seeks to analyse cases where poor arms transfer decisions still appear to be taking place, to identify patterns of poor decision-making where they exist, to consider why such patterns exist and to suggest remedies.

One of the patterns that revealed itself through this analysis was that military equipment sales of a certain magnitude create economic (or other) pressures to export such that the restrictive criteria of the EU Code/Common Position can be overridden. Such an outcome is explicitly forbidden in the relevant EU instruments. The report highlights, for example, major sales of naval equipment to Israel, Morocco, Russia and Venezuela that were approved or supported by Member State governments when there were good reasons under the EU criteria to refuse the deals. This practice is seen to generate inconsistencies in EU attitudes, whereby exceptional and large deals appeared to have been pushed through while permission to export to those same destinations has been withheld for more smaller transfers.

Other cases were identified where large economic interests did not appear to be at stake, but rather where difficult deliberations were made between selling military equipment to states – such as Chad and Mali – with issues regarding development, human rights and (sub-) regional stability to the fore. Various factors would seem to come into play here, e.g. colonial legacies, perceptions that the equipment concerned might help to create the conditions for the end of hostilities and improve prospects for long term development, belief that opponents to the intended recipient are such that supplying military equipment for use against them is justified. Supplies to Sri Lanka are also interesting in this context, as the scale of those transfers was not large enough for them to be defended on economic grounds.

In all of these instances, decision-makers appear to have forgotten that EU States are obliged to base decisions on the conduct of the recipient and against the risk that certain negative consequences may ensue, as set out in the EU Code/Common Position criteria, a principle to which licensing authorities are recommended to return in all cases.

The report also identifies an apparent significant disparity regarding the way Member States assess and respond to the risk of diversion of exported arms. Some seem to take this very seriously, others less so. The report presents in detail the case of many small arms of EU origin eventually finding their way to all sides in the Colombian conflict, despite never having been officially transferred to Colombia. These repeated instances of diversion occurred notwithstanding the fact that Member States had some familiarity with the situation and that some were refusing to license transfers of small arms into Latin America on a regular basis. A number of suggestions of how to reduce the risk of repeating a Colombian-type situation are included in the report, primarily involving better gathering, sharing and processing of relevant information.

One case study in this report, which investigates EU Member State involvement in the probable supply of Ukrainian tanks to South Sudan, highlights the legal void in which European transport companies involved in this transaction were able to operate.

There is also an examination of the way in which the EU arms transfer control system is not set up to respond to circumstances where arms sales are secured by corrupt practices. A number of cases are presented, for example the multi-billion-Euro South African procurement from EU Member States of military equipment in the late 1990s, which might have had a different outcome had the EU Code/Common Position included an “anti-corruption” criterion. Related to this is an analysis of the ways in which governments are institutionally structured to promote arms exports, which again tends to militate against rigorous implementation of the criteria, and proposals for limiting this pro-export bias.

Table of Contents

Executive Summary	3	Dutch frigates for Morocco.....	38
Table of Contents	5	Human security and corruption.....	39
Tables and Graphs.....	6	Export policy considerations.....	40
Introduction	7	Spiralling regional arms purchases.....	40
Acknowledgements.....	8	German-Israeli armaments cooperation:	
Glossary.....	9	sea, land and air	43
The EU selling arms	11	German technology at war.....	44
How export promotion takes precedence		Inconsistencies	47
over controls	11	EU military supplies to the Sri Lankan	
Government support for military companies.....	12	civil war	47
Leaders selling.....	12	‘Appalling disregard for civilian safety’.....	51
Arms export promotion agencies.....	12	(Post-)War budget.....	52
Export credit support and other subsidies.....	13	Development lost.....	52
Why do governments support the arms industry?.....	14	Further export considerations.....	52
Recommendation.....	15	French arms transfers to Chad	53
Corruption and the Arms Trade	16	War, autocracy and underdevelopment.....	53
Corruption and the EU.....	16	Military role of France and the EU.....	56
Ex-EU arms transfers.....	16	Conclusion.....	57
Intra-EU transfers.....	17	Bulgarian attack helicopters for Mali	58
Conclusion.....	20	The role played by EU companies in	
Arms exports to South Africa	21	facilitating clandestine shipments of	
Big interest cases	23	T-72 Tanks and related equipment to	
Fuelling the South Asian arms race	23	Southern Sudan 2007-2008	60
Swedish spy planes for Pakistan.....	23	Sudan: risks of grave violations of international	
Major arms consumer.....	24	humanitarian and Human rights law.....	60
Close to (civil) war.....	25	The role of German and UK companies in facilitating	
Development lost.....	25	clandestine shipments of weapons to Southern	
Ignored export criteria.....	26	Sudan between 2007 and 2008.....	61
UK Hawk trainer jets to India.....	27	Evidence that Ukrainian tanks were diverted to	
Continuing military build-up.....	28	Southern Sudan.....	62
Military vs human development.....	29	Conclusions.....	63
Conclusions.....	30	Diversion	65
Supplying Venezuela	31	What exactly is meant by ‘diversion’?.....	65
The Venezuelan market for military		Approving and denying exports of SALW.....	66
equipment becomes an issue.....	31	Locating the risk of diversion.....	68
Arming the deal.....	33	Latin American small arms abuse.....	69
Out of control?.....	34	The difficulty in spotting diverted	
Conclusion.....	35	European-made small arms.....	70
Mistral warships for Russia	36	The Colombian job – a study of diversion.....	71
The emerging North African military build-up	38	Conclusions.....	74
		ANNEX: Criteria of the Common Position	75

Tables and Graphs

Table 1: Exports that EU states authorised to Venezuela (2002 - 2008).

Table 2: Arms transfer agreements with Algeria, Libya and Morocco (2002 - 2009, total value in millions current US\$).

Table 3: Values of EU arms export licences to Israel (selected countries, 2005 - 2008, in € millions).

Table 4: Value of granted export licences by EU Member States to Sri Lanka (2005 - 2008, in €).

Table 5: Value of export licences to Sri Lanka from selected EU Member States for selected categories of military goods in 2008, in €.

Table 6: Arms export licence applications in the EU for Sri Lanka (2005 - 2008).

Table 7: Value of granted export licences by EU Member States to Chad (2005 – 2008, in €).

Table 8: European ML1 export licences approve and denied in 2008.

Table 9: ML1 licences approved/denied by region.

Table 10: ML1 export licences approved/denied to the Americas (2004, 2008).

Graph 1: Source countries of European countries found in the AUC arms stockpile.

Introduction

More than two decades ago, EU Member States began developing a common framework to ensure their decision-making on military exports took into account political and moral concerns that were being raised in their constituencies. The *EU Code of Conduct on Arms Exports*, agreed in 1998, represented a major milestone in that process. A decade later, the politically-binding EU Code was cast in concrete when it was transformed into a legally-binding *Common Position defining common rules governing control of exports of military technology and equipment*.

The EU Code/Common Position sets out eight criteria against which Member States are to assess applications to transfer arms; it establishes the list of equipment for which transfer licences are required; it establishes a mechanism whereby all Member States are to be advised of any licence denials and consulted in the event that another Member State is considering a licence application for an “essentially identical transaction”; and requires that Member States report on their exports of military technology and equipment.

While the system is a distinct improvement on what went before, and the level of control exercised in the EU is in many ways setting the global lead, the EU system is still far from perfect.

It is the contention of this report that weaknesses remain in two respects. First, it seems that in a number of cases EU States do not always follow the agreed rules with enough rigour. Second, there are cases that point to the agreed rules themselves being inadequate and in need of improvement or tightening.

An in depth analysis of the EU transfer control system and its implementation soon suggests that the reason for this is a tension between on the one hand the need and obligation to exercise restraint and on the other certain pressures to approve and even promote arms transfers, including where these appear problematic under the Common Position.

In particular, we note certain underlying factors that encourage excessively permissive licensing practices, such as:

- the development of bureaucratic structures for the purpose of promoting exports;
- an idea generally accepted by politicians that arms sales promotion is one of their functions;
- disparities in access to governments, whereby business is privileged over other actors;
- an (outdated) mercantilist interpretation of defence economics which is unreasonably sympathetic to the notion that defence exports are irreplaceable in macroeconomic terms;
- a widely-held belief that ethical concerns (as represented by the Common Position criteria) can be trumped when political, geo-strategic and/or economic interests are aligned against them.

This edited volume is a collective work, which draws together public-source data and materials that have been at least in part published previously and for different purposes by scholars, journalists and advocacy organisations from many different countries in Europe and elsewhere. The report develops its analysis from a pan-EU perspective, and attempts to give a sense of how the different Member States are using the system and whether and to what extent arms transfers from the EU correspond with the outcomes the control system was designed to generate.

This report is the first in what we hope will develop into a series that analyses EU arms transfer practices. The analysis extends into probing the mechanisms behind Member States’ decision-making on arms exports. The case studies herein are compiled from the available pool of publicly available material, including the information in national reports and the EU Consolidated Report. These are organised in several sections, each of which sheds light on a different aspect of the EU arms transfer system. The case-studies format is used as a means to explore determinants of Member States’ arms transfer authorities’ policies and practice, and the extent to which these comply with the relevant EU regulative instruments.

Obviously, this is not an exhaustive inventory of all the transfer practices that are a cause of interest, nor are the available open sources that informed the case studies taken as covering all European transfer practices worth reporting. Notably, the newer EU Member States are the ones least documented, as there tends to be less public data on which to base analysis. Cases were chosen on the basis that they appeared representative or emblematic, and were ongoing, recent, or only recently came to light.

The chapters that we built on these cases are all geared at addressing issues that interrelate, so inevitably, the chapters touch upon these various elements.

Any system which regulates (rather than prohibits) arms transfers will involve decisions at the margins which will be open to question. The analysis in this report, however, suggests that Member States are in some cases experiencing more fundamental problems in applying the rules they have agreed to follow. In addition the report identifies problematic cases even where arms transfer licensing rules have been followed, which suggests that the rules are not always good enough. The report then seeks to identify the main problem areas in existing EU arms transfer control policy and practice, to help improve compliance with the relevant instruments, and to suggest possible remedies where the system is not achieving its designated goals.

Optimal compliance with an improved European regulatory framework on arms trade, in its turn, should contribute rather than hamper conflict prevention, conflict-resolution and peace-building in the wider world.

Acknowledgements

We like to thank the Belgian Ministry of Foreign Affairs' peace-building department and the Joseph Rowntree Charitable Trust for their generous financial support for this report. Additionally, we need to acknowledge the support of Oxfam GB for commissioning some of the case study material that informed their assessment of Criterion 8 implementation. Several more people provided valuable comments on drafts for this report.

The material compiled for this report, was obtained from the and various national sections of Amnesty International AI, Berlin Information-center for Transatlantic Security BITS (Germany), Campaign Against Arms Trade (UK), Campagne Tegen Wapenhandel (The Netherlands), Fredslaget (Norway), Groupe de Recherche et d' Information sur la Paix et la Sécurité GRIP (Belgium), International Action Network on Small Arms IANSA, Fundación Ideas para la Paz FIP (Colombia), International Peace Information Service IPIS (Belgium), OMEGA Foundation (UK), Peace Research Institute Oslo PRIO (Norway), Saferworld (UK), Stockholm International Peace Research Institute SIPRI, Small Arms Survey (Switzerland), Svenskafreds - SPAS (Sweden), Transarms (US & Italy) and Vlaams Vredesinstituut VVI/FPI (Belgium).

The authors of the chapters in this report include Andrew Feinstein, Ann Feltham, An Vranckx, Frank Slijper, Nneka Okechukwu, Oliver Sprague, Otfried Nassauer and Roy Isbister. Not all these authors, the organisations they are affiliated with and other organisations whose material was sampled, would necessarily agree with all points made in this report.

Glossary

COARM

Working Party on Conventional Arms Exports, where the 27 EU Member States' representatives convene at level of the EU Council.

EU Code

European Union, the Council, Code of Conduct on arms exports, as adopted on 5 June 1998. 8675/2/98, REV 2, DG E - PESC IV.

Common Position

European Union, the Council, Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, as published in *Official Journal of the European Union* on 13 December 2008 as L 335/99. The Common Position criteria are copied in the annex with this report.

Consolidated Report

From 1999 onwards, and in accordance to operative provision 8 of the EU Code of Conduct on arms exports, the EU Council began publishing annual reports on Member States' compliance with that code of conduct. Each of these reports is published in the OJ. Digital copies are available from the Council's website www.consilium.europa.eu

Military List

The most recent version of the Common Military List of the European Union was adopted by the Council on 15 February 2010, was published in the OJ on 18 March 2010, C69/19-51 and can be found on www.consilium.europa.eu The List describes 22 categories of equipment covered by the Council Common Position. These categories are referred to as ML1, ML2, and so on.

SALW

The acronym SALW, for small arms and light weapons, refers to any man-portable lethal weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive.

Small arms are weapons designed for individual use. They include small calibre firearms, such as revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and man-portable machine guns. The EU Common Position and Military List system categorizes these small arms as ML1: Smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12,7 mm (calibre 0,50 inches) or less and accessories, and specially designed components therefor.

Light weapons are weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. These are described under ML2: Smooth-bore weapons with a calibre of 20 mm or more, other weapons or armament with a calibre greater than 12,7 mm (calibre 0,50 inches), projectors and accessories, and specially designed components therefor. They include medium machine guns, heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a calibre of less than 100 millimetres.

Terrorism List

The concept of a EU-Terrorism List proceeds from Council Common Position 2001/931/CFSP. The list is reviewed bi-annually. 25 individuals and 29 groups and entities are designated as terrorists by force of Council Decision 2009/1004/CFSP of 22 December 2009, OJ of 23.12.2009 L346/58-60.

User's Guide

The User's Guide to Council Common Position 2008/944/CFSP defines common rules governing the control of exports of military technology and equipment. This Guide can be retrieved from www.consilium.europa.eu.

The EU selling arms

How export promotion takes precedence over controls

It is over a decade since, in June 1998, the European Union agreed its *Code of Conduct on Arms Exports* with provisions relating to conflict, human rights and development. Although not in the EU, Norway has adopted similar measures and joins the other countries at meetings about them. Since December 2008 it has been a legally binding common position. EU countries have their own export licensing departments to implement this, employing, between them, what must be several hundred people. Yet, despite this, military equipment made in the EU is still being licensed for export into areas of conflict, to repressive regimes and to countries where many go without education or health care - not what many of those who worked for the EU Code envisaged.

Why is it that rivals India and Pakistan are still both being armed from Europe? That EU-supplied parts assisted the Israeli war effort in Gaza? That endorsement, via arms sales, is given to the Saudi Arabian royal family with its history of repression of women, people of differing sexual orientation and migrant workers? That South Africa has been burdened with paying for European fighter jets and submarines when it needs those resources to address its many social problems, including HIV/AIDS?

A root of the problem is that a significant priority for many EU governments is to promote the sale of arms. In several countries, in Europe and beyond, military corporations have built a close relationship with governments. Retired politicians and officials are members of company's boards and joint Government/industry committees are frequently established. This tends to put additional pressure to support industry first, rather than the interests of the people affected by the deals. It seems that US President Eisenhower's farewell speech in 1961 is more pertinent than ever and must be heeded: "In the councils of government, we must guard against the acquisition of unwarranted influence, whether

sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist."

The case of Libya illustrates the point. Military companies had difficulties supplying that country since an EU embargo was in the way, that had been instituted in 1986 on the grounds of the Libyan regime's links with terrorism. After the embargo was lifted in October 2004, oil rich Libya was immediately seen as a major marketing opportunity. For instance, the Defence Manufacturers Association (a UK trade association which has since merged with others) described Libya in July 2005 as "a relatively sophisticated customer with a political will to procure equipment".¹ In May 2007, UK Prime Minister Tony Blair lent his support, signing an Accord on Defence Cooperation and Defence Industrial Partnership on a visit there.² One such partnership has been a £85 million (almost €100 million) contract for General Dynamics UK Ltd to supply a tactical communications and data system to the Elite Brigade of the Libyan Armed Forces.³

Libya's President Gadafy was welcomed as an honoured guest by his French counterpart Nicolas Sarkozy in December 2007, a visit where an outline agreement to buy fighter jets, military helicopters and armoured vehicles was signed.⁴ By July 2009, following a warm welcome for President Gadafy in Italy the previous month, there were reports that Libya was considering buying a 2 per cent stake in the Italian-based arms manufacturer Finmeccanica. Libya had gone from being an embargoed state to a valued customer in a very short time - despite its continuing poor record on human rights.⁵

- 1 Thomas A (Assistant Director, Public Affairs, DESO), 'Seminar on Emerging Markets: Libya & Iraq', *DMA News*, July 2005.
- 2 Foreign and Commonwealth Office, London, *Joint Communiqué*, 29 May 2007.
- 3 'Defence Export success in Libya', *DMA News*, July 2008.
- 4 Tran P, 'Libya, France Agree to Fighter Talks', *DefenseNews*, 17 December 2007.
- 5 Kington T, 'Italy's Finmeccanica Benefits From Nation's Closer Libyan ties', *DefenseNews*, 13 July 2009.

Government support for military companies

The image of a particular leader of state, promoting only military exports from companies based in his or her country, is no longer entirely accurate. The exports that are being promoted may bring commercial benefit to companies that are tied to more than one country. EADS is headquartered in the Netherlands, but is predominately a Franco-German company. Yeovil, a small country town in the UK, is heavily dependent on helicopter production, but the manufacturer, AgustaWestland is owned by Italian-based Finmeccanica. BAE Systems downplays its British origins, unless it is trying to win a UK deal, and employs more people in the United States than the UK. It has other “home markets” in Saudi Arabia, India, Sweden, South Africa and Australia. Likewise companies based in countries beyond the EU have factories within it. The production of components complicates the picture further. Today, very few pieces of military equipment could be said to be the entirely the product of one country.

Military equipment manufacture itself is being exported as contracts often include the establishment of a production line in the purchasing country. Of the 72 Eurofighters sold by BAE to Saudi Arabia under a 2007 agreement, 48 are being assembled there. Similarly, a £700 million (€800 million) BAE deal with India signed in July 2010 will see 57 Hawk aircraft manufactured under licence there by Hindustan Aeronautics Limited (HAL). The logical extension of this is that HAL will produce Hawks for the global market. This involves a transfer of expertise and technology that will then support Indian indigenous production and ultimately Indian arms exports, which in turn raises prospect of further proliferation and extra competition.

Leaders selling

As shown in the Libya example, the arms promotion effort is assisted from the very top. Prime Ministers and Presidents often lend their support. The start of Russian President Dmitry Medvedev’s three-day visit to France in March 2010 was marked by Nicolas Sarkozy announcing that he had entered into “exclusive negotiations” over the sale of

four warships.⁶ Two decades after the end of the Cold War, instead of a continuing peace dividend, it seems that the former enemy is merely another lucrative market for military equipment.

Tony Blair, when UK Prime Minister, was an enthusiastic supporter of arms deals. In 2006, this extended to his Government stopping a corruption investigation into BAE Systems’ arms deals with Saudi Arabia. Although this was said to be for national security reasons, a deal for Eurofighter Typhoons was being negotiated and was at risk.⁷ This military contract appeared more important than the effort to end corruption.

The smaller European countries also get assistance from their governments. In early 2010 the State Secretary of the Norwegian Ministry of Defence met Chile’s Defence minister Francisco Vidal. The main topic being discussed in this meeting was to promote Norwegian company Kongsberg Gruppen ASA, which was competing to supply Chile with a huge air defence system.⁸

Arms export promotion agencies

Some EU countries have special organisations devoted to arms export promotion. In the UK, for example, a Labour government set up the Defence Sales Organisation as long ago as 1966. Denis Healey, the Secretary of State for Defence at the time, said that “while the Government attach[es] the highest importance to making progress in the field of arms control and disarmament, we must also take what practical steps we can to ensure that this country does not fail to secure its rightful share of this valuable commercial market”.⁹ The argument for exporting arms then is still used today although the

6 Hall B, ‘Paris agrees to sell warships to Russia’, *Financial Times*, 2 March 2010. This case is explored elsewhere in this report, in the section on ‘Mistral warships for Russia’.

7 Leigh D & Evans R, ‘National interest’ halts arms corruption inquiry’, *The Guardian*, 15 December 2006.

8 ‘Møtte Chiles forsvarsminister – diskuterte NASAMS’, *Ministry of Defence press statement*, 12 February 2010.

9 House of Commons, *Hansard*, 25 January 1966, Col.64.

responsible body is now called the UK Trade & Investment Defence and Security Organisation (UKTI DSO). It employs 160 staff.

In France, a prominent competitor of the UK for export of military equipment, responsibility for promoting such exports moved in 2007 from the Direction générale pour l'armement, with which the industry was said to be dissatisfied, to an Inter-Ministerial Committee for Defence and Security Exports, headed by a civilian. As well as marketing the military equipment, this Committee is also in charge of export controls.

Other arms export bodies are much newer. Sweden's, for example, has just been established. The Forsvarsexportmyndigheten, with forty employees, started work in August 2010.¹⁰ It has a budget of 38 million Swedish crowns (about €4.5 million) for the first six months and is responsible for selling equipment no longer needed by the Swedish armed forces, but it is also marketing new products such as Saab aircraft.

Assistance with military export promotion is given even in those countries where the industry is comparatively small. While Norway does not have an export agency as such, a post, the Defence Industrial Counsellor, at the Norwegian embassy in Washington, has been set up to support Norwegian arms exporting industry activities in the American defence market. This arrangement has been ongoing since at least 2008, and it is being directly paid for by eight Norwegian arms exporting companies.¹¹

Export credit support and other subsidies

In some EU states the Export Credit Agencies (ECA) are government bodies, while in others they are private, but all underwrite exports, making sure the companies supplying the goods are paid and transferring the risk from the private sector to the public sector. As most ECA support is needed by large projects, percentages can vary greatly from year to year. However, a 2007 report published by the European Network Against Arms Trade (ENAAT) found that between twenty and thirty per cent of EU exports underwritten by ECA were military-related, supporting the sale of a wide range of equipment including aircraft and naval vessels.¹²

ECA support was given by the UK to enable the export of Hawk fighter jets to Indonesia during the Suharto dictatorship. Four warships, worth more than ten years of development aid, are being built for the Indonesian navy with a financial guarantee from the Dutch ECA, Atradius. An armaments package which cost South Africa €4.5 billion and was the subject of corruption allegations from the start was backed by ECA in France, Germany, Sweden and the UK despite opposition from many in South African civil society who questioned the spending priorities.¹³

Other subsidies enjoyed by the arms companies can include taxpayer supported research and development projects, the use of national armed forces to display products and the distortion of the exporting country's own military procurement. In a UK example, in 2003 the RAF bought BAE Systems Hawk trainer aircraft without open competition, largely to persuade the Indian government to buy the Hawks for its air force. The UK Treasury did not believe the Hawks offered value for money.

This support is not uniformly given throughout the EU.

10 An English language website of the Swedish Defence and Security Export Agency can be accessed through <www.fx.se>. It was discussed as 'New Defence Authority to promote arms exports' in *Fria Tidningen*, 21 October 2010.

11 Johnsen A B, 'Norsk våpenindustri sponser UD', *VG Nett*, 09 February 2010.

12 Broek M, *et al*, 'European Export Credit Agencies and the financing of arms trade', *ENAAT*, July 2007.

13 These exports to South Africa are described elsewhere in this report.

Why do governments support the arms industry?

Whatever means they are using to do it - leader influence, export promotion agencies or the provision of export insurance among others - the governments are using taxpayer money to support private companies.

Arms exports are not generally popular with European people. In November 2009 an opinion poll commissioned by the Swedish Peace and Arbitration Society found that 92 per cent said Sweden should not allow arms exports to states where serious breaches of human rights occur, 81 per cent think exporting to countries engaged in conflict is wrong, and 55 per cent would not allow any military exports at all.¹⁴ In the UK an opinion poll conducted by BMRB in December 2004 showed over half the sample believed that the arms export promotion agency should be closed, while under 16 per cent supported its work.

The reasons given for continuing to give substantial support to an unpopular trade include national security, to influence other governments and employment. Opponents of military trade have scrutinized these arguments in rather critical terms:

National security

There is considerable agreement that today's threats to European security do not come from other Nation States. Physical security is most gravely threatened by those legally living within EU countries, often born there, who have grievances in relation to actions by governments and others. More broadly, the biggest threats include climate change, competition for energy resources, inequality and poverty. A key factor in addressing climate change is the rapid expansion of renewable energy research and development (R&D) and production. However, this tends to secure far less R&D resources than does military equipment.

14 'Majoritet vill stoppa vapenexporten', *Sydsvenska Dagbladet*, 10 December 2009.

Part of the military national security premise is that military exports can guarantee the supply of arms for a country's armed forces by keeping production lines open in that country and keeping them in a capacity to be state of the art. However, as explored above, the military companies that are to provide the guarantee of supply are international businesses, with production taking place across the globe. All significant purchases include many overseas components and sub-systems. It is unrealistic to expect these companies and their international shareholders to prioritise any one country's armed forces over those of other markets.

Influence over other governments

One argument sometimes put forward to justify arms exports is that they give the exporting country influence over the purchaser, and that influence is being put to laudable geo-strategic, political or moral use. But some purchasers seem to obtain more influence over sellers than the other way round. For instance, the threat by the government of Saudi Arabia not to buy Eurofighter Typhoons prompted the UK government to stop the criminal investigation into BAE Systems. In contrast, the Saudi arms purchases have never given the UK government any power to pressure the Saudi government to improve its human rights record.

Jobs

The one argument for arms exports that some of the public accept is that it is good for employment. In fact, the number of jobs supported by the military industry is rather fewer than is generally believed - many people are surprised when given the actual figures. In the UK, for instance, military exports relate to 0.2 per cent of the workforce and less than 2 per cent of manufacturing employment. Even then, UK arms exports and the arms companies in general receive support from the taxpayer that is beyond that available to comparable civil sectors. It is this support that provides the arms companies with their research and development resources and ability to attract skilled workers.

It is likely that military industry workers would be able to find work elsewhere. This was even recognized by the President and Managing Director of General Dynamics UK, when giving evidence to a UK parliamentary committee on 8th September 2010, stating that “the skills that might be divested of a reducing defence industry do not just sit there waiting to come back. They will be mopped up by other industries that need such skills.”

Government-industry links

One reason for the continuing support by governments of the arms industry is the historical equation of military power with importance in the world. Governments are reluctant to face accusations of being weak if they do not have a range of the military aircraft, ships and tanks. This military mindset is reinforced by a close relationship between military companies and some governments which can give the former immense influence over government decision-making. The relationship is sustained through the use of lobbying companies, sponsorship and donations, but, more importantly, through the arms export promotion units, the “revolving door” whereby politicians and officials move to work with arms companies, and joint government-industry bodies. This predisposes decision-making in many EU states towards solutions that involve spending on military equipment and assisting arms companies sell abroad. The arms companies also use their close relationship with governments to exploit new security concerns. While military spending is facing restraints, the security sector is growing apace. The European Union’s Security Research Programme (SRC) is fostering the growth of a homeland security industry in Europe and many of the familiar arms companies are setting its research agenda, proposing technical solutions to problems. In 2007 the European Commission funded 46 SRC projects a total of €156.5 million.¹⁵

Recommendation

In order to be consistent with UN Charter obligations relating to the least diversion of resources for military purposes, EU governments should seek to dramatically reduce, with the aim of withdrawing, public assistance for the sales of military equipment. To assist with this, EU governments should report publicly on the export promotion assistance given, including budgets, staffing, promotional activities for specific deals and export credits.

15 Hayes B, ‘NeoConOpticon: the EU Security Industrial Complex’, *Transnational Institute / Statewatch*, June 2009.

Corruption and the Arms Trade

Corruption has had and continues to have a pernicious impact on the legal global arms trade. A 2006 survey by Control Risks showed that roughly one third of international defence companies felt they had lost out on a contract in the last year because of corruption by a competitor.¹⁶ The US Department of Commerce 'Trade Promotion Co-ordinating Committee Report' of March 2000 claimed that the defence sector accounted for 50 per cent of all bribery allegations in 1994-99, despite accounting for less than 1 per cent of world trade.¹⁷ It has been estimated that bribes accounted for as much as 15 per cent of the total spending on weapons acquisitions in the 1990s.¹⁸ In 2005, the International Defence and Security Programme of Transparency International estimated the global cost of corruption in the defence sector to be at a minimum of around US\$20 billion, almost €15 billion, per year.¹⁹ According to the International Chamber of Commerce, "corruption adds up to 10 per cent to the total cost of doing business globally, and up to 25 per cent to the cost of procurement contracts in developing countries. Moving business from a country with a low level of corruption to a country with medium or high levels

of corruption is found to be equivalent to a 20 per cent tax on foreign business".²⁰

Corruption and the EU

It is frequently assumed that corruption is more a problem for other countries than European states, however the following cases challenge this assumption. The first cases highlight instances of EU Member States selling arms to states outside the EU where corruption has either been proved or where a prosecution is underway or being prepared; in the latter cases the buyers and sellers are all from the EU.

Ex-EU arms transfers

In October 2009, dozens of leading French politicians and business figures were found guilty in connection with the sale of weapons worth over €500 million to Angola in breach of a UN arms embargo. Included among the guilty were French arms dealer Pierre Falcone and Russian-Israeli businessman Arkady Gaydamak, both of whom were convicted of illegal arms deals, tax fraud, money laundering and embezzlement and other crimes. Charles Pasqua, a former French interior minister, was found guilty of taking cash from the two arms dealers even though he allegedly knew the money was a proceed of crime. Jean-Christophe Mitterand, the son of and once Africa advisor to former President Mitterrand, "was cleared of the charge that he knowingly facilitated arms shipments to Angola", but "received a two-year suspended jail sentence (...) and was fined €375,000 for embezzlement".²¹ According to *The Times*, Mitterand Jr "received US\$2.6 million in kickbacks because he was a former chief of his father's secretive Africa cell, which oversaw relations between France and its former colonies".²²

16 Control Risks, *International Business Attitudes to Corruption – Survey 2006*, p. 5 <http://www.controlrisks.com/PDF/corruption_survey_2006_V3.pdf>

17 Perlo-Freeman, S & Perdomo, C, *The developmental impact of military budgeting and procurement – implications for an Arms Trade Treaty*. SIPRI, April 2008. <http://www.sipri.org/research/armaments/milex/researchissues/milex_atrans_develop/mili_budget>

18 Tanzi, V, *Corruption around the world: causes, consequences, scope, and cures*. Staff papers 45, Washington, DC: International Monetary Fund: 1998, pp. 559-594.

19 The World Bank estimated that more than US\$1 trillion (US\$1,000 billion) is paid globally in bribes each year (2004). The World Bank also put World Gross Domestic Product at US\$41.5 trillion (current prices, 2004). Global military expenditure in 2004 was approximately US\$1 trillion (current prices, SIPRI). If \$1 in every US\$41.5 is misappropriated globally each year, then for the defence sector, worth approximately US\$1 trillion, the cost of corruption each year is about US\$20 billion. This calculation assumes that the defence sector is no more prone to corruption than other sectors – an assumption that conflicts with popular perceptions.

20 International Chamber of Commerce, *Clean Business is Good Business. The Business Case against Corruption*, 2008, p. 2.

21 Shirbon, E, 'French powerbrokers convicted over arms to Angola', *Reuters*, 27 October 2009.

22 Sage A, 'French establishment players convicted over Arms to Angola scandal', *The Times*, 28 October 2009.

On 23 June 2010, Reuters reported that Finland “is to bring bribery and accounting fraud charges against a unit of defence group Patria linked to an arms deal in Egypt”.²³ While Patria, which is 73.2 per cent owned by the Finnish state, rejects the charges as “groundless”, the Office of the Prosecutor General has stated that “there are probable causes to suspect that [Patria] representatives have promised and given significant bribes to Egyptian officials”.²⁴

In Italy Alessandro Bon, a former sales representative for Berreta, the Italian gun manufacturer, has appeared before Italian courts regarding claims that he illegally sold military hardware to the Iranian government, allegedly involving kickbacks to a politician which had to be paid every six months. According to the investigative report, at one point Bon stated that twice a year an Italian associate “has to pay a politician in Italy and he has not paid him yet (...) And I need the support of this politician, so send me the money and I will put aside the money for the politician”.²⁵

Intra-EU transfers

German submarines

An investigation has been launched by German prosecutors into two submarine deals with Portugal and Greece.

In 2004, Portugal signed a deal with a German Submarine Consortium led by MAN Ferrostaal to purchase two submarines. This was accompanied by a €1.2 billion offsets contract which included direct offsets as well as projects in the naval, automotive and new technologies industries (for an explanation of offsets, see the box below). In July 2006, the Portuguese Public Prosecution Service pointed out that a brokering intermediary had

received a surprisingly generous payment in relation to the role it played,²⁶ which caused Portuguese authorities to investigate the deal.²⁷ In 2007, a Portuguese daily published transcriptions of telephone conversations raising further suspicions about the legitimacy of certain payments.²⁸ According to public officials the investigation concerns cases of corruption, mismanagement, and laundering, mostly associated with the financing of political parties.²⁹ It is alleged that offsets have served as a vehicle for undue payments.

The investigation has thus far targeted offices of the companies and law firms involved, the Portuguese MoD and Offset Commission, the private homes of senior staff and other individuals involved in the tender.³⁰ In autumn 2009, Portuguese prosecutors accused three German executives and seven Portuguese citizens of fraud and forgery of documents relating to automotive offset projects included in the deal. The case points out that prosecutions will target offsets specifically, stressing the responsibility of those dealing with them, and that offset evaluation and audits are often inadequate.

Offsets are “a counter-trade mechanism agreed between purchasing governments and supplying companies when the former acquire military equipment or related services or works from the latter. They are frequently used as industrial (sometimes even social or economic) policy tools aimed at improving balance-of-payments accounts and compensating the purchaser’s economy (and tax payers) for a public investment that will not have an immediate direct impact on the wellbeing of the population. Offsets consist in packages valued to

23 ‘Finnish defence firm in Egypt bribery case’, *Reuters*, 23 June 2010.

24 *Ibidem*.

25 Rotella S, ‘Iran’s Efforts to Buy Embargoed Arms Revealed in Italian Case’, *ProPublica*, 31 March 2010.

26 Portuguese daily *Correio da Manhã*, 20 July 2007.

27 Reported in Portuguese weekly newspaper, *Sol*, 1 December 2007.

28 *Jornal de Notícias*, 8 July 2007.

29 Interview with the Director of DCIAP, broadcasted on Portuguese radio *TSF*, 1 October 2009.

30 Articles in the Portuguese daily *Correio da Manhã*, 22 July 2008, 8 March 2009 and 12 September 2009; articles in Portuguese weekly *Sol*, 24 and 25 July 2007, and 29 November 2008; article in Portuguese weekly magazine *Sábado*, 1 October 2009.

a percentage of the acquisition contract and may take many forms, for example, agreements for co-production, licensed production, subcontracting, training, technology transfer, or other investments in the purchasing country's economy".³¹

As observed by Nick Whitney, European defence expert at the European Council for Foreign Relations: "The arms trade is already an incubator of corruption (...) The best antidotes are transparency, and competition. But if you add offsets to the deal, it only gets murkier".³² The Defence and Security Programme of Transparency International has argued that "effective, efficient and transparent offsets require a stable framework, with little or no surprises for everyone involved; clear processes and goals for evaluation, valuation, monitoring and crediting of offsets; and flexible but comprehensive offsets contracts that set clear paths for each situation".³³

Meanwhile, it is alleged that German defence contractors have also paid bribes to facilitate the sale of submarines. The investigation, which began in May 2010, is focusing on a deal -- part of a larger, complicated decade-old contract to provide Greece with a total of six submarines -- struck between Berlin and Athens in March as Greece lurched toward bankruptcy.³⁴ Some EU officials have even accused Germany of "making their military dealings with Greece a condition for its involvement in the country's bailout and profiting from Athen's profligacy", which the German Government denies.³⁵

In Greece, the MoD has decided in an unprecedented move to refuse to extend the fulfilment period for offset agreements that are not on schedule and has informed obligors that penalties will be applied. It has been suggested that this could be because the MoD is looking for an escape route out of the government's deep financial crisis.³⁶ This is new; the Greek Government has previously taken a more relaxed approach. Authorities have begun to calculate the penalties and cashing in the performance bonds, which may affect offset contracts of almost €1 billion as well as credit lines for defence procurements. As a consequence, many suppliers have expressed concerns about their participation in future tenders until the current offset legislation has been revised. This case demonstrates that (1) offsets are important to how a country's defence procurement is perceived by the rest of the world and that (2) in high-risk environments, i.e. countries with unclear offset guidelines, suppliers might take additional precautions, such as attempting to include limits on the penalties that may be applied where offset obligations are not met.³⁷

BAE-Systems investigation

BAE Systems, the UK-headquartered aerospace and defence corporation, has been under investigation for a number of years, primarily by UK authorities, for corrupt practices in connection with a range of arms deals including aircraft to the Czech Republic, frigate refurbishment for the Romanian Government, a range of equipment to South Africa and the sale of a military air-traffic-control system to Tanzania. The UK Serious Fraud Office (SFO) announced in December 2006 that it was to discontinue investigating allegations that BAE Systems had paid bribes to secure the "Al Yamamah" arms deal with Saudi Arabia in the 1980s. Worth potentially as much as £80 billion (€90 billion at current

31 Tall references to offsets herein are based on Magahy B, Vilhena da Cunha F & Pyman M, *Defence Offsets. Addressing the Risks of Corruption & Raising Transparency*, International Defence and Security Programme of Transparency International, April 2010.

32 On quote in 'Probe into German-Greek Arms Deals Reveals Murky Side of Defense Sales', *Deutsche Welle*, 12 August 2010.

33 Magahy B. et al, *Defence Offsets. Addressing the Risks of Corruption & Raising Transparency*, London: Transparency International, 2010.

34 'Probe into German-Greek Arms Deals Reveals Murky Side of Defense Sales', *Deutsche Welle*, 12 August 2010.

35 Ibidem.

36 'The Greek honey trap', *Countertrade & Offsets Journal*, 12 October 2009.

37 Again, see Magahy B. et al, *Defence Offsets*, op. cit., 2010.

exchange rates),³⁸ Al Yamamah is the UK's largest ever arms export agreement.³⁹ The SFO controversially stated "the public interest" as the reason for ending the investigation,⁴⁰ however the UK High Court ruled on 10 April 2008 that the SFO "acted unlawfully" when making this decision.⁴¹ This ruling was overturned by the House of Lords on 30 July.⁴² The SFO, however, did not stop all of its inquiries but continued investigations into other controversial BAE contracts in Chile, the Czech Republic, Romania, South Africa and Tanzania.⁴³

Moreover, the Al Yamamah case did not end with the House of Lords decision. The US Department of Justice (DOJ) launched its own investigation over BAE Systems' conduct, and in February 2010 BAE Systems reached a plea bargain in both the US (with the DOJ, paying US\$400 million) and the UK (with the SFO, paying £30 million).⁴⁴ In the US, BAE admitted to "making false statements to the US Government in relation to proposed deals in 2001 involving Gripen fighter jets in Hungary and the Czech Republic". US companies who were offering F-16 jets at the same time to governments in Central Europe suspected their competition of offering bribes.⁴⁵

BAE, the Czech Republic, and the Gripens

In the Czech Republic, there have been long-running concerns about possible corrupt practices in connection with the planned purchase of 24 JAS-39 Swedish Gripen fighter jets (the purchase ultimately fell through for economic reasons, as the Czech Government prioritised spending on repairing flood damage from 2002). The jets were to be produced by SAAB, 21 per cent owned by BAE Systems, which was involved in the marketing side of the deal. The Czech Parliament did not approve the original funding, estimated at 60.2 billion Czech Koruna (approximately €2 billion), while related off-set arrangements were criticised at the time of purchase as being illusory, with two finance ministers criticising their execution.⁴⁶ The first specific allegations of corruption were made on Swedish television in 2007, notably regarding an Austrian agent for BAE Systems.⁴⁷ In May 2010, following two earlier investigations by Czech prosecutors, both of which were dropped,⁴⁸ the Prosecutor General of the Czech Republic reopened the corruption inquiry.⁴⁹

In July 2010, the Czech Prosecutor General asked the US for assistance with the inquiry.⁵⁰ Swedish authorities have also looked into the corruption allegations that SAAB "offered huge, secret 'commissions' to promote the sale of its Gripen fighter jet to the Czech Republic and Austria" in 2007.⁵¹ Although this investigation was closed, the Democratic Alliance in Sweden recently asked "the chairman of the Standing Committee on Public Accounts, Themba

38 Mike Turner, the then Chief Executive of BAE Systems, speaking at the 2005 Paris Air Show, said "We have £43 billion from Al-Yamamah over the past 20 years and there could be £40 billion more," on quote in O'Connell D, 'BAE cashes in on £40bn Arab jet deal', *Sunday Times*, 20 August 2006.

39 'Al Yamamah' <www.corruptionisacrime.com/background>

40 'Timeline: BAE corruption probe', *BBC News*, 26 June 2007.

41 'UK wrong to halt Saudi arms probe', *BBC News*, 10 April 2008.

42 'Lords says SFO Saudi move lawful', *BBC News*, 30 July 2008.

43 'BAE hopes its SFO settlement marks a new chapter', *BBC News*, last updated 5 February 2010; 'Lords overturn Saudi probe ruling', *BBC News*, 30 July 2008.

44 O'Brian, R & Pelofsky, J, 'BAE reaches settlement with U.S, Britain', *Reuters*, 5 February 2010.

45 Jiříčnā, K., 'Gripen inquiry ordered reopened. Prosecutor general calls for third probe into fighter jet deal', *The Prague Post*, 5 May 2010.

46 'Czech-BAE corruption probe worries Prague', ISN Security Watch reported on Sero News, 28 February 2007.

47 Jiříčnā, K., 'Gripen inquiry ordered reopened. Prosecutor general calls for third probe into fighter jet deal', *The Prague Post*, 5 May 2010.

48 Lehane B, 'US help sought in Gripen probe', *The Prague Post*, 18 August 2010.

49 Fortado, L and Pirone S.: 'Ex-BAE Lobbyist Charged With Alleged Bribes for Jets' (Update 1), *Bloomberg*, 29 January 2010.

50 'Czechs ask US for help in jet fighters probe', AFP reported on *Bloomberg Businessweek*, 12 August 2010.

51 Ekman, I, 'Sweden's squeaky-clean image sullied by scandals', *The New York Times*, 11 May 2007.

Godi, for an urgent special hearing into the termination of the investigation into the arms deal".⁵²

Conclusion

Corruption, which is believed to be widespread in the arms trade, increases the cost of otherwise legitimate business. But more than that, it can skew decision-making processes and thus encourage poor procurement choices. It can even generate trade that otherwise would never have taken place, as purchases are approved purely to generate commissions for personal or other forms of illegitimate enrichment (see, for example, Arms Exports to South Africa, below). Yet the EU Common Position makes no reference to corruption. Member States have expressed themselves anxious to stamp out corruption wherever possible, including in the context of arms transfers, and have signed up to various anti-corruption agreements.⁵³ It would therefore be consistent with this stance for Member States to amend the Common Position and agree a new ninth criterion whereby prospective transfers would be refused where there existed a clear risk that they might involve corrupt practices.

52 'DA wants hearing into closed arms deal probe', *Times Live*, 17 October 2010.

53 E.g. the 1997 OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*; the UN *Convention Against Corruption*; and the Council of Europe *Criminal Law Convention Against Corruption*.

Arms exports to South Africa

Dreams Destroyed : The arms deal that promoted corruption and undermined socio-economic development in the Rainbow nation.⁵⁴

In late 1998, early 1999 South Africa's nascent democratic government spent over €4.5 billion on arms that the country didn't need and barely uses. Over €200 million of bribes were paid to senior politicians, officials, middlemen and the ruling party. The bribes were a key motivator in the deal.

The contracts were won by five EU governments and their nominated companies. The deal violated at least two criteria of the EU's Common Position and has cost South Africa dear in terms of the socio-economic opportunity cost and the damage wrought to the country's democratic institutions and the rule of law.

The procurement process was fatally flawed, with the most expensive contract being awarded for a jet that didn't make the original short-list and that the Air Force stated publicly they didn't want. It was two and a half times the price of the preferred jet, but the company paid more than €100 million in bribes.

This significant amount of money was committed at a time when then President Mbeki claimed the country lacked the fiscal resources to provide life-saving medication to the almost 6 million people living with HIV/AIDS, leading to, according to a Harvard University study, at least 355,000 avoidable deaths. The deal has, and will continue (until the contracts' conclusion in 2018) to reduce South Africa's GDP by anything between 0.1 and 0.5 of a per cent p.a. in an economic environment with more than 25 per cent formal unemployment.

This money could have funded, not only the life-saving medication, but also approximately 33,000 new schools staffed with fully trained teachers, 2 million new houses or 100,000 new jobs for a decade.

In order to cover up the massive corruption, key institutions of South Africa's democracy and the rule of law were undermined, some fatally. These included the independence of Parliament, the judiciary, the prosecutorial authorities, investigative and anti-corruption bodies.

The arms deal was the template for a series of massive, corrupt transactions that have benefited the ANC and senior members of government, and which continue today. The country's current President faced 783 counts of corruption in relation to the deal, which were controversially dropped ten days before he was elected. The Deputy President has recently lamented the corruption that continues to pervade the ruling party and government.

This arms transfer, in violation of the Common Position, has severely weakened South Africa's once hopeful democracy. Sadly, the South African experience is not unique.

54 This account is drawn from Andrew Feinstein's best-selling book on the deal and its consequences, *After the Party: Corruption, the ANC and South Africa's Uncertain Future*. London: Verso, 2009. Andrew Feinstein is a former ANC Member of Parliament who resigned after being stopped from investigating the arms deal.

Big interest cases

The bigger it gets, the harder to say no

The following cases all seem to be examples where the size of the deal and their value to EU industrial interests are creating huge pressures on licencing authorities to interpret the criteria of the Common Position liberally. In most cases regional stability is a major issue. Additionally, in some cases there are concerns about diversion and development.

Fuelling the South Asian arms race

India and Pakistan shook the world when they tested nuclear bombs in 1998, giving their problematic relationship another explosive twist. Tensions between the two have run high many times ever since they became independent in 1947, with three wars fought and a number of military stand-offs, such as in 2001-2002, after India held Pakistan responsible for a militant attack on the Indian parliament in December 2001. After the attacks by Pakistani militants in Mumbai in 2008 tensions grew again, but fortunately defused eventually.

Apart from their rivalry that mostly centres on the status of Kashmir, both countries also face huge internal problems. Pakistan has been struggling with both Afghan and home-grown Islamic militants that have surged over the past few years. American attacks inside Pakistan with unmanned aircraft on major figures of the militancy have not improved the situation, undermining the position of the already unstable Pakistani government. India in turn has in recent years labelled a Maoist insurgency as the main internal security threat.

Also, both India and Pakistan are developing countries that face huge developmental challenges – often mentioned as a root cause for militancy to blossom. Despite India's much-clamoured economic growth large sections of society are still locked in a vicious cycle of poverty, illiteracy and poor

health. The UNDP's Human Development Index currently ranks India 134th and Pakistan 141st out of 182 countries.⁵⁵

Many political observers see South Asia as potentially the most explosive region in the world. Indo-Pakistani rivalry has led to constant high levels of military expenditure and major procurement programmes that run in the billions of euros. For decades both countries have been among the world's largest arms purchasers. For both the 2000-2009 and 1990-2009 periods SIPRI ranks India as the world's second largest importer and Pakistan as 13th.⁵⁶ While Russia has been India's predominant source of weapons, as has China been for Pakistan, European countries have also had a significant share in transfers to both countries. Cancelling its arms embargoes against both countries post-9/11, the US has emerged as a new rival to existing suppliers.

This case focuses on two major European arms export deals with South Asia: the export of spy planes to Pakistan and the UK sale of Hawk fighter aircraft to India, and considers how both of these may cause problems in terms of the EU arms transfer criteria.

Swedish spy planes for Pakistan

Pakistan had long been looking to buy Saab surveillance aircraft, but is said to have been rejected several times under Sweden's military export policies.⁵⁷ Nevertheless, on 15 October 2005 Saab signed a contract to supply six Saab 2000 turboprop aircraft equipped with Erieye airborne surveillance systems to Pakistan at a value of 8.3 billion Swedish Kronor (around €850 million), although the deal was apparently delayed a few days because of a devastating

55 United Nations Development Programme, 'Human Development Report 2009 - HDI rankings' <<http://hdr.undp.org/en/statistics>>

56 Stockholm International Peace Research Institute, Arms Transfers Database that can be accessed from <<http://www.sipri.org/databases/armstransfers>>

57 'Sweden finalises AEW&C contract with Pakistan', *Defense Industry Daily*, 07 April 2008,

earthquake that had just hit Kashmir.⁵⁸ For financial reasons, related to that earthquake,⁵⁹ Pakistan slashed some arms purchases, including one Erieye Airborne Early Warning & Control (AEW&C) aircraft, bringing the order value down to around €700 million.⁶⁰ One of the five aircraft is in basic transport configuration – without the AEW&C system – and was delivered in 2008. The first AEW&C aircraft arrived in Pakistan in late 2009 with the remaining three slated for delivery in 2010.⁶¹

Saab's Erieye surveillance radar – built on either Saab or Brazilian Embraer aircraft - has been one of Sweden's top arms export successes of the past 15 years. The system has been built for Sweden, Brazil, Greece, Mexico and Pakistan with new orders since late 2009 from Thailand, the United Arab Emirates and Saudi Arabia.⁶² In terms of both sustainable development and regional stability, the Pakistani deal has been the most controversial sale.

Major arms consumer

Pakistan has always been a major importer of military equipment but especially so over the past few years, with a place firmly in the top ten of the world's recipients. Islamabad has, for example, been upgrading 46 older F-16 fighters as well as buying

18 new ones from Lockheed Martin, as part of a US\$5.1 billion deal.⁶³ Pakistani F-16s have been used extensively in anti-Taliban operations since 2009.⁶⁴

China has been another major supplier, with Pakistan purchasing in recent years 36 J-10 fighter aircraft for US\$1.4 billion in 2009⁶⁵ as well as four Sword-class frigates for US\$700-750 million.⁶⁶ Pakistan also signed a US\$278 million contract with China for four AEW&C aircraft in December 2008, similar to but less advanced than the Swedish.⁶⁷ China and Pakistan are also jointly producing JF-17 fighters of which Pakistan plans to buy 150-250.⁶⁸

Pakistan is also a major European export destination. In 2008, at least €685 million worth of export licences were granted by EU Member States, with France (€283 million), Austria (€155 million)⁶⁹, Germany (€93 million), the UK (€39 million) and

58 'Ibidem; Hewson R, 'Saab sale of Erieye radar to Pakistan given go-ahead', *Jane's Defence Weekly*, 28 June 2006 'Important order secured', *Saab press release*, 22 June 2006; Kärman J, 'Saab mörkade vapenkontrakt', *Aftonbladet* [Swedish daily], 19 Oct 2005.

59 Bokhari F, 'Islamabad backs Swedish AEW&C deal', *Jane's Defence Weekly*, 31 May 2006.

60 'Saab renegotiate Surveillance contract', *Saab press release*, 28 May 2007.

61 Jennings G, 'Pakistan receives second Erieye AEW&C aircraft', *Jane's Defence Weekly*, 5 May 2010; 'Pakistan's First Saab 2000 Erieye Delivered', *Air Forces Monthly*, Feb 2010.

62 Greece, Mexico and Brazil have all chosen Brazilian Embraer aircraft, the others Saab aircraft. See e.g. Hewson R, 'Saudi Arabia signs up for Erieye system', *Jane's Defence Weekly*, 13 Oct 2010; Defence Industry Daily, 'Sweden Finalizes AEW&C Contract With Pakistan', 7 April 2008; 'UAE Buys Saab's Erieye AEW&C Aircraft', *Defence Industry Daily*, 17 Nov 2009; 'Thailand Buying JAS-39 Gripens, AWACS', *Defence Industry Daily*, 27 January 2010; <http://en.wikipedia.org/wiki/Erieye_radar>

63 Capaccio T, 'Pakistan steps up use of Fort Worth-made F-16s in fight against insurgents', *Bloomberg*, 17 December 2009. Earlier Pakistan had planned to buy 75 new F-16s, but brought the number down to 18 as a consequence of the October 2005 earthquake; see Ansari U, 'Pakistan Spending Falls With Economy', *Defense News*, 22 September 2008.

64 Warnes A, 'On the edge of something big', *Air Forces Monthly*, July 2010; Capaccio T, 'Pakistan steps up use of Fort Worth-made F-16s in fight against insurgents', *Bloomberg*, 17 December 2009.

65 Bokhari F, 'China to sell Pakistan 36 fighter jets', *Financial Times*, 10 November 2009; Jon Grevatt, 'Pakistan seeks Chinese loan for fighter purchase', *Jane's Defence Weekly*, 3 December 2008. A first batch of 42 JF-17 aircraft was agreed to buy for \$1 billion; see 'Pakistan 42 FC-1 Deal 'Biggest'', *Aviation Week Beijing Airshow shownews*, 23 September 2009.

66 Bokhari F, 'Pakistan receives first Sword-class frigate', *Jane's Defence Weekly*, 5 August 2009, Minnick W, 'Pakistan's New Frigate Launches', *Defense News*, 14 April 2008.

67 Bokhari F, 'Pakistan still plans to buy Erieye aircraft', *Jane's Defence Weekly*, 21 January 2009.

68 A first batch of 42 JF-17 aircraft was agreed to buy for \$1 billion; see: 'Pakistan 42 FC-1 Deal 'Biggest'', *Aviation Week Beijing Airshow shownews*, 23 September 2009.

69 An Austrian official has explained that this was mostly about one big licence for trucks that eventually was never exercised and that a similar licence today would likely not be rewarded. Still in 2008 there was clearly no reason not to do so (private correspondence with Austrian official, March 2010).

Sweden (€36 million) leading the charge.⁷⁰ In 2007 EU licences were worth €862 million and €1,361 million in 2006, €903 million of which was accounted for by Sweden.⁷¹ Germany is said to be close to approving the purchase of Type 124 submarines built by shipbuilder Howaldtswerke-Deutsche Werft (HDW), for which a preliminary export licence is said to have been provided; the Green Party reportedly raised development issues regarding the deal.⁷²

Close to (civil) war

Pakistan has experienced over half a century of rivalry with neighbouring India, with three wars and a number of near-war confrontations. In 1998 the two nations tested nuclear weapons and brought the prospect of a nuclear war closer than ever since the end of the Cold War. Pakistan has a troubled democratic history, with a number of military coups including the most recent led by Pervez Musharraf in 1999, which lasted until 2008. Islamist militancy has grown largely beyond control over the past few decades, with the Pakistani Taliban extending their power base along the border with Afghanistan to further inside the country, including the Punjab and Pakistan's largest city, Karachi.⁷³ Attempts to counter the Islamist offensive, supported by high numbers of targeted killings by US-operated Reaper armed drones have so far only increased fears of a civil war. In a recent report Amnesty International has strongly criticised both sides. "Nearly 4 million people are effectively living under the Taliban in north-west Pakistan without rule of law and effectively

abandoned by the Pakistani government".⁷⁴ One teacher interviewed by Amnesty said: "The government just gave away our lives to the Taliban. What's the point of having this huge army if it can't even protect us against a group of brutal fanatics? They took over my school and started to teach children about how to fight in Afghanistan. They kicked out the girls from school, told the men to grow their beards, threatened anybody they didn't like. Our government and our military never tried to protect us from this".⁷⁵

According to a UN study Pakistan had the highest number of internally displaced people in the world in 2009. Some three million people out of 170 million fled their homes because of the Taliban insurgency and the country's military response.⁷⁶

Development lost

Adult illiteracy in Pakistan is at 46 per cent, while 38 per cent of children under five years are underweight.⁷⁷ Making things worse, Pakistan has faced major natural disasters in recent years, with a huge toll in terms of lives lost and property destroyed. The tremendous flooding in the summer of 2010, the worst in the country's history, as at late August had killed about 1,600 people and affected some 16.8 million.⁷⁸ In 2005 an earthquake in northern Pakistan caused massive devastation, including nearly 75,000 deaths.⁷⁹ Swedish NGOs have on several occasions strongly denounced Swedish efforts to win the SAAB Erieye AWACS contract, especially in the light of the earthquake.

70 Eleventh EU annual report on arms exports. Note that these figures fail to take account of UK open licences, as these do not place upper limits on the value or quantity of equipment that may be transferred. In 2008, the UK issued 9 open licences for transfers of controlled goods to Pakistan.

71 Ninth and Eleventh EU annual reports on arms exports. The UK issued 17 open licences for transfers of controlled goods to Pakistan in 2007, and 25 in 2006.

72 Ansari U, 'Germany-Pakistani Sub Deal on Course', *Defense News*, 25 May 2009.

73 See e.g. Bokhari F, 'Lahore attacks fuel concern over Punjab', *Jane's Defence Weekly*, 9 June 2010.

74 'Millions suffer in 'human rights free zone' in northwest Pakistan', *Amnesty International*, 10 June 2010.

75 'Ibidem.

76 'Pakistan: U.N. Report Finds High Levels of Displacement', *Reuters*, 17 May 2010.

77 UNDP, 'Human Development Report 2009 – Pakistan', <http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_PAK.html>.

78 'Pakistan floods: Senior UN figure criticises response', *BBC News*, 22 August 2010.

79 'Overview: Quake aftermath', *BBC News*, 2 November 2005.

Pakistan's public debt situation, including military debts, improved during the first half of the last decade,⁸⁰ partly because of sustained high GDP growth and a more favourable credit position after 9/11. However, both its recent military operations in the country's north, as well as a number of very big arms contracts that have been concluded since about 2005 have put the government budget under pressure. Foreign reserves crashed from US\$15.7 billion in early 2008 to US\$8.8 billion in September 2008.⁸¹

Pakistan's military spending has been consistently high and far from transparent, with the official budget partially classified.⁸² As noted by *Defense News*, "The government provides no overall breakdown of military spending. In 2006 the defence budget was described in a closed-door session to the Senate Standing Committee on Defence and Defence Production." In constant (2008) dollars the budget has increased from around US\$4 billion in the last half of the 1990s up until 2001, to \$4.8 – 5.3 billion between 2003-2009, but according to SIPRI these figures reflect "current spending only (i.e. exclude capital spending)".⁸³ Recent reports suggest increasing levels of defence spending.⁸⁴

Ignored export criteria

The huge Swedish deal, which would seem to be of a piece with many other big-ticket arms contracts, should ring various alarm bells in relation to criteria 4 and 8 of the EU Common Position (the "regional peace, security and stability" and "sustainable development" criteria respectively). Pakistan is a developing country with a far from stable government that is more busy with counter-insurgency

warfare, matching India's military capability and in maintaining a balancing act vis-à-vis the US, than with improving education, health and other basic human security needs for its people, including those in the tribal areas.

The acquisition is a new asset in the military's inventory and widely regarded as an answer to arch-rival India's 2004 deal with Israel for three Phalcon AEW&C, nicknamed the "eye in the sky", the first of which arrived in May 2009.⁸⁵ "Analysts say the purchase (...) is part of India's efforts to achieve air dominance over its rival, Pakistan", according to a BBC article; "only a few non-NATO countries have Awacs and critics say it is a bad omen for the arms race in South Asia".⁸⁶

Pakistan itself has recently voiced concerns of a spiralling arms race. "New war doctrines, tremendous boost to the defence spending, induction of new sophisticated weapons systems, these are elements that are prejudicial to regional security and stability", according to Pakistan's Foreign Secretary Salman Bashir.⁸⁷

Another BBC news report observed that "the Saab-2000 aircraft will boost the Pakistani military's early warning capabilities in the event of hostilities with India. The aircraft can be used to provide information on all three spheres of military conflict – aerial, naval and land based. Our correspondent says the Awacs planes and advanced F-16 fighter-bombers soon to arrive from the US will provide a qualitative edge to the Pakistan air force against its numerically superior adversary. Pakistani military officials say the planes also have a greater range than similar aircraft in the Indian military and can

80 Xiaoqin Fan E, *Pakistan's Public Debt: A Brief Overview*, Asian Development Bank, 2007.

81 Ansari U, 'Pakistan Spending Falls With Economy', *Defense News*, 22 September 2008.

82 Ibidem.

83 The SIPRI Military Expenditure Database <<http://milex-data.sipri.org/result.php4>>

84 See e.g.: Ansari U, 'Pakistan Increases Defense Spending in New Budget', *Defense News*, 14 June 2010.

85 See e.g. Bokhari F, 'Islamabad backs Swedish AEW&C deal', *Jane's Defence Weekly*, 31 May 2006. The second and third aircraft are due to be handed over in 2010.

86 'Indian air force gets AWACS plane', *BBC News*, 28 May 2009.

87 'Pakistan Sounds Warnings Over India Buildup', *AFP*, 25 February 2010; and 'India Unveils \$32B Defense Budget', *AFP*, 26 February 2010.

be used as airborne command centres in case of a possible nuclear conflict".⁸⁸

Some supplier countries however often seem to hold a more cynical view that as long as both parties arm themselves with similar amounts of weapons regional stability will be maintained – and western industries secured of a continuing flow of business. While Sweden and other EU Member States, including for example the Netherlands, stopped issuing new arms export licences after the South Asian nuclear tests, they resumed a few years later. However, Sweden stopped new licences again in November 2007, as did Switzerland, apparently in response to a severely deteriorating internal situation. All these considerations however never stopped the Erieye deal.

Pakistan's development indicators are such that EU Member States should exercise extreme caution when considering large-value exports to Pakistan, and indeed it is hard to see how this particular transfer could have been approved. Matters are further complicated when one considers the previously mentioned similar deal Pakistan has signed with China. It would seem that the Chinese aircraft appear to cost only 25-30 per cent of the Swedish Erieye AEW&C aircraft.⁸⁹ Even acknowledging that Swedish technology is superior to Chinese, it raises yet more concerns about the cost-effectiveness and sense of the Swedish deal.

Stockholm claims that it sees criterion 8 as neo-colonial, or at least interfering with a democratically elected government.⁹⁰ But especially this last element was lacking at the time the deal was agreed, when Pakistan, a country which history is marked by decades of political interference by the military, was ruled by a military dictatorship. Moreover, although when the deal was first agreed Sweden may have been operating under the EU Code, which did not

have legal force, Sweden continues to prosecute this deal even though now legally obliged under the Common Position to implement criterion 8.

One further issue may be relevant here. It was recognised at the time of negotiating the contract that technology could spill over to Pakistan's close defence partner China, which at the time was building an airborne radar that "outwardly resembles the Erieye radar in almost every way". However Saab said at the time that "security issues regarding the Erieye in Pakistan will be covered in a government-to-government agreement".⁹¹ Whether that is a watertight arrangement remains to be seen.

UK Hawk trainer jets to India

The UK and India traditionally have had close ties, in terms of arms trade as well as in development relations. Over the past decade major military aircraft sales have made up for most of these exports; as recently as July 2010 India announced the purchase of 57 Hawk military trainer jets, all of which are to be manufactured in India.⁹² While slowly but steadily developing an independent national arms industry, India at the same time is a huge developing country where hundreds of millions of people daily struggle below subsistence level to make a living. Despite more than a decade of high economic growth, development indicators still reveal poor performance in many areas, while at the same time India's defence budget has experienced years of substantial growth.

With €270 million worth of standard individual arms export licences (SIELs) granted as well as a further 196 open individual export licences (OIELs) over the four years from 2005 to 2008,⁹³ India is one of the largest UK customers. Potential new orders are looming; BAE Systems' Eurofighter Typhoon is

88 'Pakistan gets first AWACS Plane', *BBC News*, 9 December 2009.

89 See Bokhari F, 'Pakistan still plans to buy Erieye aircraft', *Jane's Defence Weekly*, 21 January 2009.

90 Interview with ISP (Swedish Inspectorate of Strategic Products) official by Saferworld, 2007.

91 Hewson R, 'Saab sale of Erieye radar to Pakistan given go-ahead', *Jane's Defence Weekly*, 28 June 2006.

92 Jennings G, 'India to buy more Hawk AJTs from BAE Systems', *Jane's Defence Weekly*, 28 July 2010.

93 EU Annual Consolidated Reports 2005-2008.

competing in the contest to deliver 126 fighter jets worth an estimated US\$10 billion.⁹⁴ It is understood that India has also “lodged a firm expression of interest” to buy one of the state-of-the-art 65,000 tonne aircraft carriers planned for manufacture in the UK, in a move that could help solve part of London’s defence budget problems.⁹⁵ Most recently India signed a €560 million contract for 12 AugustaWestland AW101 Merlin helicopters for the Air Force, for VIP transport.⁹⁶ The Merlin is manufactured at factories in England and Italy.⁹⁷

The main running UK arms export programme for India is for 66 BAE Systems Hawk trainer/combatt aircraft worth US\$1.1 billion, of which 42 are being produced in India by Hindustan Aeronautics Ltd (HAL). Before the original deal was signed in 2004, the UK Government received strong criticism from MPs and the NGO community as it admitted that the Hawks could be modified for nuclear use.⁹⁸ The programme has been plagued by delays and assembly problems and HAL has been seeking compensation from BAE.⁹⁹ The accident-prone Indian Air Force has at least for some time been forced to curtail training as a result of the delays.¹⁰⁰ Many of these delays, frictions and complaints appear to have been settled as the purchase of another 57 jets – all to be locally built – was announced by India at the 2010 Farnborough Airshow. Contracts were signed in India a few days later, when the largest British delegation

since independence, led by Prime Minister David Cameron, visited India.¹⁰¹

Continuing military build-up

Indian defence spending in absolute terms has increased by 67 per cent over the last decade, from about US\$21.9 billion in 2000 to US\$36.6 billion in 2009.¹⁰² In 2009 a massive 34 per cent budget increase was approved on the grounds that the “security environment has deteriorated considerably” referring to the November 2008 Mumbai attacks.¹⁰³ In February 2010 India announced another four per cent increase for its 2010-11 budget.¹⁰⁴

India remains largely dependent on arms imports and for decades it has been one of the world’s top recipient states, second only to China for both the 1990-2009 and the 2000-2009 periods.¹⁰⁵ According to SIPRI, over the past ten years the most important suppliers have been Russia (by far), the UK, Israel, Uzbekistan and Poland.¹⁰⁶ The USA is a recent entry to the Indian market. Substantial further increases in procurement have been scheduled.¹⁰⁷

94 Grevatt J, ‘India to downselect fighter jet by mid-2010’, *Jane’s Defence Weekly*, 3 March 2010; Misquitta S, ‘Defense Contractors Target Big Jump in India’s Military Spending’, *The Wall Street Journal*, 17 July 2009.

95 Webb T, ‘Royal Navy aircraft carrier may be sold to India’, *The Guardian*, 16 November 2009.

96 Bedi R, ‘AgustaWestland secures Indian AW101 contract’, *Jane’s Defence Weekly*, 17 March 2010.

97 <http://en.wikipedia.org/wiki/AgustaWestland_AW101>.

98 Norton-Taylor R, ‘British plane sales to India raise fears of nuclear use’, *The Guardian*, 23 April 2002.

99 Bedi R, ‘HAL seeks compensation over Indian Hawk delays’, *Jane’s Defence Weekly*, 24 February 2010; Mathews N, ‘Hawks Not Soaring’, *Aviation Week & Space Technology*, 16 November 2009.

100 Bedi R, ‘Hawk delay sparks IAF training review’, *Jane’s Defence Weekly*, 26 August 2009.

101 Raguvanshi V, ‘British Prime Minister, CEOs Woo Defense Contracts in India’, *Defense News*, 2 August 2010; Jennings G, ‘India to buy more Hawk AJTs from BAE Systems’, *Jane’s Defence Weekly*, 28 July 2010; Bedi R, ‘Doubts surround IAF Plans to acquire additional Hawk 132s’, *Jane’s Defence Weekly*, 1 April 2009.

102 Stockholm International Peace Research Institute, The SIPRI Military Expenditure Database, <<http://milexdata.sipri.org/result.php4>>

103 Grevatt J, ‘India ups defence budget’, *Jane’s Defence Weekly*, 15 July 2009; Dutta S, ‘26/11 oils wheels of arms bazaar’, *The Telegraph* [Indian daily], 12 February 2009.

104 ‘India Unveils \$32B Defence Budget’, *AFP*, 26 February 2010.

105 The SIPRI Military Expenditure Database <<http://milexdata.sipri.org/result.php4>>

106 Ibidem.

107 Drazean Y J & Sharma A, ‘U.S. Sells Arms to South Asian Rivals’, *Wall Street Journal*, 25 February 2010; Misquitta S, ‘Defense Contractors Target Big Jump in India’s Military Spending’, *Wall Street Journal*, 17 July 2009; Srivastava S, ‘Indian arms spree on the fast track’, *Asia Times*, 4 June 2009.

For the period 2010-2022 purchases worth a total of US\$80-100 billion have been planned.¹⁰⁸

It is part of India's defence industry policy that it should develop an independent industrial base, however this has not so far gone smoothly.¹⁰⁹ Licenced production programmes have been plagued by delays and immense cost increases, partly caused by absorption of technology problems.¹¹⁰ Similarly, home-grown Indian weapon development programmes have experienced huge delays and financial setbacks, with the Arjun tank and the Light Combat Aircraft (LCA) the most striking examples.

"The volume of deliveries to India and Pakistan has increased significantly in recent years and will continue to rise during the next five years," according to SIPRI.¹¹¹ India often justifies its massive arms procurement with reference to perceived threats from both China and Pakistan,¹¹² while Pakistan has repeatedly voiced its concerns over India's military build-up.¹¹³ The conditions for continuing arms racing are well established.

Military vs human development

Human development in India has steadily improved over the past decade but certainly not as fast as its economic growth. A staggering 400 million people – 37 per cent of India's population of 1.1 billion – have now officially been recognised as poor by India's Planning Commission.¹¹⁴ Recent statistics from the Oxford Poverty and Human Development Initiative (OPHI) for the UNDP classify 55 per cent of India's population as poor.¹¹⁵ The country ranks only 171 of 175 countries in terms of public health spending per person.¹¹⁶ Every year 400,000 Indian babies die within 24 hours of birth.¹¹⁷ Child malnutrition rates are higher than in many sub-Saharan African countries. In India, 42.5 per cent of children under five are underweight, as compared to 7 per cent in neighbouring China where similarly high economic growth rates have strongly contributed to sharply decreased malnutrition rates.¹¹⁸ According to UNICEF and the World Health Organisation (WHO), every year in India an estimated 387,000 children under five die of diarrhoea, by far the highest number in the world.¹¹⁹ A World Food Programme report in early 2009 noted that India is still home to "more than a fourth of the world's hungry, 230 million people in all".¹²⁰ The latest Global Hunger Index described hunger in the Indian state of Madhya Pradesh "extremely alarming"; "serious" rates of hunger persisted across Indian states that had experienced most economic gains in recent years, including Maharashtra and Gujarat.¹²¹ UNICEF

108 Raghuvanshi V, 'Bureaucracy Remains Hurdle To Rapid Arms Procurement', *Defense News online*, 1 March 2010; Bedi R, 'India keeps shooting itself in the foot', *Jane's Defence Weekly*, 21 October 2009.

109 See e.g. problematic cooperation between Mahindra and BAE Systems; EADS and Larsen&Toubro. Also see: Misquitta S, 'Defense Contractors Target Big Jump in India's Military Spending', *Wall Street Journal*, 17 July 2009.

110 Bedi R, 'India approves additional payment for delayed subs', *Jane's Defence Weekly*, 17 March 2010; Pandit R, 'Desperate step? Govt OKs 2000cr more for Scorpenes', *The Times of India*, 7 March 2010; Raghuvanshi V, 'India's Scorpene Submarine Program Plagued by Delays', *Defense News*, 7 September 2009.

111 Holtom P, et al, 'Trends in international arms transfers, 2009', *SIPRI Fact Sheet*, March 2010.

112 See e.g. Raghuvanshi V, 'Shifting Geopolitics Realigns Indian Relations', *Defense News* 1 March 2010; Bedi R, 'India seeks more Sukhois to keep up with rivals', *Jane's Defence Weekly*, 14 October 2009.

113 'Pakistan Sounds Warnings Over India Buildup', *AFP*, 25 February 2010.

114 *Time Magazine*, Vol. 157, No. 17, 3 May 2010, p. 7.

115 Shrinivasan R, '55% of India's population poor: Report', *The Times of India*, 15 July 2010.

116 'Saving Children's Lives In India – Every One', Save the Children, *Briefing Paper*.

117 'Babysterfte in India enorm hoog', *De Volkskrant* [Dutch daily], 6 October 2009.

118 Sengupta S, 'As Indian Growth Soars, Child Hunger Persists', *New York Times*, 13 March 2009.

119 Out of a total of 1.5 million deaths. 'Diarrhea: Why Children are Still Dying and What Can Be Done', *UNICEF/WHO*, October 2009.

120 Sengupta S, 'As Indian Growth Soars, Child Hunger Persists', *New York Times*, 13 March 2009.

121 Ibidem.

has been critical of high military budgets in the region at the cost of social protection. "A number of countries in South Asia decide to invest in the military and not to increase investment in their people," according to Daniel Toole, UNICEF's regional director.¹²² According to the UN MDG Monitor, as at August 2010, in India none of the UN's Millennium Development Goals (MDGs) had been achieved or are "very likely to be achieved, on track".¹²³

The UK Government would seem to acknowledge the huge development challenges India faces. "In 2008/09 India continued a pattern of receiving by far the greatest amount of Department for International Development (DFID) bilateral assistance to an individual country (£297m [...]). Iraq (£353m), India (£339m) and Afghanistan (£178m) were the top three recipients of UK net bilateral Overseas Development Assistance in 2008".¹²⁴

High levels of both foreign aid and arms exports are symbolic of the UK's ambiguous approach to development issues in India. While India has experienced sustained high levels of economic growth, many development issues, including health and education have not yet been properly addressed, while at the same time the military budget has grown significantly in absolute terms. British arms manufacturers have profited from this development, thanks to a liberal arms exports policy that has reflected a strong tendency to allow the arms industry to profit from India's sharply increased defence spending, ignoring many of the persistent development issues.

Conclusions

Both India and Pakistan belong to the world's lower-income countries. Sustained high economic growth should have reduced many development-related problems, however underdevelopment remains a huge issue, as does Pakistan's highly unstable political climate. Sustained rivalry between the two nuclear-armed countries is used as a pretext for high military spending, fuelling an arms race and hampering human development. European countries, as well as the US and China, have shown little restraint in arming Pakistan, apparently comfortable with maintaining an escalating balance between the two states, and are also prone to justifying sales to Pakistan as helping to combat Islamic militancy. Not only do these justifications appear problematic in the context of Common Position obligations; it is far from clear that they are likely to deliver their intended outcomes.

122 Lamont J, 'Unicef attacks India's record on poverty', *Financial Times*, 2 June 2009.

123 UN MDG Monitor - India, <http://www.mdgmonitor.org/country_progress.cfm?c=IND&cd=356>.

124 'Statistics on International Development 2008/09, section 4: Where does UK Expenditure on International Development go?', Department for International Development (DFID, UK).

Supplying Venezuela

In the past five years, European industry has built warships for the Venezuelan navy. Some governments in Europe, and elsewhere, saw these deals as a threat to regional security. Nevertheless, authorities in states where these contractors are based seemed content to ignore these concerns.

The Venezuelan market for military equipment becomes an issue

In 2003, the first year for which the Consolidated Report reported on licences denied, EU states approved 51 licence applications for exports to Venezuela and refused three.¹²⁵ This mixed pattern in export approval persisted in the next few years, but the relative weight of denied licences increased (Table 1 summarises information included on Venezuela in the Consolidated Reports from 2003 on).

Some of these denials referred to criterion 7, the existence of a risk that the exported equipment be diverted (...) or exported under undesirable conditions. Such denials were consistent with evidence that rifles supplied to the Venezuelan military by European manufacturers had been diverted to Colombian guerrillas included in the EU Terrorism List.

Venezuelan support to groups that undermine a neighbouring state was highlighted in the US State Department Country Terrorism Reports. But these reports also began to portray Venezuela as a risk in and of itself. Venezuelan president Hugo Chávez repeatedly made provocative statements about the US and made no secret of his intention to develop relations with Iran. This led the then US Secretary of State in 2006 to certify the Venezuelan Government was “not fully cooperating in efforts to fight terrorism”.¹²⁸ As a consequence, the US imposed a

Table 1: Exports that EU states authorised to Venezuela (2002-2008).¹²⁶

Year	2002	2003	2004	2005	2006	2007	2008
# (new) licences approved	36	51	38	41	85	26	20
value of (new) approved licences (in € million)	50	50,1	119,3	118,7	267,4	39,3	183,3
value of actual sales (in € million) ¹²⁷	19,7	16,4	6,3	23,2	16,9	18,0	42,0
# licences denied	N/A	3	6	5	11	12	10
criteria denials		2(1) 3(1) 7(2)	3(1) 7(1)	1(2) 3(1) 4(2) 5(1) 7(3)	1(1) 2(2) 3(3) 4(7) 5(6) 7(3)	1(1) 4(8) 5(8) 7(4) 8(2)	3(1) 4(8) 5(5) 7(4)

125 Sixth EU Consolidated Report (2004).

126 Data compiled from the corresponding EU Council’s annual reports, published in the sixth (2004), seventh (2005), eighth (2006), ninth (2007), tenth (2008) and eleventh (2009) EU Consolidated Reports.

127 As reported data on some EU countries’ actual sales are known to be incomplete, the figures in this column ought to be interpreted cautiously.

128 U.S. Department of State, *Country Report on Terrorism*, 2006.

ban on the export of military goods and services to Venezuela, including re-sales of all weapons and equipment containing US technology or components. The ban affected pending sales in the US and elsewhere. For example, the Israeli military industry lost a \$200 million contract to upgrade Venezuelan F16 fighter planes, and from early 2007, Israeli authorities no longer allowed the export of 'own military technology' to Venezuela, in response to President Chávez' increasingly close ties with Iran.¹²⁹

The US encouraged its transatlantic partners to practice similar restraint, including when selling military hardware that did not contain US components.

Comparison of data from 2005 and 2006 on licences granted and refused for arms exports to Venezuela (see Table 1) shows contradicting tendencies. EU exporting states saw reason to deny more export licences, on grounds that began to include regional security issues (criterion 4). The altered policy climate may also have discouraged potential exporters from applying for licences for Venezuela, which would suggest even more "lost opportunities" for EU-based arms companies than is reflected in the 11 export licences that EU states formally denied in 2006, and 12 denials they reported in 2007. On the other hand, that restraint and the licences denied by EU authorities coincided in 2006 with €16 million worth of military sales to Venezuela and the approval of 85 new licences, representing a potential trade figure of almost €270 million - by far the highest value of European exports authorised to Venezuela since the EU Council began publishing the Consolidated Reports, and possibly the highest ever annual value. Such figures suggest that while the US arms ban on Venezuela may have contributed to stop some European exports to Venezuela, its indirect effect may have been to open new market opportunities for those eager to replace Venezuela's former suppliers, such as Israel. These and other market opportunities could still be grasped by industries based in EU countries if authorities downplayed the risk that others ascribed to Venezuelan foreign policy.

129 'Israel joins U.S. Arms Ban on Venezuela', *Defense News*, 1 February, 2007.

Even before the US ban on arms for Venezuela was put in place, President Chávez had reached out to suppliers in countries assumed to be under friendly regimes, such as the Spanish Government that Jose Luis Rodríguez Zapatero began heading in 2004. Prime Minister Zapatero was also Secretary General of Spain's socialist workers' party (PSOE). In October 2005, his Defence Minister José Bono signed a contract to sell Venezuela ships as well as light-medium transport aircraft and maritime surveillance aircraft. In response to US State Department concern over the contract, Spanish Minister Bono explained the aircraft and the ships were intended to be used for the protection of the Venezuelan Exclusive Economic Zone and of shipping lanes, to fight drug trafficking and provide medical support to civil units.

The Spanish reassurances did not stop the US from breaking the deal that had been signed with EADS CASA, since the electronics and engines of all the aircraft that Venezuela sought to buy contained US-made components.¹³⁰ But the larger part of the Spanish contract with Venezuela, that is a €1,2 billion deal for the state-owned Navantia wharf to construct and sell to Venezuela 4 coast patrol vessels and 4 larger ships, that all concerned were careful to label "Economic Area Vessels" or POVZEE, was shielded more effectively. Navantia planned to furnish the ships with Swiss-made Oerlikon machine guns and Italian Oto Melara 76mm guns, but promised not to install combat systems that contained US technology.¹³¹ The promise helped the deal pass the US arms export ban for Venezuela. Clearing the deal with Spanish authorities in compliance with the EU arms export control regime was not expected to encounter problems. A Spanish pre-licence notification was enough for Navantia and the Venezuelan navy to sign off on 25 May 2006, and begin construction at the shipyard and the auxiliary industry around the San Fernando-Puerto Real shipyard near Cadiz.

130 'Love on the Rocks: CASA's \$600M Venezuelan Plane Sale In Heavy Turbulence', *Defense Industry Daily*, 14 February 2006.

131 González M, 'Francia suministrará el sistema de combate de los buques para Caracas', *El País* 13 March 2006.

Arming the deal

The ban on selling US-designed combat systems did not mean that Navantia intended the ships to arrive in Venezuela without state-of-the-art combat capability. The Spanish company subcontracted other European companies to install radar and combat systems that do not contain US technology. Quoting “naval sources close to the project”,¹³² defence journals reported the ships were being provided with the Tacticos combat management system and STING EO radar electro-optical fire-control directives and Mirador electro-optical sensors for search and target tracking. Moreover, all eight ships built for the Venezuelan navy were to be equipped with covert surface search radar based in Thales-NL’s scout technology, complemented with the SMART-S MI2 E/F band 3-D surveillance radar on the four larger ships and with VARIANT 2-D radar on the four smaller vessels.

In mid-2006, the Dutch branch of Thales industries requested a formal export licence to install these particular radars and combat systems on ships under construction in Spain for an end-user in Venezuela – a deal worth over €190 million.¹³³ Deliberation over the licence was not taken lightly. Dutch Defence Minister Henk Kamp aligned himself to the US position and publicly voiced his concern that Venezuela could pose a “Falkland conflict-type military threat to the security of the Netherlands Antilles and Aruba”.¹³⁴ He referred to President Chávez’ claim that The Empire prepared to invade Venezuela from US military facilities at these island territories that are located at only a stone’s throw off the Venezuelan coastline, but are part of the Kingdom of the Netherlands. That expectation, or paranoia, in turn, is taken to have motivated Venezuela to bolster its armed forces and prepare countermeasures. Some even surmised President Chávez’ ‘Bolivarian’ desire to liberate the isles from the Dutch. Coincidentally,

the entire Dutch armed forces were deployed to these isles from late May to mid June 2006, to stage a grand exercise, called Joint Caribbean Lion. The exercise was designed to have the Dutch forces prevent a hypothetical neighbouring country from invading the isles.¹³⁵ Nevertheless, in the fall of 2006, the Netherlands gave Thales the green light to supply the Venezuelan navy, after Dutch Foreign Minister Bernard Bot visited Caracas and was assured of Venezuelan respect for the isles’ sovereignty. Approval of the export licence for the combat and radar system was then presented as a strategy to improve Dutch-Venezuelan relations.¹³⁶

This was not the only export licence the Netherlands authorised for Venezuela,¹³⁷ nor the last. In 2007 and 2008, Dutch authorities extended the duration of the licence for Thales, and the expected value of the sales to be made under that licence increased to €255 million.¹³⁸ It later appeared that the Netherlands had authorised another €65 million worth of exports as part of the same scheme, but in its reporting had ‘mislabelled’ the additional licence as for equipment destined for Spain, rather than the end-user in Venezuela.¹³⁹

Only in 2008, after Navantia completed construction of the first of the eight vessels, did transfers of radar and combat systems under these Dutch licences begin. These transfers were worth €20 million in 2008, according to the Consolidate Report

132 Janssen Lok J, ‘Thales deal helps thaw Dutch-Venezuelan relations’, *Jane’s Defence Weekly*, 19 June 2006. *Revista Tecnología Militar* n°2 (2006) covered the deal as well.

133 Rijksoverheid (Economische Zaken), *Maandrapportages militaire goederen in 2006*, 15 January 2007.

134 Janssen Lok J, ‘Thales deal helps thaw Dutch-Venezuelan relations’, *Jane’s Defence Weekly*, 19 June 2006.

135 The exercise was described in ‘Joint Caribbean Lion’, *De Landmacht*, (4), n° 6, July 2006, pp. 4-9; and ‘Joint Caribbean Lion bevrijdt’, *Alle Hens - Maandblad van de Koninklijke Marine*, July/August 2006, pp. 4-18.

136 Janssen Lok J, ‘Thales deal helps thaw Dutch-Venezuelan relations’, *Jane’s Defence Weekly*, 19 June 2006.

137 Other sales to Venezuela relate to 3 Defender ground-based air defence systems produced for the Venezuelan Air Defence Command that Thales-NL produced with an Israeli contractor only months before Israel banned its own exports to Venezuela.

138 Rijksoverheid, *Maandrapportages militaire goederen in 2007 & 2008*.

139 Private communication from civil servant at the Dutch Ministry of Economic Affairs, 12 October 2010, entailing a commitment to correct the matter in the next official reporting.

published in November 2009,¹⁴⁰ which was roughly half of that year's reported EU sales to Venezuela. The remaining Dutch sales to the Venezuelan navy are understood to have taken place in the course of 2009, as no extension of the licence was requested beyond that date. In their report on 2009, Spanish authorities already included a formal authorisation to export 'warships' to Venezuela valued at €945 million, but they do not record the actual sale had already taken place.¹⁴¹ The first of these ships was formally handed over to the Venezuelan navy in March 2010.¹⁴²

Out of control?

The incorporation of a fleet of heavily armed European-made ships into the Venezuelan navy should not be seen as the inevitable outcome of a process that began more than half a decade ago, when members of the Spanish and Dutch governments had no reason to doubt Venezuela intended to deploy the ships for defensive purposes only. The concerned European governments had means to halt this process, and could have used these had they been convinced of the need to. Instead, Spanish authorities formally authorised export of the fleet in 2009. The Netherlands approved several extensions to the licence it had already obtained in 2006. Each of these extensions would have been contingent on evaluation of the latest state of affairs, including an assessment of the risks named under criteria 4 and 5 in the EU Code and Common Position on arms exports. To that effect, the relevant authorities evaluate "the recipient's intentions, as well as whether the import is an appropriate and proportionate response to the recipient country's need to defend itself (...) Member States shall deny

an export licence if there is a clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim".¹⁴³

Although the Spanish and Dutch authorities cannot have failed to notice how developments in Venezuela took a problematic turn, neither sought to halt the deal. In March 2008, the Chávez regime made its first threat to send tanks, troops and Russian combat aircraft across the Colombian border to stage a war that would adversely affect regional security and threaten territories under EU Member States' responsibility, such as the Netherlands Antilles. Similar threats followed at later date. These developments seriously undermined the belief that the Venezuelan navy would restrict its use of the new ships to defensive purposes only, as had been assured by the European governments that cleared the deal in 2006. Since then, the Venezuelan Government all but ceased describing Netherlands-linked isles off the Venezuelan coast in unfriendly terms. Yet its navy is getting equipped to patrol the seas around these isles with Spanish ships that have Dutch radars and combat systems aboard. The Dutch navy that is deployed to guard these isles also voiced serious concern over three submarines that Venezuela was negotiating to buy from Russia.¹⁴⁴

In Dutch parliamentary debate at the end of 2009, Secretary for Economic Affairs Heemskerk ensured he made best efforts to balance out governmental 'responsibility towards industry' with concern over stability in the Western hemisphere.¹⁴⁵ This explanation is revealing. Both the EU Code and the Common Position that replaced it state that while "Member States, where appropriate, may (...) take into account the effect of proposed exports on their economic, social, commercial and industrial interests, *these factors shall not affect the application of the ... criteria*" (emphasis added), which includes

140 11th EU Consolidated Report, 2009. The sales are reported under ML5, that category covers radar and combat systems.

141 (Spanish) Ministerio de Industria, Turismo y Comercio, *Estadísticas Españolas de exportación de material de defensa, de otro material de producción y tecnologías de doble uso, año 2009*. Anexo 1, 'Estadísticas de exportación de material de defensa año 2009', p. 57.

142 'Navantia entrega el primero de los cuatro buques a la Armada Venezolana', *El Mundo* [Venezuelan daily], 2 March 2010.

143 User's Guide, pp. 61-64.

144 Klopper R, 'Marine beducht voor Venezuela', *De Telegraaf* [Dutch daily], 12 August 2008.

145 Tweede Kamer, *Wapenexportbeleid - Verslag van Algemeen Overleg*, 06 October 2009.

criterion 4 (regional stability).¹⁴⁶ The job of government in this situation is not one of balancing, it is to honour its commitments and obligations.

Secretary Heemskerk added that he had in fact already denied a licence for Venezuela. On closer inspection, that denial concerned decoy launching systems, its intended importer was Navantia and the end-user was listed as the Venezuelan navy.¹⁴⁷ Importer and end-user to that deal are identical to those to which the Dutch branch of Thales is authorised to export by way of the licence that was first approved in October 2006 and extended several times after. Yet this denial should not be confounded with a (denied) extension of that original licence. This decoy launching system is not a Thales product. The deal to install a decoy system on the ships involved a different Dutch company and was not included in the original contract for which export authorisation was requested in 2006. This denial may have detracted attention from the other business that proceeded as planned in 2006, when Venezuela's bellicose turn was still harder to predict and not all members in the Dutch government shared the fears that had motivated the US to put an arms export ban in place, nor the grounds that other EU member states had stated for denying export licences to Venezuela.

already denied, but the system did not prevent large one-of-a-kind deals that Spain and the Netherlands approved to a recipient country that the concerned states' policy makers condemned and that was assessed unfavourably on several criteria of the export control instruments.

Conclusion

The case does not show the EU arms control mechanism to have brought consistency in Member States' arms export policy and practice towards Venezuela. Formal export denials were given for relatively modestly-priced military goods and the consultancy procedure and other means may have prevented Member States supplied the military goods that others European export authorities had

146 Paragraph 10 of the EU Code, and Article 10 of the Common Position.

147 The denial is listed on p. 32 of the *Rapport over het Nederlandse wapenexportbeleid 2009*, published by Dutch Rijksoverheid in June 2010. In private communication, a Thales company spokesperson explained this company was not affected by the denial, which concerned a product to be exported by another company.

Mistral warships for Russia

In August 2009 the chief of the Russian General Staff, General Nikolai Makarov, announced that Russia was in negotiations with France to buy at least one Mistral class amphibious assault ship and then possibly to acquire another three ships to be jointly built in Russia.¹⁴⁸ The deal for the first ship was reported to be worth anywhere from €300 million to €600 million.¹⁴⁹

In December 2009 it was reported that Spain and the Netherlands had entered the bidding for the contract,¹⁵⁰ but then in March 2010, French President Nicolas Sarkozy announced that France was in “exclusive talks” for the sale of the ships.¹⁵¹ More recently, in August 2010, it was announced that the Russian Ministry had decided to put the purchase out to tender.¹⁵²

A Mistral-class ship is capable of transporting and deploying 16 helicopters, four landing barges, up to 70 vehicles including 13 main battle tanks, and 450 soldiers, and can be used as an amphibious command ship. The deal, which would be the first-ever major military equipment sale by a NATO state to Russia, has been controversial from the start. While France has argued in the context of the deal that Russia must be treated like a partner and not a threat in Europe, both the US and other EU Member States, most notably the Baltic States, have raised concerns. Matters have not been helped by the Russian Navy’s commander, Admiral Vladimir Vysotsky, stating that had the Mistral ships been available in 2008, the Russians would have defeated Georgia

“within 40 minutes”, and Prime Minister Vladimir Putin assuring reporters during a visit to Paris in November that “if we purchase this armament, we will use it wherever deemed necessary”.¹⁵³

In the US, in December 2009, Congresswoman Ileana Ros-Lehtinen, the top Republican on the House Foreign Affairs Committee, introduced a bill that stated “France and other Member States of NATO and the EU should decline to sell major weapons systems or offensive military equipment to the Russian Federation”, while several Senators from both the Republican and Democrat parties drafted a letter to the French Embassy calling on France to refuse the sale.¹⁵⁴ Defence Secretary Robert Gates, when in Paris in February 2010 was described by Pentagon Press Secretary Geoff Morrell as having “made [US] concerns very clear” on the arms sale to French officials.¹⁵⁵

Latvia and Lithuania have also expressed grave misgivings about the sale. Lithuanian Defence Minister, Rasa Juknevičienė, has revealed that “Our lawyers consider that such a sale would allow ambiguous interpretations in regard of compliance with several important criteria of [the EU Common Position]”¹⁵⁶ and has suggested “[i]t is time for the EU and NATO to formulate a more clear and firm policy on rules for military export control. There are no clear rules now”.¹⁵⁷ Latvian Defence Minister, Imants Liegis, has urged consultation among allied countries when NATO members consider selling power-projection equipment to non-allies.¹⁵⁸ He has said that “[t]he EU and NATO should only sell their mili-

148 See, for example, ‘Russia set to purchase large French warship-topbrass’, *RIA Novosti*, 26 August 2009; and ‘France defends decision to sell Russia amphibious warships’, *France 24*, 9 February 2010.

149 ‘Russia set to purchase large French warship-topbrass’, *RIA Novosti*, 26 August 2009.

150 ‘French, Dutch enter Russian carrier bid’, *United Press International (UPI)*, 23 December 2009.

151 ‘Russia: Mistral Must Be Sold Fully Equipped’, *Defence News*, 25 March 2010.

152 ‘Russia throws open French warship buy to tender’, *AFP on Defence News*, 9 August 2010.

153 Cody E, ‘Critics say proposed sale of French Mistral ship to Russia will harm region’, *The Washington Post*, 3 February 2010.

154 Rogin J, ‘Proposed French arms sale to Russia faces mounting opposition on Capitol Hill’, *Foreign Policy: The Cable*, 18 December 2010.

155 Shanker T, ‘Gates voices concern about warship sale to Russia’, *New York Times*, 8 February 2010.

156 Rettman A, ‘French warship deal opens wound in EU and NATO’, *EU Observer*, 11 February 2010.

157 Rettman A, ‘Latvia and Lithuania call for tighter EU rules on arms sales’, *EU Observer*, 25 February 2010.

158 Hale J, ‘Caution Urged on Sales to Non-NATO Members’, *Defence News*, 28 June 2010.

tary equipment and weapons to third countries if it does not create risks of regional security tension”, and that “EU Member States should consult among themselves on issues that might compromise the security of other Member States before clinching strategic and military deals”.¹⁵⁹

France has attempted to alleviate these misgivings by repeatedly stating that the ships will be sold without sensitive equipment such as command and navigation systems and weaponry.¹⁶⁰ However Russia seems to have a very different view. General Staff Chief, First Deputy Defense Minister Nikolai Makarov, has stated that “Russia’s leadership and Defense Ministry have a clear position on the issue. Should a final decision be made on Mistral, we will purchase this ship only if it is fully equipped – with all control and navigation means and armaments. The only exception is helicopters. They will be domestically made. Everything else is to be made to their standards completely”.¹⁶¹ Admiral Vladimir Vyotsky was reported to have said in July 2010 that there was “no point” in the purchase of the French ship unless this involved transfer of technology.¹⁶² It would seem it is this disagreement that has prompted Russia to put the contract out to further tender.

This case raises once again the difficulty EU Member States seem to have in reconciling the prospect of very high-value defence sales with the obligations of the EU Common Position. Time and again the specifics contained in the Common Position criteria appear to be ignored when the commercial stakes are high enough, despite the fact that Article 10 of the Common Position is unambiguous in stating that “[w]hile Member States, where appropriate, may also take into account the effect of proposed exports on their economic, social, commercial and industrial interests, these factors shall not affect

the application of the above criteria”.¹⁶³ Moreover, it would seem likely that the current economic environment will be increasing the pressure to prioritise support for the defence industry over strict application of the Common Position.

This case is unusual in that the drive to export is being pursued despite fellow EU Member States publicly expressing their disquiet over what this could mean for their own security. This would seem to be the last circumstance in which Member States should be approving or promoting transfers, and, as highlighted by the comments from the Latvian and Lithuanian Defence Ministers, suggests a fundamental weakness in the existing EU consultation mechanisms. Currently, consultations are only required in the event that one EU Member State is considering an application to transfer controlled goods for what is an “essentially identical transaction” to one already refused by another Member State, which is not the case here. But it is difficult to think of a more appropriate occasion to consult with EU partners before a military equipment sale than when they feel this has implications for their own security.

159 Rettman A, ‘Latvia and Lithuania call for tighter EU rules on arms sales’, *EU Observer*, 25 February 2010.

160 See, for example, ‘France defends decision to sell Russia amphibious warships’, *France 24*, 9 February 2010.

161 ‘Russia will only buy fully-equipped Mistral from France—Gen. Staff chief’, *Ria Novosti*, 25 March 2010.

162 ‘Russia throws open French warship buy to tender’, *AFP on Defence News*, 9 August 2010.

163 EU Common Position, 2008.

The emerging North African military build-up

Over the past few years Algeria and Morocco have signed a number of very large arms contracts, including fighter aircraft and major warships. Relations between Algeria and Morocco have been cool for decades. As noted in 2006 in the *North African Journal*: “The region’s governments clearly do not like Algiers decision to pump billions of dollars on defence, accusing it of starting a dangerous arms’ race spiral in the region (...) The whole situation, although it may not escalate from a military standpoint, is likely going to worsen political and diplomatic relations in the region”.¹⁶⁴

Libya, with the EU arms embargo removed in 2004, is following suit. Smaller initial contracts are being followed up by much larger deals. With no direct security threat, such increasing sales to the three Maghreb countries risk fuelling a regional arms race that may actually worsen the security situation, with consequences for the wider region.

All three countries have an abysmal record in terms of human rights. Many EU Member States appear to justify arms trade with these countries with reference to EU or NATO cooperation programmes around migration control, piracy or anti-terrorism. This chapter focuses mainly on the largest recent European contract in the region – the sale of Dutch frigates to Morocco, while putting it in the perspective of a wider arms build-up, including many recently announced agreements and contracts with EU Member States.

164 Daoud A, ‘North Africa’s Own Defense Buildup: Regional Risk or Legitimate Decision?’ *The North Africa Journal*, 21 April 2006

Dutch frigates for Morocco

Early 2008 Damen Schelde Naval Shipbuilding won an order from the Moroccan government to build and design three Sigma-class frigates.¹⁶⁵ A few weeks earlier the Dutch export credit agency Atradius Dutch State Business had agreed to insure the financial side of the deal.¹⁶⁶ An export licence worth €555 million was granted in September 2009.¹⁶⁷

Reportedly the vessels would be needed for patrol and coast guard tasks and to enable joint operations with NATO navies.¹⁶⁸ Armaments that include MICA and Exocet missiles (both supplied by European missile maker MBDA) and a 76mm Oto Melara canon however suggest more offensive capabilities as well.¹⁶⁹ The Sigmas supplement two frigates bought from France in 2002.¹⁷⁰

The deal clearly builds on Morocco’s aim to build closer military ties with both the EU and NATO, which have been steadily increasing over recent years. For example, for its support in the War on Terrorism, the US government designated Morocco ‘major non-NATO ally’ in 2004¹⁷¹ and NATO agreed in 2008 “to enhance NATO-Morocco cooperation against terrorism and to develop interoperability between NATO and Morocco military forces”.¹⁷² In October 2009 another agreement was signed over

165 ‘The Royal Moroccan Navy Orders Three Sigma Class Frigates’, *Damen News*, 20 February 2008.

166 ‘Uitgereikte polissen’, <http://www.atradiusdutchstate-business.nl/Images/EKVpolissen2008_tcm1008-130101.pdf>

167 See export control website of the Dutch government <<http://www.rijksoverheid.nl/onderwerpen/exportcontrole-strategische-goederen#ref-ez>>

168 ‘Morocco goes Dutch’, *Strategy Page*, 15 February 2008; ‘Opsteker voor Schelde’, [regional Dutch daily] *PZC*, 8 February 2008. Also see: ‘Algeria, Israel, Morocco To Join NATO Navy Patrols’, *Reuters*, 7 April 2006; ‘Talks Open Between NATO and Med Partners’, *AFP*, 7 April 2006.

169 Janssen Lok, J, ‘Morocco’s Dutch Frigate Order is Confirmed’, *Aviation Week’s Ares Defense Blog*, 8 February 2008.

170 Jane’s Sentinel Security Assessment - North Africa.

171 ‘U.S. names Morocco major non-NATO ally’, *Reuters*, 4 June 2004

172 ‘NATO and Morocco sign agreement on Operation Active Endeavour’, *NATO Press Release*, 22 October 2009.

a Moroccan contribution to NATO's anti-terrorism mission, Operation Active Endeavour.¹⁷³ As part of the European Neighbourhood Policy (ENP), Morocco is bolstering security and military cooperation with the EU.¹⁷⁴ While the European Commission acknowledges that the internal situation is deteriorating,¹⁷⁵ Morocco is allocated €654 million under the ENP's 2007-2010 programme.¹⁷⁶

With NATO and EU cooperation a main goal, Morocco appears to have set its sights on western weapons, at a significantly higher price, compared to alternatives from Russia, South Korea or China, or the western military surplus market. The sale of frigates is also at odds with the current naval trend for smaller size craft for coastal operations. However, Dutch shipyard Damen is looking for exports in this sector too. Not long after the Moroccan Sigma deal was secured, one of its regional directors was quoted as saying: "Small patrol boats are cheaper for poorer North African countries, and easier to operate and integrate".¹⁷⁷

Military spending in Morocco is high at 3.4 per cent of GDP, slightly higher than in Algeria (3 per cent), but – according to the most recently available data – still much higher than in Libya (1.3 per cent) and Tunisia (1.3 per cent).¹⁷⁸ In constant terms military spending rose from US\$1.4 billion in 2000 to US\$3.14 billion in 2009.¹⁷⁹ Quoting Moroccan state

media *Jane's Defence Weekly* identified a US\$1 billion defence budget increase for both 2010 and 2011.¹⁸⁰ Unlike Algeria and Libya, Morocco has no energy revenues and thus less financial flexibility and is said to have sought Saudi aid to cover some US\$3 billion of its procurement costs. "Morocco can't proceed with major projects unless it has a multi-year commitment from the Saudis to pay for aircraft and naval platforms," according to an unidentified industry source.¹⁸¹

Human security and corruption

Preoccupied with military security, Morocco fails to deliver on human security issues. According to the UNDP's 2009 Human Development Index (HDI)¹⁸² Morocco is ranking number 130 out of 182 countries; 19 per cent of the population is living below the national poverty line. Adult literacy has slightly improved but is still very low at 55 per cent.

Morocco has also fallen down Transparency International's Corruption Perceptions Index, from a 72nd out of 180 countries surveyed in 2007 to a 85th position in 2010.¹⁸³ Many Moroccans consider corruption as systemic, especially affecting the armed forces.¹⁸⁴ "Corruption is a structural matter and an integral part of the 'security state'," according to Abdullah Kamoun of the Moroccan Human Rights Association (AMDH).¹⁸⁵ A few controversial cases have surfaced in the media in recent years, linking the military to corruption and other illegal activities. In January 2009 80 people, most of them military and police forces, including naval officers, were arrested for involvement in hash smuggling by ac-

173 Ibidem

174 See e.g. Jane's Sentinel Security Assessment - North Africa; 'EU Mulls Deeper Policy Cooperation with Morocco', *Reuters*, 22 March 2006; 'European Neighbourhood And Partnership Instrument, Morocco Strategy Paper 2007 – 2013', p.10 <http://ec.europa.eu/world/enp/pdf/country/enpi_csp_morocco_en.pdf>

175 Progress Report ('Rapport de Suivi Maroc') of 23 April 2009 (SEC(2009) 520/2) at <http://ec.europa.eu/world/enp/pdf/progress2009/sec09_520_fr.pdf>

176 'European Neighbourhood And Partnership Instrument, Morocco Strategy Paper 2007 – 2013', p.10

177 Kahwaji R, 'Officials: Regional Navies Prefer Small Patrol Boats', *Defense News*, 24 March 2008.

178 SIPRI Military Expenditure data available at <<http://milex-data.sipri.org>>

179 Ibidem; Achehbar S, 'Enquête sur les Forces armées royales', *TelQuel* nr. 351, 13-19 December 2008; 'Morocco doubles military budget', *Afrol News*, 9 December 2008.

180 Gelfand L, 'Morocco increases defence budget to compete regionally', *Jane's Defence Weekly*, 3 March 2010.

181 'Morocco', *Middle East Defense Newsletter*, vol.5 no.48, 15 December 2008

182 Covering 2007 data

183 Transparency International, Corruption Perception Index 2010.

184 Adolf S, 'Marokkaans leger kampt met corruptie', [Dutch daily] *NRC Handelsblad*, 15 September 2006; El Ouali A, 'Corruption-Morocco: Worries Rise With It', *IPS*, 21 February 2006.

185 Ibidem.

cepting bribes from smugglers.¹⁸⁶ A few weeks later three civil rights activists that had been involved in anti-corruption protests were detained on charges of having discredited the police and “offending magistrates”.¹⁸⁷

Export policy considerations

In recent answers to parliamentary questions the Dutch government has elaborated on sustainable development aspects (criterion 8) and the regional security (criterion 4). It has justified the export of the three frigates referring to an improving situation in areas of rural development and education. It further reported that “Morocco is changing step by step into a stable, increasingly democratic and internationally participating neighbour of the EU”.¹⁸⁸ In terms of regional stability it explained that both Algeria and Morocco are modernising their ageing military equipment and that any expansion of their assets is directed to “internal fight against terrorist organisations” (Algeria) or to more efficiently counter-piracy (Morocco); “both efforts the Dutch government applauds”.¹⁸⁹

While migration control rather than piracy is likely to be the focus for the Dutch-built frigates, it also fails to explain why these frigates are armed with air defence and surface-to-surface missiles. And – in the case of Algeria – it is completely unclear how Sukhoi fighter aircraft, Kilo-class submarines and main battle tanks (see section below) will help resolve Algeria’s internal problems. Finally, the answers also fail to acknowledge that recent arms purchases have significantly pushed up military expenditure in both Morocco and Algeria, and are likely to continue to do so.

186 Chmirou Y, ‘Démantèlement d’un important réseau de trafic de drogue: Les 10 jours qui ont changé la lutte anti-drogue au Maroc!’, *La Gazette du Maroc*, 23 January 2009; ‘Arrestaties bij marine Marokko’, [Dutch daily] *NRC Handelsblad*, 26 January 2009.

187 ‘Activisten gearresteerd in Marokko’, [Dutch daily] *NRC Handelsblad*, 10 March 2009.

188 Answers to parliamentary questions on the Dutch Arms Exports Annual Report 2009, 10 August 2010.

189 Ibidem.

Spiralling regional arms purchases

While the Dutch sale of frigates has been the largest European sale to Morocco, the North African country concluded a number of other big arms deals recently. Despite the loss of the frigate tender to their Dutch rival, French yard DCNS finalised a deal later in 2008 for one FREMM frigate, costing €470 million and to be delivered in 2013.¹⁹⁰ The air force is modernising and expanding mostly through US-sourced weapons, such as Lockheed Martin F-16 aircraft and 24 Hawker Beechcraft T-6C Texan II aircraft, jointly worth over US\$1 billion.¹⁹¹ Meanwhile, ageing Mirage F1 fighters are being modernised by France for €350 million.¹⁹² Furthermore on order for the air force are four Italian/American C-27J Spartan transport aircraft worth an estimated US\$130 million, one Gulfstream 550 for the Air Force’s ‘VIP Squadron’ (at US\$142 million),¹⁹³ and three Boeing CH-47D Chinook transport helicopters, adding to nine older C model versions already in service, for an estimated US\$134 million.¹⁹⁴

190 Hammick D, ‘DCNS finalises FREMM deal with Morocco’, *Jane’s Defence Weekly*, 30 April 2008; Lewis J, ‘Algeria advances talks with France for FREMM purchase’, *Jane’s Defence Weekly*, 27 February 2008; Janssen Lok J, ‘Three Sigma’, *Aviation week & Space Technology*, 28 January 2008; Lewis J, ‘Morocco becomes first FREMM export customer’, *Jane’s Defence Weekly*, 31 October 2007. <<http://www.defense.gov/contracts/contract.aspx?contractid=4185>>

191 Gelfand L, ‘Morocco seals trainer aircraft FMS agreement’, *Jane’s Defence Weekly*, 30 September 2009; U.S. DoD Contracts, 22 December 2009 <<http://www.defense.gov/contracts/contract.aspx?contractid=4185>>

192 SIPRI Arms Transfers Database.

193 ‘Morocco – Gulfstream G-550 Aircraft’, *Defense Security Cooperation Agency News Release*, 18 May 2009.

194 ‘Morocco Seeking CH-47Ds’, *Air Forces Monthly*, January 2010.

Table 2: Arms transfer agreements with Algeria, Libya and Morocco (2002-2009, total value in millions current US\$).¹⁹⁵

	2002-2005	2006-2009
Algeria	600	6,800
Libya	900	1,600
Morocco	700	4,700

Morocco's spending spree is certainly not taking place in isolation, but fits in a pattern of increased defence spending in North Africa – especially Algeria, Libya and Morocco - resembling a regional arms race.¹⁹⁶ Algeria and Morocco follow each other's moves closely, and both have similar procurement programmes. Algeria has agreed a US\$7.5 billion package deal with Russia, including 28 Su-30 jet fighters,¹⁹⁷ 180 T-90 tanks, two submarines and several air defence systems. To sweeten the deal, Moscow forgave Algeria's US\$4.74 billion of Soviet-era debt.¹⁹⁸

A similarly large deal has been won by Anglo-Italian helicopter manufacturer AgustaWestland which reportedly will supply up to 100 helicopters, worth up to US\$5 billion, to meet the country's "battlefield and internal security requirements".¹⁹⁹ A number of European shipyards have negotiated to

supply four stealth frigates, including technology transfers.²⁰⁰ The U.K. government signed a military cooperation accord with Algeria in October 2009, hoping it will spur further sales of helicopters and ships.²⁰¹

Libya's first major arms purchases have only recently been signed following the lifting of long-standing EU and UN arms embargoes in 2003/2004 after Tripoli declared to give up its weapons of mass destruction programmes. Russian Prime Minister Putin in early 2010 announced a US\$1.8 billion deal with Tripoli, reportedly including 12-20 Sukhoi fighter aircraft, six Yak-130 light combat aircraft, S-300 air defence systems and a Kalashnikov manufacturing facility.²⁰² In late 2007, France announced a preliminary agreement with Libya over a €4.5 billion arms package, including 10-14 Rafale fighters, 2 Gowing corvettes and 8-12 Tiger attack helicopters, among many more items.²⁰³ No firm contract has so far been signed though. However it appears that Paris has delivered 100 MILAN-3 anti-tank missiles to Tripoli in 2009, in a deal worth €168 million.²⁰⁴ Dassault is also said to be working on the overhaul of Mirage fighter aircraft.²⁰⁵

The biggest military-related deal with an EU Member State to date has been a €300 million contract Italy's Finmeccanica signed with Libya in late 2009.²⁰⁶ Finmeccanica and AgustaWestland – each

195 Figures in this table are sourced from Grimmert R, 'Conventional Arms Transfers to Developing Countries', *Congressional Research Service*, 10 September 2010.

196 See e.g. Persson S and Mbogo S, 'Libya arms deal, just in case', *AfricaReview.com*, 16 February 2010; Carney D, 'Arming the Maghreb', *ISN Security Watch*, 17 November 2009; Nativi A, 'Market demand', *Defense Technology International*, October 2009; Daoud A, 'North Africa's Own Defense Buildup: Regional Risk or Legitimate Decision?' *The North Africa Journal*, 21 April 2006.

197 Worth US\$2.5 billion; see: 'Russia completes delivery of Su-30 fighters to Algeria', *RIA Novosti*, 18 November 2009.

198 Carney D, 'Arming the Maghreb', *ISN Security Watch*, 17 November 2009; 'Algerian Arms Deal Brings Russia \$7.5 billion, Gas Market Leverage', *Defense Industry Daily*, 14 May 2009.

199 Ripley T, 'AgustaWestland wins 100-helo Algerian order', *Jane's Defence Weekly*, 23 September 2009; 'AgustaWestland Wins Huge Algerian Contract', *Air Forces Monthly*, October 2009. Also see Carney D, 'Arming the Maghreb', *ISN Security Watch*, 17 November 2009.

200 'Algeria seeks European stealth frigates', *UPI*, 2 October 2009; Kingston T, 'Fincantieri Polishes Offer for Algeria', *Defense News*, 24 August 2009

201 Arezki Himeur M and Gelfand L, 'UK signs accord with Algeria in pursuit of sales', *Jane's Defence Weekly*, 4 November 2009.

202 'Russia confirms Libyan timeline', *Jane's Defence Weekly*, 2 June 2010; 'Tripoli's Shopping List', *Aviation Week & Space Technology*, 22 February 2010; 'Russia and Libya Sign \$1.8 Billion Arms Deal', *Military Technology*, 3/2010; Gelfand L, 'Libya close to finalising major Russian arms deal for \$2bn', *Jane's Defence Weekly*, 3 February 2010

203 'Russia and Libya Sign \$1.8 Billion Arms Deal', *Military Technology*, 3/2010.

204 SIPRI Military Expenditure Database <<http://milexdata.sipri.org/result.php4>>

205 Warnes A, 'Libyan Mirage F1s Returning to Service', *Air Forces Monthly*, December 2009.

206 Kingston T, 'Libya, Finmeccanica Sign Border Control Deal', *DefenseNews.com*, 7 October 2009.

for 25 per cent - have also created joint venture LIATEC (Libyan Italian Advanced Technology Company) with the Libyan Company for Aviation Industry; it hopes to use it as leverage to win orders from the Libyan air force.²⁰⁷ LIATEC has already done upgrades for at least three Chinook helicopters.²⁰⁸ Spanish company ITP has signed a contract to service and repair Libyan C-130 Hercules transport aircraft.²⁰⁹

The UK has issued arms export licences for Libya since at least 2007, including water cannons for riot control and internal security. According to the UK Strategic Export Controls annual report of 2008 this happened despite “concerns with Libya’s human rights record”.²¹⁰ William Hague, the then shadow and now current Foreign Minister said in September 2009 “Arms exports controls are designed to protect fundamental human rights principles. Relaxing the rules to accommodate Libya in this case is wrong”.²¹¹ However the DSO export promotion organisation had made Tripoli a prime target for UK arms transfers.²¹²

Human rights organisations in Belgium in 2009 successfully challenged a €11.5 million transaction of small arms to Libya, with the Council of State concluding that a transitional government could not grant export licences, but also noting that the weapons could be used for human rights violations and would risk diversion. However, soon after, the new government granted a new export licence, with negotiations pending for new exports up to €111 million over five years.²¹³

In June 2010 Amnesty International stressed the continuing dire human rights situation, with Brussels negotiating a pact with Libya on areas including migration and asylum.²¹⁴ Back in 2004 the EU lifted its arms embargo partly under pressure from Italy which wanted “to supply Tripoli with surveillance equipment to help prevent illegal immigration. Italy’s long coastline makes it a major target for African migrants trying to reach Europe by boat”.²¹⁵

207 Warnes A, ‘Liatec In Strong Position’, *Air Forces Monthly*, December 2009

208 Warnes A, ‘Upgraded Chinooks in Service’, *Air Forces Monthly*, December 2009

209 Suggested to be worth up to EUR 23 million. ‘ITP expands Libya helos contract’, *Jane’s Defence Weekly*, 17 March 2010.

210 Quoted in Elliott F, ‘Sale of riot equipment to Libya ‘waved through’ in spite of fears’, *The Times*, 8 September 2009.

211 Elliott F, ‘Sale of riot equipment to Libya ‘waved through’ in spite of fears’, *The Times*, 8 September 2009.

212 Baldwin T, ‘Political help behind Libya arms trade, says official’, *The Times*, 5 September 2009; Chuter A, ‘Britain: We Were No. 2 Exporter In ‘08’, *Defense News*, 9 June 2009.

213 ‘Belgian Court suspends export licences to Libya’, *GRIP press release*, Brussels, 19 November 2009.

214 ‘Phillips L, ‘Europe’s cosy relations with Libya crushing human rights, says Amnesty’, *EUObserver.com*, 23 June 2010.

215 Bowley G, ‘EU agrees to end arms ban on Libya’, *International Herald Tribune*, 12 October 2004. Also see: Castle S, ‘EU ends arms trade ban with Libya’, *The Independent*, 12 October 2004.

German-Israeli armaments cooperation: sea, land and air

For many years Berlin has paid large parts of Israeli purchases of five Dolphin class submarines built by German HDW, a yard owned by Thyssen Krupp Marine Systems (TKMS). Germany has underwritten a substantial part of Israel's Dolphin submarines, including all of the costs of the first two vessels, and half of the costs of the third, and one-third (or around €330 million) of the fourth and fifth in a 2005 deal, that will be delivered in the next few years.²¹⁶ These Dolphins will be equipped with fuel-cell air-independent propulsion. In addition Germany has promised to procure Israeli weapons technology worth another third of the costs of the last two submarines, to ease Israeli hard currency burdens associated with the procurement.²¹⁷

Most recently Germany has been approached by Israel to help develop a funding scheme for another major naval procurement. Israel wanted to buy a sixth Dolphin sub and two enlarged Meko corvettes to be equipped as missile defence ships. These would have been built by another TKMS subsidiary, Blohm + Voss at Hamburg. Media reports in July 2010 said that no agreement was reached and preliminary discussions had ended. Israel hoped, Germany would again cover one third of the costs of the deal, which has been estimated worth €1.2 billion.²¹⁸ It is unclear whether the German government decided not to fund additional ships at this point for economic reasons or because it would have set a precedence for Germany to financially support another class of Israeli warships which could have included a much larger number of ships than the two requested by now.

Significantly, after a 2009 reorganization, TKMS and Blohm + Voss have become part of a strategic venture with Abu Dhabi MAR (ADM) of the United Arab Emirates, which has no diplomatic ties with Israel. The strategic partnership yet awaits German governmental approval.²¹⁹ This acquisition problem comes as the Israeli Navy adds new missions to its traditional one of coastal defence. The Israeli Navy now routinely deploys to more distant waters, such as the Western Mediterranean, the Red Sea and possibly the Gulf.²²⁰ Also, during Israel's 2008-2009 war in Gaza, warships provided fire support for ground forces and launched precision strikes against rocket sites and other targets and more recently in attempts to break Israel's naval blockade of Gaza. In May 2010 nine people were killed and dozens wounded in a raid on the largest of a several ship Turkish flotilla, transporting aid and igniting international pressure against Israel's blockade of Gaza.

Many more Israeli weapons contain German technology. For example, the Saar 5 corvette, hit by a Hezbollah missile in July 2006, had an MTU engine.²²¹ The same company's engines are also installed in the Israeli Super Dvora and Shaldag class fast patrol crafts.²²²

The Dolphin submarines have Atlas Elektronik heavy torpedoes for sea-based targets.²²³ They are delivered via the USA, so that US military aid can be used for the financing. Israel can employ the submarines in the Mediterranean and in the Gulf region for reconnaissance and for traditional naval warfare. They can bring combat divers into position for operations, lay underwater mines, and fire Harpoon-missiles at targets at sea and on land.

216 Ben-David A, 'Israel orders two more Dolphin subs', *Jane's Defence Weekly*, 30 August 2006.

217 Eg. Germany leases Heron surveillance UAVs for its troops in Afghanistan.

218 Opall-Rome B, 'Israel Sub Deal Falls Through, Leaving Acquisition Plans Adrift', *Defense News*, 19 July 2010; Ben-David A, 'Germany dampens Israel's naval plans', *Jane's Defence Weekly*, 28 July 2010; Opall-Rome B, 'Israel Seeks German Arms-Aid Deal', *Defense News*, 18 January 2010.

219 Schulte S, 'Details emerge of TKMS, ADM strategic partnership', *Jane's Defence Weekly*, 18 August 2010; Opall-Rome B, 'Israel Sub Deal Falls Through, Leaving Acquisition Plans Adrift', *Defense News*, 19 July 2010.

220 Opall-Rome B, 'Israel Sub Deal Falls Through, Leaving Acquisition Plans Adrift', *Defense News*, 19 July 2010.

221 'Eilat Class Sa'ar 5 Multimission Corvettes, Israel', *Naval Technology.com*, s.d.

222 '\$15,5M for Israeli Fast Patrol Boat Propulsion', *Defense Industry Daily*, 18 May 2006.

223 'Submarines', Global Security.org.

Table 3: Values of EU arms export licences to Israel (selected countries, 2005 - 2008, in € millions).²²⁵

	2005	2006	2007	2008	2005-8
Belgium	14.233	.512	5.409	1.407	21.049
France	72.219	89.140	126.271	75.034	362.664
Germany	20.358	19.558	28.371	25.084	93.371
Poland	.567	6.678	3.850	7.008	17.536
Romania			16.669	15.455	32.124
United Kingdom	33.455	5.928	6.790	31.555	77.728
Total EU	145.404	127.149	199.409	162.262	634.224
Licences granted	439	610	1,018	833	2,900
Licences denied	14	27	28	22	91

Israel is an undeclared nuclear power. It sees the Dolphin submarines as a part of its strategic potential. Since it became known that the Dolphin subs have four larger 650mm in addition to the standard 533mm tubes and that Israel tested a cruise missile with a range of 1,000-1,500 kilometres off the coast of Sri Lanka in 2000, many observers assume that Israel wants to place some of its nuclear weapons on submarines, where they will be nearly invulnerable.²²⁵ Since the submarines are mobile, they can cover many more and much more distant targets. In supplying these submarines, Germany risks contributing to nuclear proliferation, since it supplied a weapons platform that could be used for nuclear missiles.

German technology at war

The Israeli air force bombarded targets in Lebanon in 2006. The Israeli army pushed into Lebanese villages and cities that they regarded as Hizbollah

strongholds. The Israeli navy blockaded the country at sea. During all these operations, German military technology was used. Israel's Merkava 3 and 4 tanks for example contain many elements that have their origin in German Leopard 2 tanks. These include the turret stabilisation system, which made the Leopard the first tank able to shoot while driving cross-country. It includes the armour (cooperation with the German engineering firm IDB-Deisenroth), the engine and the gearbox supplied by Renk of Augsburg. The tank's engines were developed by MTU and assembled from the individual parts by an American licensee, from where they were sent to Israel.

The Heidelberg firm AIM-Infrarot-Module makes infrared modules for reconnaissance, targeting, and firing that are installed in combat planes' components, such as the LANTIRN targeting systems, or in helicopter systems such as TADS, that is used in the AH-64 Apache helicopter gunship. With the aid of the module weapons can be aimed and fired very precisely. Israel's flying weapons systems, such as the F-16 fighter-bombers and Apache are equipped with these components. Similarly, the company Zeiss Optronik cooperates with the Israeli firm Rafael in the production and marketing of Litening and Recce Light of reconnaissance and

224 Table sourced by EU Consolidated Reports on the years 2005-2008. Romania was not a member of the EU before 2007.

225 Also see Eshel D, 'Urgent need', *Defense Technology International*, May 2010.

targeting systems, which are also successful export products.²²⁶

Many of the German components finally ending up in Israel do not appear in German government reports on Germany's exports to Israel. Since they are subcomponents to larger components or weapons built in third countries such as the US, they are often reported as exports to these countries. This is likely true for Germany's annual reports to the EU Council as well. From these reports it becomes clear that looking at the last four available years (2005-2008), Berlin is one of the EU's main suppliers of arms to Israel. No submarines were exported during these five years. However in years, during which submarines are delivered (e.g. 1999/2000) Germany is by far the largest supplier among the EU Member States, since submarines are currently valued around €400-500 million apiece. Thus a single submarine represents a larger export than the sum of all EU exports in any given year. Submarine 4 and 5 are likely to receive an export licence in 2011.

The security situation vis-à-vis the Palestinians has been clear for many years. Despite recent large-scale military operations and an obvious dominance of its military forces, most recently shown in Operation Cast Lead in Gaza, Israel continues to have relatively easy access to EU-origin military equipment. While a few countries have exercised real restraint, still 18 countries granted 833 export licences to Israel in 2008, worth €162 million. France, the UK, Germany and Romania are the main exporters. From these reports, due to lack of specific information on end-users, it is impossible to tell how much of the goods exported under these licences are for use by the Israeli military.

226 'Rafael RecceLite reconnaissance pod (Israel), Airborne systems - Observation and surveillance - Reconnaissance systems', *Jane's Military & Security Assessments*; 'Rafael marks sale of the 1000th Litening Pod', press release, *ASDNews*, 18 Oct 2010; and <http://en.wikipedia.org/wiki/LITENING_targeting_pod>

Inconsistencies

The previous cases brought to light the considerable financial pressures that can be applied to EU Member States' authorities to take decisions that would appear to run counter to the EU Code/Common Position. These cases hint at disagreements and difference of opinion among Member States.

In the following cases, this overarching economic rationale seems absent. Nevertheless, transfers are still being authorised that apparently run counter to the spirit and letter of the EU instruments, in particular transfers to a number of actors involved in armed conflict where there are concerns about their conduct. The policy and practice for transferring military goods to those actors is seen to lack consistency across the EU. Some cases discussed also indicate inconsistency between the words and actions of a single Member State.

EU military supplies to the Sri Lankan civil war

Decades of civil war have left deep scars all over Sri Lanka. At least 70-80 thousand people have died in the war. After a 2002 ceasefire brokered by Norway was formally ended in January 2008 by the government, the conflict was clearly heading towards a new phase of violence.²²⁸ According to the government the rebels had used the peace pact "to rearm and regroup. It now aims to crush them by the end of the year", the BBC reported at the time.²²⁹ For that reason Colombo needed weapons itself and thus went out shopping. While it was crystal clear that the conflict was about to re-escalate, EU Member States were willing to allow arms and ammunition to flow to Sri Lanka during 2008. In the spring of 2009 the offensive by Colombo crushed the Tamil rebel forces, with devastating humanitarian consequences. It is estimated that over 20,000 people

Table 4: Value of granted export licences by EU Member States to Sri Lanka (2005 - 2008, in €).²²⁷

	2005	2006	2007	2008	2005-2008
Austria	14 893	14 907			29 800
Bulgaria			2 095 769	903 064	2 998 833
Czech Rep.	2 482 000	1 584 000	633 667	17 304 739	22 004 406
France		1 160 365	159 293		1 319 658
Germany	550	667 550	59		668 159
Hungary	50 000				50 000
Italy		15 716			15 716
Latvia	784				784
Lithuania	16 906	16 875	158 493	30 136	222 410
Netherlands			91 349		91 349
Poland	94 498	60 074	191 668	50 758	396 998
Slovakia	20 382	192 328	173 016	1 867 158	2 252 884
Spain		355		3 915 780	3 916 135
U.K.	5 526 784	3 027 140	588 307	7 887 421	17 029 652
TOTAL	8 206 797	6 739 310	4 091 621	31 959 056	50 996 784

227 Table sourced by the EU Council Consolidated Reports for the years 2005-2008. Bulgaria became a member of the EU in 2007.

228 Buerk R, 'Sri Lanka ceasefire formally ends', *BBC News*, 16 January 2008.

229 Ibidem.

Table 5: Value of export licences to Sri Lanka from selected EU Member States for selected categories of military goods in 2008, in €.²³⁰

	ML 1	ML 3	ML 4	ML 6
Bulgaria	2 160	739 912	160 992	
Czech Republic	7 361 079	2 545 907		6 580 689
Slovakia			1 867 158	
Spain			3 915 780	
U.K.	2 530		95 676	

lost their lives during the last months of the conflict, many of them civilians.²³¹

EU arms transfers

Though non-EU members have supplied most of Sri Lanka's arms over the past years, a few EU states have transferred significant amounts of military goods to the war-torn nation. The Czech Republic and the UK stand out as the EU's largest suppliers, while Slovakia's decision in 2008 to transfer rockets was also noteworthy. While Sri Lanka seems to be a clear case of an intensely problematic destination – a civil war, visibly escalating towards the final offensive in early 2009, as well as well-documented accounts of human rights abuses – EU countries granted export licences worth €32 million in 2008; eight times more than in 2007 (see table 4). Also in 2008, about one out of four licence requests was denied (table 5).

The Czech Republic has a history of supplying arms to Sri Lanka and is the EU's foremost exporter to Colombo.²³² Colombo was the single largest destination for Czech arms export licences in 2008, with a value of over €17 million.²³³ The 2008 deliveries included 20,000 7.62mm 'version 58 automatic weapons', which were shipped through the port of Rotterdam in November 2008.²³⁴ As production of this type appears to have terminated in the 1980s, this transfer has likely come from surplus stocks.

These automatic weapons were shipped through the port of Rotterdam in or after November 2008.²³⁵ The Dutch government has a policy not to interfere with transit that comes from EU and NATO partner states, even when the transfer would have been refused if the equipment was being sourced out

230 EU Council Consolidated Report for the year 2008. The ML numbers refer to the categories of armament described in the EU Common Military List: ML 1 = Smooth-bore weapons with a calibre of less than 20mm; other arms with a calibre of 12.7mm or less; ML 3 = Ammunition and fuse setting devices; ML 4 = Bombs, torpedoes, rockets, missiles and other explosive devices; ML 6 = Ground vehicles.

231 Philip C and Evans M, 'Times photographs expose Sri Lanka's lie on civilian deaths at beach', *Times Online*, 29 May 2009.

232 See: Athas I, 'Sri Lankan arms spending set to reach record levels', *Jane's Defence Weekly*, 22 October 2008 and SIPRI arms transfers database, which mentions a number of army material transfers, often in aid and often specified "against LTTE rebels". Also see: 'Czechs reject Amnesty International criticism over arms exports', *BBC Monitoring Europe – Political*, 14 May 2004, excerpt from report by *Czech Radio 1 - Radiozurnal*, in Czech, 1000 gmt 14 May 2004; 'Czech Republic Does Not Control Enough Arms Exports – AI', *Czech News Agency CTK*, 13 May 2004; Spritzer D A, 'Arms' length', *The Prague Post*, 20 November 2003; 'Arms exports to Sri Lanka in line with Czech law – ministry', *CTK news agency*, 20 April 2001; 'Sri Lanka Gets Czech Arms Supplies', *AFP*, 15 April 2001.

233 "Annual Report on the Czech Republic's Control of Exports of Military Equipment and Small Arms for Civilian Use – 2008.

234 Notification of 4 November 2008, Dutch government transit data 2008, also see the 'Annual Report on the Czech Republic's Control of Exports of Military Equipment and Small Arms for Civilian Use – 2008', annex 4.

235 Ibidem.

of the Netherlands – very likely to have been the case here. This transfer via Dutch territory therefore highlights a systemic deficit of such a policy: Why allow a transfer of military equipment through one's territory if one would not grant an export licence for that same equipment to that same destination? While a certain amount of loyalty and trust among partner countries is understandable, that should not imply that a government should turn a blind eye to controversial arms shipments that pass through their territory.

A Czech Industry and Trade Ministry spokesman confirmed these exports to Sri Lanka, while underlining that mostly due to pressure from the Foreign Ministry several other requests were rejected.²³⁶ In its 2009 annual report on arms exports the Czech government elaborates further on its Sri Lankan arms exports: "The Czech Republic was also among those Member States that were criticized for exporting military equipment to Sri Lanka. The [MZV -Ministry of Foreign Affairs] has been consistently monitoring the conflict between the rightfully elected Sri Lankan government and the LTTE separatist movement, which is included on both the UN's list of terrorist organizations and the EU's similar list. From the start of 2008, after the Sri Lankan government ended its ceasefire agreement and the conflict gradually started to heat up in the northern parts of the island, the MZV started reviewing all export license applications in a highly restrictive fashion. This resulted in a growing number of rejected applications. Starting mid-2008, the MZV temporarily suspended the export of large calibre weapons and ammunition".²³⁷

Also a Mi-24 'Hind' attack helicopter, extensively used in the war,²³⁸ was transferred from the Czech Republic via Rotterdam in 2008, according to Dutch

governmental transit data.²³⁹ As no Czech sale of (second hand) Mi-24s has been reported - Sri Lanka's Mi-24's were sourced from Russia and Ukraine in the late 1990s²⁴⁰ - it may be that maintenance or modernisation work on the Mi-24 has been carried out in the Czech Republic.

The UK has also been a significant exporter of military equipment to Sri Lanka over the whole of the decade preceding the Sri Lankan Government's 2009 military offensive. During the period 2004-2008 the UK authorised transfers of *inter alia* semi-automatic pistols, heavy machine guns, sub machine guns, small arms ammunition, weapon sights, components for semi-automatic pistols, components for heavy machine guns, components for general purpose machine guns, components for assault rifles, components for submachine guns, gun mountings, armoured all-wheel drive vehicles, military utility vehicles, military transport aircraft, components for combat aircraft, technology for the use of combat aircraft, technology for the production of combat aircraft, components for military training aircraft, components for military transport aircraft, components for military aero-engines, components for combat helicopters, equipment for the use of combat helicopters, technology for the production of combat helicopters, components for military utility helicopters, components for naval light guns, general naval vessel components and military/infrared thermal imaging equipment.

The UK acknowledged the aggravating situation in its 2007 annual report on arms exports,²⁴¹ but appearing before a parliamentary committee in April 2009 the then UK Foreign Minister Bill Rammell claimed that all the sales were legitimate based on evidence available at the time and further observed that "[i]f you went back through history, bluntly we

236 'Czech officials block many arms deals with Sri Lanka – Ministry', *Czech news agency CZK*, 20 May 2009 (translated report).

237 '2009 Annual Report on the Czech Republic's Control of Exports of Military Equipment, Small Arms for Civilian Use and Dual-Use Items and Technologies'.

238 'Mil Mi 24, <http://en.wikipedia.org/wiki/Mil_Mi-24#Sri_Lankan_Civil_War_.281987.E2.80.932009.29>

239 'Notification of 11 March 2008', Dutch government transit data 2008.

240 see e.g. <<http://www.deagel.com/equipment/Combat-Helicopters-Mi-24-a000751.aspx>>.

241 2007 UK Annual Report on Arms Export, case study 5, p.15

Table 6: Arms export licence applications in the EU for Sri Lanka (2005 - 2008)

	2005	2006	2007	2008	2005 - 2008
Applications	93	140	116	129	478
Granted	85	117	93	96	391
Refused	8	23	23	33	87

would not sell arms to anybody because of what has happened in the past".²⁴² This, however, was a fundamentally disingenuous response. The application of relevant existing and past evidence – which is entirely feasible without going “back through history” – is a critical aspect of the risk assessment EU Member States are obliged to take for all prospective arms transfers, as a cursory glance at the User’s Guide or denial notification system will reveal. And in the case of Sri Lanka, this evidence available at the time was clearly disturbing.

The Times reported the Government’s primary concern in authorising the 2008 deal was based on a concern that “countries, such as China, would take its place”.²⁴³ Apart from the fact that China has been an arms supplier to Sri Lanka for a long time, the arguments as well as their timing clearly do not show much consideration of the then situation in Sri Lanka. If true, the report in *The Times* raises some fundamental questions about the UK’s understanding of its commitments under what was then the EU Code.

Slovakia meanwhile licensed, and delivered, 10,000 rockets worth over €1 million to the Sri Lankan Armed Forces General Staff in 2008. When questioned about this deal, a Slovak government representative stated that it ‘was justified as there was no UN embargo on Sri Lanka, the government

had the right to defend itself and that the LTTE was a banned terrorist organisation’.²⁴⁴ Just as the UK Government seemed blind in the case of Sri Lanka to the way the EU system is supposed to function, this suggests that in this case Slovakia was no less confused than the UK about how the EU arms transfer control system is supposed to work. The question of whether a prospective recipient is subject to embargo is only one part of one of eight criteria Member States are now obliged to apply, which for the most part address the conduct of the recipient rather than the possible target. If the Slovak Government had properly gone through all criteria they should have denied a licence for this deal.

Sri Lanka obviously is a controversial destination, also for export control officials, as can be seen from the relatively high and increasing number of licences refused (table 6). The denial rate has increased over the past few years from 8.6 per cent of all applications for Sri Lanka in 2005 to 25.6 per cent.

Denials come from both EU Member States that have not licenced any arms exports to Sri Lanka over this period, as well as the main supplier countries. For all denied licences criterion 3 (internal situation; tensions and armed conflict) concerns have been quoted, often besides other criteria, such as human rights concerns (criterion 2).

242 Minutes of Evidence. ‘Scrutiny of Arms Export Controls (2009): UK Strategic Export Controls Annual Report 2007, Quarterly Reports for 2008, licensing policy and review of export control legislation, question 154’, UK Parliamentary Committees on Arms Export Controls, 22 April 2009.

243 Page J, ‘Britain sold weapons to help Sri Lankan army defeat Tamil Tigers’, *The Times Online*, 2 June, 2009.

244 Nicholson T, ‘Slovak rockets sold to war-torn Sri Lanka’, *Slovak Spectator*, 7 April 2008; ‘Attack on arms sale to Sri Lanka’, *BBC News*, 10 April 2008.

'Appalling disregard for civilian safety'

More than 25 years of civil war between Sri Lanka's government forces and secessionist Tamil guerrilla's (commonly known as the Tamil Tigers, or LTTE) came to an end in May 2009 after a massive government offensive defeated the last Tamil strongholds in the north of the island. "International concern was raised about the fate of civilians caught up in the conflict zone during the final stages of the war, the confinement of some 250,000 Tamil refugees to camps for months after the war, and allegations that the government had ordered the execution of captured or surrendering rebels".²⁴⁵

Such allegations have been made by e.g. Human Rights Watch (HRW), which called the "disregard for civilian safety appalling".²⁴⁶ HRW has also documented the Government's shelling of heavy artillery into the no-fire zone in northern Vanni, where at the time some 100,000 people were trapped by the Tamil Tigers.²⁴⁷ Many similar incidents were recorded by the US State Department in its report to the US Senate.²⁴⁸ However, according to the International Crisis Group (ICG) there "have been no investigations into any of the credible allegations of violations of human rights law by senior government and the LTTE leaders over the course of the war".²⁴⁹ In a May 2010 report the ICG accused both sides of war crimes.²⁵⁰ The Sri Lankan army was also accused of extra-judicial killings of captured Tamil fighters; a video leaked to a news station in August 2009 appeared to show Sri Lankan soldiers in the act of executing a group of men believed to be Ta-

mil fighters²⁵¹ in a move that was apparently ordered "from the top".²⁵²

It has also been alleged that elements in the Sri Lankan Government (GSL) gave material support to other armed groups in the east of the country, such as the Tamil Makkal Viduthalai Pulikal (TMVP), which supported it in its war against the LTTE. This material support included providing the groups with arms from its stockpiles and stockpiles of the LTTE discovered in the north of the country as well as colluding with them in the abduction of child soldiers.²⁵³ In addition, the GSL armed villages to the east of the country which were perceived to be under threat from the LTTE during the war. However, there are no records of how many were distributed and no attempt at disarmament has been made since the conclusion of the war.

Accusations of human rights violations have not been restricted to war-time. The Emergency Regulations (2000) and Prevention of Terrorism Act (2005), both of which give the GSL powers of arbitrary arrest and detention for national security purposes and have been criticised by human rights organisations worldwide, are still in force more than one year after the end of the civil war. The EU recently suspended Sri Lanka from its Generalised System of Preferences Plus (GSP Plus) trading scheme as a result of that government's refusal to demonstrate improvements in human and civil rights.²⁵⁴

245 'Sri Lanka Country Profile', *BBC News*, page last updated 16 March 2010.

246 'Sri Lanka: Disregard for Civilian Safety Appalling', *HRW news release*, 3 February 2009.

247 'Sri Lanka: Stop Shelling No-Fire Zone', *HRW news release*, 9 April 2009.

248 'Report to Congress on Incidents During the Recent Conflict in Sri Lanka', *US Department of State*, 2009 available at <<http://www.state.gov/documents/organization/131025.pdf>>.

249 'Sri Lanka: A Bitter Peace', *International Crisis Group*, 11 January 2010.

250 'War Crimes in Sri Lanka', *International Crisis Group*, Asia Report No. 191, 17 May 2010.

251 See, for example video available at <<http://link.brightcove.com/services/player/bcpid1184614595?bctid=35256686001>>

252 Miller J, 'Sri Lanka Tamil killings 'ordered from the top'', *Channel 4 News*, 18 May 2010.

253 'Complicit in Crime', *Human Rights Watch*, 23 January 2007; See also 'Tamil People's Liberation Tiger (TMVP/ Karuna Group)', *Transnational and Non-State Armed Groups* <<http://www.armed-groups.org/6/section.aspx/ViewGroup?id=18>>

254 Leahy J, 'Sri Lanka shrugs off EU move on trade', *Financial Times*, 6 July 2010, <<http://www.ft.com/cms/s/0/a3df41cc-88b9-11df-aade-00144feabdc0.html>>.

(Post-)War budget

In spite of all this, Sri Lanka still continues to spend large amounts on its army. Colombo's war budget increased significantly over the past years, from around US\$1 billion (constant 2008 figures) from 2002-6, partly as a consequence of the 2002 ceasefire, to US\$1.5 billion in 2009, or a 50 per cent increase in real terms.²⁵⁵ Media have reported even higher spending, quoting government sources. According to the BBC, "Sri Lanka's defence expenditure has soared in recent years – to 166.4bn rupees (US\$1.48 billion) in 2008. This amounts to about 5 per cent of GDP, nearly double that spent by India and Pakistan".²⁵⁶ Based on information from the Appropriations Bill the 2009 defence spending was set at US\$1.6 billion, a record level.²⁵⁷ Later in 2009 – after the end of the war – the military budget was raised with an additional "33 billion rupees (US\$ 287 million) to pay for hardware and beef up security in former conflict zones".²⁵⁸ The Sri Lankan defence budget for 2010 has been estimated at US\$1.64 billion.²⁵⁹

A significant part of defence spending was made available for arms procurement prior to and in anticipation of the 2008 – 2009 government offensive.²⁶⁰ The Sri Lankan Defence Secretary Gotabaya Rajapakse confirmed in August 2009 – after the Tamil defeat – that further increases were needed for modernization of the military and for payments made on hardware bought on credit. "I don't see an immediate need to reduce the defense spending next year", he said. "We have cut down on our ammunition purchases. But we need to bring in

new technology to upgrade our military capacity".²⁶¹ Again in early 2010 there have been reports of a US\$300 million credit from Russia to realise a sweeping modernisation programme.²⁶²

Development lost

Human development has clearly suffered of the ongoing war, if only because of the huge opportunity costs spent on the conflict, but possibly more so because in terms of lives lost, lack of access to basic needs for the displaced people, as well as major material damage due to the fighting. Potentially one of South Asia's richest countries, it has yet to overcome a number of development-related problems. With sustained increases in the defence budget Sri Lanka seriously risks missing the MDG (Millennium Development Goals) targets.

Further export considerations

While the Czech and UK governments have reported their exports to Sri Lanka in their annual arms export reports, Sri Lanka itself is much less transparent. It last reported to the UN register of Conventional Arms in 1996, for the year 1995.²⁶³ In terms of corruption Sri Lanka also has a poor performance, "indicating a serious corruption problem in the public sector".²⁶⁴

Reporters Without Borders has frequently raised alarm over serious press freedom breaches over the past years, including threats of, as well as factual arrests.²⁶⁵ It spoke of a media crackdown on the eve of the 2010 presidential elections.

255 SIPRI Military Expenditure Database <<http://milexdata.sipri.org/result.php4>>

256 'Q&A: Post-War Sri Lanka', *BBC News*, page last updated 25 January 2010; Athas I, 'Sri Lanka records 20% budget rise', *Jane's Defence Weekly*, 7 November 2007.

257 Athas I, 'Sri Lankan arms spending set to reach record levels', *Jane's Defence Weekly*, 22 October 2008.

258 'Sri Lanka raises defence budget by 20%: report', *AFP*, 8 October 2009.

259 Mallawarachi B, 'Sri Lanka retains heavy defense budget', *Associated Press*, 29 June 2010.

260 Karniol R, 'Sri Lanka set to boost air assets for northern strike', *Jane's Defence Weekly*, 1 August 2007.

261 'Sri Lanka Plans for Increased Defense Spending', *AFP*, 19 August 2009.

262 'Russian Deal - Sri Lanka to upgrade military capability with Russian credit: report', *Lanka Business Online*, 7 February 2010, mentioning a *Sunday Times* report.

263 United Nations Register of Conventional Arms, <http://disarmament.un.org/UN_REGISTER.NSF>

264 Transparency International, 'Sri Lanka is 92nd in the Corruption Index', *Sri Lanka Press Release*, 23 September 2008, <<http://www.tisrilanka.org/?p=361>>

265 Reporters Without Borders <http://www.rsf.org/en-pays79-Sri_Lanka.html>

Reasons for allowing military goods to be exported to Sri Lanka may differ across the Member States, justifying arms exports because of the fight of an elected government against a terrorist organisation, clearly ignores the wider context in which an export licence request should be considered. "The EU has on numerous occasions condemned both the LTTE and the Sri Lanka government for gross human rights violations. Normally this would translate into denials of the sale of military equipment to these actors, but that has not been the case", said SIPRI researcher Siemon Wezeman. "The scale of the transfers is not on the same level as other powers, but the EU needs to get its act together on this for its own moral integrity".²⁶⁶

French arms transfers to Chad

There has been a French connection to a number of recent arms transfers to Chad, most notably armoured vehicles, but also ammunition, trucks and aircraft. In addition, the role of Belgium in the supply of the armoured vehicles raises questions about how EU Member States should take final end-use into account for transfers that are initially bound for another Member State.

War, autocracy and underdevelopment

Chad has suffered through years of civil war, military coups and autocratic rule. With the crisis on its eastern border with Darfur and conflict over a booming oil business in the south, the country is far from stable and only a paper democracy.²⁶⁷ In the aftermath of a February 2008 coup attempt several opposition politicians were arrested. Many pro-democracy and human rights advocates have fled.²⁶⁸

Chadian Arabs have been cooperating with the Sudanese Janjaweed militia, one of the main players in the conflict in Darfur. The Darfur war spilled over to Chad in 2006, including an attack by Chadian rebels on the capital N'djamena, which was launched from Darfur and the Central African Republic (CAR). Again in 2008 rebels unsuccessfully attacked the capital.²⁶⁹ Rebel leaders have blamed the international community for allowing president Deby to portray himself as the protector of Darfur.

The UN's attitude towards Chad with regard to Sudan has been mixed. In 2008, the UN panel of experts monitoring implementation of the UN arms embargo on Darfur concluded that weapons had reached Darfur via Chad and on that basis recommended that the UN arms embargo on Darfur be

266 Philips L, 'While condemning Sri Lanka violence, EU still sells arms to government', *EU Observer*, 19 May 2009.

267 Polgreen L, 'Gun Battles in Chad's Capital as Rebel Forces Storm In', *The New York Times*, 3 February 2008.

268 Polgreen L, 'Rebels Border War Prolongs Darfur's Misery', *The New York Times*, 13 April 2008.

269 Polgreen L, 'Gun Battles in Chads Capital as Rebel Forces Storm In', *The New York Times*, 3 February 2008.

expanded to include Chad.²⁷⁰ However, in reaction to the abovementioned rebel attack on N'djamena in 2008, the UN Security Council 'called upon Member States to provide support, in conformity with the UN Charter, as requested by the Government of Chad'.²⁷¹ SIPRI noted that "even though this statement did not explicitly mention military aid, it could be interpreted as legitimising arms transfers."²⁷²

In a surprise twist, after Deby made a surprise visit to Sudan in February 2010, both sides appear to have "put an end to all the problems" between the countries.²⁷³ Earlier the two sides had already agreed to start common border patrols. In July 2010, International Criminal Court (ICC) member Chad made headline news for not arresting visiting Sudanese president al-Bashir, indicted by the ICC for war crimes and genocide in Darfur.²⁷⁴ While Chad has a chance "to escape the political and military crisis of the last five years (...) Déby's rigid control of political space and recurrent problems in the electoral process could plunge the country into turmoil once again", according to the International Crisis Group.²⁷⁵

Already in 2008, responding to the wave of violence in – both by opposition and government forces – that hit Chad, in particular the capital N'Djaména. Amnesty International called on all governments not to supply arms to Chad when there is reason to believe that they could contribute

to human rights violations or violations of international humanitarian law.²⁷⁶

Ranked 175 out of 182 by the UNDP's Human Development Index, Chad faces massive developmental challenges. Despite significant oil revenues – since 2003 the main source of export earnings – poverty has not been cut over the past decade. Life expectancy at birth is still less than 50 years and adult literacy stands at only 32 per cent.²⁷⁷ Transparency International's Corruption Perceptions Index (CPI) ranks Chad 171 out of 178 countries – the few countries that score worse include Iraq, Sudan, Myanmar/Burma, Afghanistan and Somalia.²⁷⁸ Jane's Information Group assessed Chad as the fourth least stable territory in the world, in both 2008 and 2009.²⁷⁹ According to SIPRI, Chad's defence budget exploded from 1 per cent of GDP around 2004 to 6.6 per cent in 2008; from US\$71 million in 2005 to US\$611 million in 2008. In 2009, as oil prices fell, military spending fell back to US\$412 million.²⁸⁰

In 2001 the World Bank provided financing to Chad to support development of the Chad-Cameroon pipeline carrying crude oil to the Gulf of Guinea, with a specific agreement that substantial oil revenues would be directed to poverty reduction. It was touted as a test case for oil-revenue management in Africa,²⁸¹ but as it turned out much of the proceeds were spent on weapons and payments to

270 United Nations Security Council, 'Report of the Panel of Experts established pursuant to Resolution 1591 (2005) concerning the Sudan', included in Letter dated 7 November 2008 from the Chairman of the Security Council Committee established pursuant to Resolution 591 (2005) addressed to the President of the Security Council, S/2008/647, 11 November 2008, p. 91.

271 UN Security Council, Statement by the President of the Security Council, S/PRST/2008/3, 4 February 2008.

272 Wezeman P D, 'Arms flows to the conflict in Chad', *SIPRI Background Paper*, August 2009.

273 'Sudan and Chad to end hostilities', *BBC News*, 10 February 2010.

274 'Bashir warrant: Chad accuses ICC of anti-African bias', *BBC News*, 22 July 2010.

275 International Crisis Group, 'Chad: Beyond Superficial Stability', *Africa Report N°162*, 17 Aug 2010.

276 Amnesty International, 'Double Misfortune – Deepening human rights crisis in Chad', December 2008 (AFR 20/007/2008), p. 64.

277 UNDP, 'Human Development Report 2009 – Chad', <http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_TCD.html>

278 Transparency International, 'Corruption Perception Index 2010'.

279 Shared with Zimbabwe in 2008 and Afghanistan in 2009; see Gilmour A, 'State of the Nations', *Jane's Intelligence Review*, January 2010.

280 SIPRI Military Expenditure Database <<http://milexdata.sipri.org/result.php4>>; Wall R *et al*, 'Budget Blades', *Aviation Week & Space Technology*, 7 June 2010.

281 'Chad wants oil money for arms', *www.news24.com*, 19 April 2006 [article no longer available online].

senior military aides.²⁸² Interviewed by French daily *Le Figaro*, Deby said: “Why shouldn’t Chad be allowed? We are going to buy weapons. We’re going to do it openly”.²⁸³ Following repeated disputes between the World Bank and the Chadian government on compliance with the agreement, the Bank’s involvement in the project ended in 2008.²⁸⁴

EU arms transfers to Chad

In such circumstances, it would seem sensible for EU Member States to exercise extreme caution with regard to supplying Chad with military equipment, and while many EU states do not export any arms to Chad, this is not universally the case. France has been Chad’s main EU arms supplier in recent years. Transactions authorised have included the re-transfer of 82 ex-South African, armoured vehicles armed with 90mm light weapons, which were refurbished in Belgium.²⁸⁵

First reported on by Chadian media, a contract for 82 AML-90 armoured vehicles, built under licence in South Africa as Eland-90, was signed on 5 September 2006 by Chadian President Deby and a South African company.²⁸⁶ 121 Eland vehicles had been transferred from South Africa to Belgium in 1999 and 2002 respectively, reported by South Africa to the UN register of conventional arms.²⁸⁷ Their

submission reads that the sale was to “End User: SABILEX”, which it would seem reasonable to presume refers in fact to the Belgian defence contractor SABIEX.²⁸⁸

It is unclear exactly what knowledge the Walloon government²⁸⁹ had of the final destination when the licence was awarded for the transfer of the vehicles to France, but it is clear it was comfortable hiding behind formal arguments that because this was a transfer to an EU country an end-user certificate was not necessary, and thus an International Import Certificate (IIC)²⁹⁰ was used.²⁹¹ Quoted in a local newspaper, a spokesman for the Walloon Prime Minister said: “It was important for us to verify whether France was really the final destination of these goods. After the goods were delivered at French subsidiary of the producer’s premises, the matter was in the hands of the French political authorities. It was for them to decide whether or not to re-export these goods, the Walloon government no longer had a say in this (...) We would not accept the French to instruct the Walloon Region or provide us with moral advice. Conversely, we shouldn’t meddle in France’s foreign policy vis-à-vis third countries”.²⁹²

Ignoring for the moment the apparent contradiction between the Prime Minister’s first sentence and the rest of his statement, this illustrates a serious flaw in the licensing system, if states are able to avoid conducting a proper end-use evaluation or even taking account of known end-use risks in cases

282 Styan D, ‘Hanging Chad’, *Jane’s Intelligence Review*, February 2008; ‘Chad needs oil money for arms’, *BBC News*, last updated 19 April 2006.

283 As quoted in ‘Chad ‘needs oil money for arms’, *BBC News*, last updated 19 April 2006.

284 World Bank, ‘World Bank statement on Chad–Cameroon pipeline’, *Press release no. 2009/073/AFR*, 9 September 2008.

285 Wezeman P D, ‘Arms flows to the conflict in Chad’, *SIPRI Background Paper*, August 2009; Mampaey L, ‘Commerce d’armement triangulaire Belgique-France-Tchad: limites et lacunes de la réglementation belge et européenne’, *GRIP*, Brussels, February 2008.

286 Mampaey L, ‘Commerce d’armement triangulaire Belgique-France-Tchad’, *GRIP*, Brussels, February 2008; ‘Double Malheur – Aggravation de la crise des droits humains au Tchad’, *Amnesty International*, December 2008 (AFR 20/007/2008), p. 60.

287 Belgium only reported the import of 115 pieces in 1999, see <http://disarmament.un.org/UN_REGISTER.NSF>.

288 SABIEX website’s homepage says “Réalise en collaboration avec l’Agence wallone à l’Exportation” (“in collaboration with the Walloon Export Agency”) <<http://www.sabiex.com/>>

289 In Belgium, the Walloon, Brussels and Flemish regional governments each have their own arms transfer control authorities.

290 An IIC declares that the importing company will seek appropriate licences from its own government in case of re-export.

291 See e.g. Amnesty International, ‘Double Misfortune – Deepening human rights crisis in Chad’, December 2008 (AFR 20/007/2008).

292 Author translation from quote cited in Mampaey L, ‘Commerce d’armement triangulaire Belgique-France-Tchad: limites et lacunes de la réglementation belge et européenne’, *GRIP*, Brussels, February 2008, p.5.

where the immediate recipient is within the EU. This case therefore also raises questions about the implementation of the 2009 directive on simplifying terms and conditions of transfers of defence-related products within the Community, with regards to end-user information requirements.²⁹³ It may give impetus to arms exporting companies to set up local branches in EU countries where the licensing system is known to be more flexible towards exports out of the Union.

France subsequently reported to the UN register a 2007 transfer of 40 armoured combat vehicles to Chad, plus the export in 2008 of 25 armoured personnel vehicles.²⁹⁴ While the first transfer is likely to refer to the Eland vehicles, the latter point to a transfer of other armoured vehicles from France.²⁹⁵ It remains unclear why France did not report the transfer of the other 42 Elands to Chad. According to news reports the transferred vehicles were destined directly for the fight against Chadian rebels.²⁹⁶

These are not the only arms transferred to Chad with French involvement. France has acknowledged that it facilitated emergency supplies of ammunition from Libya to Chad in February 2008, when rebels were fighting in the capital.²⁹⁷ In 2009 Renault Trucks – part of the Volvo Group – received orders for 116 trucks from the Chadian MoD,²⁹⁸ with the company noting that the “new contract is important for Renault Trucks Defense in this troubled

area of Africa”.²⁹⁹ The Singapore office of Eurocopter – the predominantly French helicopter branch of EADS – started delivering to Chad the first three of six refurbished ex-Singaporean Air Force Fenec helicopters in late 2009.³⁰⁰ Most recently it was reported that two ex-French armed forces EMB-312 Tucano aircraft – originally built by Brazilian company Embraer – are being prepared for delivery to the Chadian air force.³⁰¹

Military role of France and the EU

France has maintained a military presence in Chad for most of its post-colonial history. While formally only guarding Chad’s territorial sovereignty, with 1,200 troops operating reconnaissance and ground attack aircraft under Operation Epervier, which already began in 1986 to defend against Libyan intervention,³⁰² France has been drawn into the country’s internal problems as well. In 2006, the French Government admitted that its Mirage fighter aircraft had fired warning shots at rebels advancing on the capital, though it insisted it had not actually been involved in the fighting.

In March 2008, EUFOR, the European Union military force set up to distribute humanitarian aid and to protect refugees and UN personnel and equipment, started operations in Chad.³⁰³ The Mission included troops from 23 of the EU Member States involved, though it was dominated by the French.³⁰⁴

293 ‘Directive 2009/43/EC of the European Parliament and of the Council of 6 May 2009 simplifying terms and conditions of transfers of defence-related products within the Community’.

294 France has not reported any transfers to Chad to the UN Register for the years 2003-2006 and has not yet reported over 2009. Belgium in recent years did not report to the UN Register any transfer of such vehicles to France or Chad. Chad itself last reported to the Register in 1995.

295 Information obtained from SIPRI, February 2010.

296 Quoted in ‘Double Malheur – Aggravation de la crise des droits humains au Tchad’, *Amnesty International*, December 2008, AFR 20/007/2008, p. 62.

297 Wezeman P D, ‘Arms flows to the conflict in Chad’, *SIPRI Background Paper*, August 2009.

298 ‘Chad: a new contract for Renault Trucks Defense’, *Renault Trucks Defense press release* 26 November 2009. It is not known whether they are MilSpec trucks or not.

299 ‘Chad: a major contract notified to Renault Trucks Defense’, *Renault Trucks Defense press release*, 6 January 2009.

300 See SIPRI Arms Transfers Database (last accessed 30 January 2010); ‘Chad Air Force Expansion Continues’, *Air Forces Monthly*, February 2010.

301 ‘Former French Tucanos for Chad and Mauritania’, *Air Forces Monthly*, September 2010.

302 Styan D, ‘Hanging Chad’, *Jane’s Intelligence Review*, February 2008.

303 EUFOR TCJAD/RCA webpage at <<http://www.consilium.europa.eu/showPage.aspx?id=1366>>

304 Plus third party sayes Russia, Croatia and Albania. Lauren Gelfand [with additional reporting by Grzegorz Holdanowicz], ‘EU ends mission in Chad/CAR with handover to UN’, *Jane’s Defence Weekly*, 18 March 2009; Goldirova R, ‘EU approves military force in Chad’, *EU Observer*, 29 January 2008.

Table 7: Value of granted export licences by EU Member States to Chad (2005 – 2008, in €).³⁰⁵

	2005	2006	2007	2008	2005-2008
Bulgaria				2 042 965	2 042 965
Czech Rep.	4 000				4 000
Denmark		25 606			25 606
France	2 678 756	3 395 801	3 506 969	12 979 250	22 560 776
Greece				11 780	11 780
Portugal	23 743		609 843	452 334	1 085 920
U.K.			344 400	261 800	606 200
TOTAL	2 706 499	3 421 407	4 461 212	15 748 129	26 337 247

It is therefore of interest whether France has “considered how their arms exports to Chad could affect their credibility as neutral participants in the EU and UN-sanctioned multinational peacekeeping forces in Chad”, as arms transfers expert Pieter Wezeman notes.³⁰⁶ Bjørn Seibert, a researcher with extensive knowledge of the mission, notes that the roots of the instability have not been properly addressed with the EU providing substantial infrastructure assets and financial assistance to Deby.³⁰⁷ In 2009 EUFOR was absorbed into the UN MINURCAT mission.³⁰⁸ In 2010 Deby demanded that UN troops withdraw before the end of the year.³⁰⁹

Conclusion

Chad is one of the poorest and least stable countries in the world, with internal and external armed conflicts, with no proper democratic system in place, and with a UN panel recently naming the Chad Government as in breach of an embargo. Depending on the specific nature of a possible transfer, as many as seven of the eight Common Position criteria could form the basis of a decision to refuse (it seems unlikely that criterion 5 – national security of the Member States – would be grounds for a denial). Most EU Member States have indeed followed a restrictive policy towards Chad, which can be seen from the limited number of supplying countries, as well as denied export licences: 13 between 2005 and 2008, with 51 licences granted.³¹⁰

The glaring exception has been France, which has granted export licences worth €22.5 million from 2005-2008, out of a total value of €26.3 million by all EU Member States as reported in the Consolidated Reports on those years. French NGOs have repeatedly criticised the French government for having allowed for continuing arms exports to Chad, noting that these have been worth more than the

305 Ibidem.

306 Wezeman, P, ‘Arms flows to the conflict in Chad’, *SIPRI Background Paper*, August 2009.

307 Gelfand L. [with additional reporting by Holdanowicz G], ‘EU ends mission in Chad/CAR with handover to UN’, *Jane’s Defence Weekly*, 18 March 2009.

308 Ibidem

309 ‘UN begins troop withdrawal from Chad and CAR’, *Jane’s Defence Weekly*, 28 July 2010; Dunin A, ‘Intel Brief: The Chad Withdrawal’, *ISN Security Watch*, 18 May 2010.

310 EU Consolidated Annual Reports 2005-2008

amount Chad has dedicated to, for example, combating child mortality and AIDS.³¹¹

The French policy to exports to Chad is worrying in its own right, suggesting that for whatever reason, France is willing to apply a very liberal interpretation of the Common Position when it comes to arms transfers to its ex-colony. This becomes even more problematic when placed alongside the apparently more restrictive policies of France's partner EU States; the Common Position states clearly in its preamble that Member States "are determined to set high *common* standards" (emphasis added) and "intend to reinforce cooperation and to promote convergence in the field of exports of military technology and equipment".³¹²

This discrepancy of policy, when combined with the apparent willingness of Belgium in the case of the refurbished armoured vehicles to leave France completely responsible for onward export, highlights a potential problem with the EU Directive on intra-community transfers. The Directive is designed to liberalise intra-EU trade on the understanding that high common arms transfer control standards will be applied at the EU's external border. Where Member States do not apply high common standards, the dangers are obvious.

Bulgarian attack helicopters for Mali

Media in early April 2008 reported the use of two Malian Mi-24s in a "bloody air strike that marked an escalation of a conflict that has rumbled on for months deep in the Sahara".³¹³ The armed helicopters had attacked Tuareg rebel positions near Kidal in the Sahara, during which "dozens of rebel fighters were killed or wounded in the attack, the first of its kind in the conflict" according to a military source; a Malian newspaper reported that 62 people had been killed in the fighting.³¹⁴ "They had started deploying mines on the road from Gao to Kidal to stop all traffic. They were planning an ambush on a military convoy from Gao, so the army had to take the offensive", a Malian military official explained to Reuters.³¹⁵ According to the *Air Forces Monthly* magazine it is unclear "whether the Mali Republic Air Force (FARM) has its own pilots trained to fly these Hinds or if foreign mercenaries are being used to operate them on their behalf".³¹⁶

From its surplus stocks Bulgaria sold four Mi-24D 'Hind' attack helicopters to Mali that were delivered between mid-2007 and November 2009.³¹⁷ Moreover Bulgaria supplied 78 armoured combat vehicles.³¹⁸ While little has been reported on the value of individual deals, according to the EU's consolidated reports of the years concerned Bulgaria issued export licences for Mali worth a total €13.8 million in the years 2007 and 2008. Figures of 2009, which are not yet available, are likely to include more licences as the last two Mi-24s were only delivered in late November 2009. SIPRI's database reports a €5.7 million value for the sale of these two Mi-24s. Bulgaria has

311 'Rapport au Parlement sur les exportations d'armement 2008: transparence de façade pour un contrôle en chute libre', contrôlez les armes (French Control Arms coalition) press release, 28 September 2009.

312 Common Position, preambular paragraphs 3 and 5 respectively.

313 Sarrar, S, 'Mali, rebels agree truce after bloody air strike', *Reuters*, 3 April 2008.

314 Ibidem.

315 Tiemoko Diallo, 'Mali helicopters strike Tuareg rebels, several dead', *Reuters*, 2 April 2008.

316 'Second Mali Hind in Service', *Air Forces Monthly*, October 2008.

317 'Two More ex-Bulgarian Hinds for Mali AF', *Air Forces Monthly*, January 2010; 'Second Mali Hind in Service', *Air Forces Monthly*, October 2008.

318 SIPRI Military Expenditure Database <<http://milexdata.sipri.org/result.php4>> for Mali and the Bulgarian reports to the UN Register of Conventional Arms for 2007-9.

almost been Mali's sole arms supplier over the past years, apart from a 2005 Czech transfer of three surplus Mi-21 fighter aircraft.³¹⁹

The Mi-24 attack helicopter is equipped with a 23mm or 30mm twin-barrel gun and can launch missiles from six underwing pylons. The Mi-24, dubbed Hind by NATO, was widely deployed in Afghanistan by the Soviet Army in the 1980s. In the 1990s Russian Mi-24s were utilized to smash the rebellion in Chechnya.

Mali has been the stage of a series of confrontations with Tuareg rebels, the last between 2007-2009. It was the most recent of a series of insurgencies by formerly nomadic Tuareg populations. Algeria helped negotiate an August 2008 Malian peace deal, which was broken by a rebel faction in December and crushed by the Malian military. A new peace deal was agreed in February 2009.³²⁰ The Tuareg group ADC has since joined the Malian government in its fight against Al Qaeda in the Maghreb (AQIM). The peace deal appears to be part of Algeria's strategy to help the Malian government tackle the AQIM presence in its country. In May 2009, Algiers provided Bamako with military equipment ahead of a Malian army operation against an AQIM base in northern Mali.³²¹ Also US troops have been training Malian armed forces in counter-insurgency operations from a base in Timbuktu since 2003, including the delivery of supplies of 4WDs, communications and radar equipment.³²²

For decades Mali has been one of the world's poorest countries and among the least developed.

319 See SIPRI's arms transfers database for Mali

320 http://en.wikipedia.org/wiki/Tuareg_Rebellion_%282007%E2%80%932009%29

321 Gelfand L and Arezki Himeur M, 'Saharan neighbours join forces against Al-Qaeda in Islamic Maghreb', *Jane's Information Group*, 19 August 2009; 'Mali's Tuareg tribesmen join fight against Al-Qaeda', *Jane's Information Group*, 22 July 2009; Arezki Himeur M and Gelfand L, 'Mali gets Algerian help to fight Islamist insurgency', *Jane's Defence Weekly*, 13 May 2009; 'Algeria and Mali target al-Qaeda', *BBC News*, 6 May 2009.

322 Van der Aa G, 'Smokkel ontzien graag', [Dutch daily] *NRC Handelsblad*, 13 January 2007; 'Gunmen seize Mali military base', *ISN Security Watch*, 23 May 2006.

The UNDP Human Development ranking puts Mali currently number 178, with only the Central African Republic, Sierra Leone, Afghanistan and Niger performing worse in terms of human development. Life expectancy is 48.1 years on average and Mali has the world's lowest adult literacy rate at 26.2 per cent.³²³

Because of economic growth Mali's military expenditure has been relatively stable around 2 per cent of GDP over the past decade. However, in real (2008 US\$) terms it has significantly grown from 117 million in 2002 to US\$182 million in 2009.³²⁴

Bulgaria reported to the UN's Arms Register the 2008 transfer to Mali of 15 BRDM plus 14 BTR armoured combat vehicles "without armaments"; in 2007 it reported another 20 armoured "reconnaissance vehicles", plus two Mi-24Ds.³²⁵ Bulgaria also reported the 2009 Mi-24 deliveries. Mali itself has never reported any arms imports to the UN Register.

In conclusion, the transfer of four ex-Bulgarian Mi-24 attack helicopters to Mali has significantly strengthened Mali's air force adding a new attack capability to an inventory of only five much smaller utility/transport type helicopters.³²⁶ Moreover the Mi-24s were quickly used in a bloody air attack against Tuareg rebels and likely to sustain a lingering conflict between government and rebel forces. Therefore the Bulgarian Mi-24 transfers raise serious criteria implementation questions. Firstly because these exports were either fulfilled or agreed at a time the Malian armed forces were fighting a Tuareg rebellion. Secondly the first two helicopters were used in combat shortly after their delivery, but before the other two were transferred. No public information could be found on how the Bulgarian government has judged the transfers in this context, nor about its evaluation of Mali's poor record in the area of human development.

323 http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_MLI.html

324 <http://milexdata.sipri.org/result.php4>

325 http://disarmament.un.org/UN_REGISTER.NSF

326 I.e. 1 Mi-8, 2 Mi-4s and 2 Z-9s; see: 'World Defence Almanac', *Military Technology* 1/2009.

The role played by EU companies in facilitating clandestine shipments of T-72 Tanks and related equipment to Southern Sudan 2007-2008

This study details the role played by companies based or registered in two EU countries - the UK and Germany - in facilitating a series of large consignments of tanks, artillery, multiple rocket launch systems, rocket propelled grenades and assault rifles to the government of Southern Sudan, via illicit diversion through Kenya. Not only do such transfers risk fuelling armed conflict and serious violations of international human rights and humanitarian law, but may also have breached existing EU embargoes, which have been in place for the whole of Sudan since 1994.

It is apparent that many governments via intelligence and diplomatic channels, including the UK, the USA and Germany, were seemingly aware that these deals were of a clandestine nature and were likely being diverted from Kenya by road and rail to armed forces in Southern Sudan. Despite such knowledge, in the case examined below, Member States appear to have failed to meet their obligations to help prevent serious breaches of existing EU sanctions via companies operating within their jurisdictions.

The case also clearly demonstrates the key role that ancillary services such as transport and logistics play in the clandestine delivery of arms, and highlights deficiencies in current levels of EU export control regulations over these types of activities.

Documents, field research and interviews for this case were undertaken by researchers working for the Small Arms Survey and Amnesty International UK. A more detailed analysis of weapons flows into

the Sudan can be found in Mike Lewis' paper for the Small Arms Survey, 2009.³²⁷

Sudan: risks of grave violations of international humanitarian and Human rights law

The 20-year Sudanese civil war (1983-2003) was a brutal conflict, which left at least two million people dead and displaced a further four million from their homes.³²⁸ Serious human rights abuses were committed by all sides in the conflict,³²⁹ including the deliberate targeting of civilians, forced conscription, the use of child soldiers, 'scorched-earth' policies and blocking the delivery of food aid. The use of heavy weaponry, including indiscriminate shelling and bombing of civilian areas was a key feature of the conflict. Civilians are still being killed and abducted as a result of ongoing clashes between armed communities, militias and military units in the region with weapons continuing to be used to fuel serious human rights violations. Between May and June 2008, forces from both sides initiated direct conflict in the provincial capital, Abyei, displacing an estimated 50,000 people. In February 2009, clashes between SAF and SPLA contingents of the Joint Integrated Units stationed in Malakal, southern Sudan, reportedly left around 62 dead (at least 31 of whom were civilians) and 94 wounded (at least 21 of whom were civilians), according to UN reports.³³⁰ UN military observers stated that both SAF and SPLA forces used main battle tanks and small arms in the fighting.³³¹ In both cases it was reported that both sides used tanks to launch their attacks.³³²

327 Lewis M, *Skirting the Law: Sudan's Post-CPA Arms Flows*, Small Arms Survey HSBA Working Paper, September 2009, available through <http://www.humansecuritygateway.com/documents/SAS_SudansPostCPAArmsFlows.pdf>

328 See International Crisis Group on Sudan.

329 See Amnesty International Reports on Sudan.

330 Report of the Secretary-General on the Sudan, 17 April 2009 (S/2009/211).

331 Video Sudan / Malakal Fighting, *UNifeed news release*, 25 February 2009; Lt Paul Morrison, 'Battle rages around UN Military Observers in southern Sudan', *National Defence and the Canadian Forces* (website), 20 February 2009.

332 See 'Sudan agreement on Abbey reached', *BBC News*, 28 November 2008.

Any non-declared import of weaponry to South Sudan is a violation of the Comprehensive Peace Agreement (CPA) signed in 2005 by the Sudan Government and the authorities of South Sudan was brokered in large part by Kenya. According to the CPA's implementing procedures, signed at Nativasha, Kenya on 31st December 2004, "replenishment of ammunition, weapons and other lethal or military equipment" would violate the terms of the CPA unless it had been approved via a joint military committee and under the oversight and coordination of the UN mission in Sudan.³³³

Significant quantities of arms have also been supplied to the Government of North Sudan in recent years, particularly from China and Russia which have fuelled killings and grave human rights violations in the Darfur region and elsewhere.³³⁴ In the run-up to the long-awaited referendum in February 2011 on the possible secession of the South, it is clear that large scale re-arming by North and South Sudan is likely to re-ignite major armed conflict which clearly risks indiscriminate attacks on civilians and other serious violations of international human rights and humanitarian law.

The role of German and UK companies in facilitating clandestine shipments of weapons to Southern Sudan between 2007 and 2008

In September 2008, a Ukrainian-operated ship, the MV Faina, bound for Mombasa (Kenya), was hijacked by Somali pirates. The Faina was carrying a large cargo of artillery, small arms and T-72 tanks loaded at Oktyabrsk (Ukraine). There had been widespread speculation, including a public statement from the US Navy's 5th Fleet in the Indian Ocean, that the cargo on board was destined not for the Kenyan

Armed Forces, but for the Government of Southern Sudan (GOSS).³³⁵ This was denied by the Kenyan Ministry of Defence, which claimed that 'GOSS' stood for a (previously unheard of) department within the Kenyan Ministry of Defence called 'General Ordnance Supply and Security'.³³⁶

Documents have since come to light, including shipping manifests, charter documents and a Ukrainian export permit, showing that the MV Faina's cargo was only one of at least three major maritime arms shipments since September 2007, fulfilling at least three arms contracts, with 'MOD/GOSS' contract numbers, signed with a Ukrainian arms exporter, SSSFTF 'Ukrinmash', on 29 December 2006 and 15 February 2007 respectively.³³⁷ The first contract included ZU-23-2 (23mm) and ZPU-4 (14.5mm) anti-aircraft guns; BM-21 'Grad' 122mm multiple launch rocket systems, mounted on URAL trucks; RPG-7V rocket-propelled grenades; and at least 5 containers full of AKM assault rifles. The second contract consisted of T-72M1 and T-72M1K (command version) main battle tanks, along with spare parts, tools and accessories. The third contract included 13,926 rounds of 125mm tank ammunition, suitable for T-72 tanks.³³⁸

Reports made by Ukraine to the UN Register of Conventional Arms (UNRCA) in 2007 and 2008 show exports of 110 T-72 Tanks to Kenya, which is likely to represent the total number of tanks exported as part

333 See sections 5.3.1 to 5.3.8, 9.6, 10.1.1 to 10.1.9 of Annex 1 of the Permanent Ceasefire and Security arrangements implementation and modalities and appendices, signed at Nativasha, Kenya on 31st December 2004.

334 See for example, *Sudan: Arms continuing to fuel serious human rights violations in Darfur*, Amnesty International, May 2007 and *Blood at the Crossroads: Making the case for a global Arms Trade Treaty*, Amnesty International, September 2008.

335 Associated Press (2008), BBC (2008).

336 We have been unable to identify any reference to this department on any available Kenyan MOD documentation we have been able to locate from prior to the Faina's seizure.

337 SSSFTF Ukrinmash is a subsidiary of Ukraine's main state-owned arms exporter, Ukrspetsexport.

338 The contract numbers are Contract No. MOD/GOSS/ARMS/06-07-3/87-K dated 29 December 2006 and Contract No. MOD/GOSS/T-72/06-07-5/9-1K dated 15 February 2007 and Contract No. MOD/GOSS/ARMS/07-08-5/35-1K dated 5 May 2008. Freight/Cargo manifest for Faina dated 1 September 2008; Mate's Receipts for MV Beluga Endurance, issued in Oktyabrsk, Ukraine, 18 December 2007; Ukraine State Service on Export Control, One-Time Export Permit No. 26290101 dated 3 August 2007.

of these contracts.³³⁹ To date, the Kenyan authorities have only acknowledged delivery of the 33 tanks and other weapons from the MV Faina and not the previous two unreported shipments and their contents. That currently leaves 77 T-72 tanks and the other items of heavy weaponry, artillery systems and small arms and light weapons unaccounted for by the Kenyan authorities. Kenya has also failed to submit any returns to the UNRCA showing the import of any heavy weaponry from Ukraine.

The two previous shipments arrived in the port of Mombasa in October 2007 and January 2008. The first arrived on board the MV Radomyshl, which departed from the Ukrainian port of Oktyabrsk on 14 September 2007 and arrived in Mombasa, Kenya, on 29th October 2007.³⁴⁰ The Radomyshl was operated by the Danube Shipping Company of the Ukraine (UDASCO), but was 'time chartered',³⁴¹ more particularly by a UK-registered company Marine Energy Trading Company Ltd (METCO).³⁴² It has not been possible to determine the controlling ownership of METCO: the charter contract was arranged by two Latvian-based consultants, representing two British Virgin Islands-registered companies whose ownership is kept secret under BVI law.³⁴³

The second shipment arrived on board the German-operated MV Beluga Endurance, which departed Oktyabrsk on 12 December 2007 and arrived in Mombassa on 12 January 2008. The Beluga Endurance was operated by German company Beluga Shipping GmbH, but Time Chartered by Ace

Shipping Ltd of the Isle of Man, closely associated with Ukrainian company Phoenix Transport Services. A spokesperson for Phoenix Transport Services told researchers that "the only reason of using Ace Shipping Co during the vessel's chartering is the simplification of accounting, as the Ukrainian tax legislation is one of the most complicated in the world".³⁴⁴

Representatives from Beluga Shipping told researchers the original charter was to move "general construction equipment" from Ukraine to Kenya and not military equipment. On arriving at Oktyabrsk and on discovering that the consignment was in fact a large array of weapons and munitions, immediate enquires were made to relevant government departments in Germany and they were informed that it was likely these arms were bound for South Sudan. According to Beluga Shipping, despite an EU embargo and clear concerns over the nature of this cargo, the German authorities did not make any request to stop the delivery.³⁴⁵

This and other research has highlighted a current deficiency in German export controls on transportation which appear to only cover German-flagged ships, but not ships which are owned or operated by German firms, but are foreign flagged in other Jurisdictions. In this case, the Beluga Endurance, while operated by a Germany company was flagged in Antigua and Barbuda.³⁴⁶

Evidence that Ukrainian tanks were diverted to Southern Sudan

Compelling evidence, including analysis of satellite imagery, triangulated with eye witness

339 See Ukraine reports to the UN register of Conventional Arms for calendar years 2007 and 2008, available at http://disarmament.un.org/un_register.nsf

340 Interview, Kenya Port Authority official, Mombasa, 6 May 2009; interview, shipping agent for MV Radomyshl, Mombasa, 6 May 2009.

341 A Time Charter is an agreement to hire the ship for a stated period of time or for a specified round-trip voyage or, occasionally, for a stated one-way voyage.

342 Time charter contract for MV Radomyshl between Marine Energy Trading Company and UDASCO, obtained by Amnesty UK.

343 Time Charter Contract dated 7 August 2007 and supporting documentation; company documentation for Ireland & Overseas Acquisitions Ltd and Milltown Corporate Services Ltd.

344 Email communication to Amnesty International, December 2008.

345 Interviews conducted on 12 November 2008.

346 Section 4 of Act Implementing Article 26(2) of the Basic Law ('War Weapons Control Act'), 20 April 1961, as amended by the Announcement of 22 November 1990 (Federal Law Gazette I, p. 2506) (as amended by Article 3 of the law of 11 October 2002, Federal Law Gazette I, p. 3970). For further detail of this legal loophole, see Amnesty International, *Deadly Movements: Transportation Controls in the Arms Trade Treaty* (ACT 30/015/2010), fn.30

testimony and interviews with military sources close to the SPLA in Southern Sudan also strongly suggests that the weapons delivered on the MV Radymshyl and the MV Beluga Endurance were clandestinely transferred by road and rail through Kenya via the town of Lokichoggio on the Kenya/Sudan border. For example, eyewitnesses described a series of night time convoys of low load vehicles in late 2007 and February 2008 with tanks clearly visible either under tarpaulin sheets or plywood coverings: dates corresponding to the arrival of these two shipments.³⁴⁷ Further eyewitnesses reported seeing tanks matching the description of explosive-reactive-armoured T-72s in early 2009 in two locations around Juba in southern Sudan. One military source close to the SPLA described to a researcher in some detail the political and military considerations of the purchase of these weapons following a visit by then SPLA Chief of Staff Lt Gen. Oyei Deng Ajak and other senior SPLA officers to Ukraine in early 2006.

In July 2009, Jane's Defence Weekly published a series of satellite imagery showing for the first time, photographic evidence of newly delivered tanks in SPLA bases near Juba in Southern Sudan.³⁴⁸ One image captured on 17 May 2009 clearly showed the presence of 12 new tracked vehicles with a size ratio consistent with T-72 tanks and much larger than the older T-55/Type 59 tanks that were previously used by SPLA forces.³⁴⁹ Analysis of satellite images taken from Kahawa barracks outside Nairobi, Kenya, in March 2009 clearly show the presence of 33 T-72 tanks that were offloaded from the MV Faina. A comparison of the images taken from Kahawa and Juba clearly show that the vehicles are of the same dimensions and shape,³⁵⁰ and further indicate that at least some of the first two shipments of T-72 tanks were indeed delivered to Southern Sudan. Finally, in July 2009 an SPLA spokesperson, while denying

that the Faina's cargo was theirs, confirmed publicly to Jane's Defence Weekly in late May 2009 that the SPLA had acquired T-72 tanks "since last year and some even earlier".³⁵¹

Conclusions

Sudan has been subject to a comprehensive EU arms embargo since 1994. The involvement of the UK and German companies raises serious concerns about EU governments' ability and willingness to implement and enforce this embargo as well as provisions contained within the EU common position relating to armed conflict, diversion and violations of human rights and international humanitarian law.

Improvements in EU export controls are needed to better regulate companies involved in the transport of arms to destinations where there is a substantial risk the arms will be used for violations of human rights. As stipulated in the 2007 UN Panel of Experts report on arms brokers, EU controls on arms brokering activities should be strengthened to include controls over closely associated activities such as transportation, freight forwarding, brokering and handling agents. To avoid jurisdiction-based loopholes, it is vital that controls apply to all companies based, operating or registered in EU countries, as they already do for some categories of weapons in the UK, for example.³⁵²

Several governments appear to have had strong intelligence that suggested a large scale and clandestine delivery of weapons to Southern Sudan. This includes a public statement by the USA, and information apparently passed to the German government by a transport provider during the shipments. A further transport services provider involved in the shipments who told researchers that the shipments were destined for Southern Sudan, acts as a consular official for a European government.³⁵³ It is clear that credible intelligence is a key tool in the

347 Interviews were conducted with numerous sources, including senior military commanders, experts and advisers working with the SPLA forces in Southern Sudan as well as individuals working for transport and freight forwarding companies connected with these deliveries.

348 See special report by Gelfand L & Puccioni A, *Janes Defence Weekly*, 8 July 2009.

349 Ibidem.

350 Ibidem.

351 Ibidem.

352 UK Export Control Order 2008.

353 Confidential interview with transport service provider, May 2009.

risk assessment process and in wider efforts to stop weapons deliveries that risk contributing to grave breaches of international law. In this case, German authorities made no attempts to intervene and stop weapons being delivered by a German shipping company, despite being consulted by the company prior to departure from the Ukraine.

This research has provided further evidence of the role that “shell” or “brass plate” companies play in facilitating clandestine arms deliveries. Given that the EU is at the forefront in efforts to curb illicit arms proliferation, it is of serious concern that such companies can easily register in EU jurisdictions without any efforts by EU governments to investigate or prosecute these companies even when their involvement in illicit arms deals come to light.³⁵⁴ There should be greater regulatory oversight, including a registering of all arms brokers and ancillary services, and more rigorous company registration and vetting process for any EU company wishing to trade in conventional weapons.

354 For further examples, see Amnesty International, *Deadly Movements: Transportation Controls in the Arms Trade Treaty* (ACT 30/015/2010), fn.30.

Diversions

What exactly is meant by 'diversion'?

Military goods sometimes end up in a different place than where the exporter shipped them. The case described in the previous section illustrates the matter in some respect. Europeans were reminded of this diversion problem in 2009 after FARC guerrilla forces were discovered to possess Swedish AT-4 anti-tank rocket launchers,³⁵⁵ which they had used in at least one attempted attack on the Colombian presidential plane. Sweden had authorized the export of these rocket launchers to the Venezuelan armed forces in the late 1980s. It is hard to prove whether and to what extent these Venezuelan armed forces were complicit in the diversion of the arms to guerrilla forces in Colombia almost 20 years later. What is certain and relevant to the issue discussed here, is they failed to prevent a large number of AT-4s leaking from their arsenals, to register which pieces went missing, and to notify the Swedish export authorities what had happened.³⁵⁶

The EU arms transfer control system describes diversion as a situation whereby military goods authorised for export to a clearly identified end-user, are passed on to a different end-user within the same buyer country – 'internal diversion' – or are re-exported under undesirable conditions to a third country. To avoid diversion, exporting states are recommended to conduct post-shipment control through delivery verification certificates and on-site inspections. It is also suggested they request end-user certificates that contain a clause prohibiting unauthorised re-export. Such clauses may either ban all re-export, or make re-export subject to agreement in writing of the authorities of the original exporting country and demand a commitment

by the final consignee to provide a delivery verification certificate.³⁵⁷

More preventive action is due when a licence application is being considered. Before approving an export, authorities must make a judgement about whether or not that export entails an acceptable risk of diversion, as set out in article 2, criterion 7 of the Common Position. According to the 11th Consolidated Report, diversion was the most commonly stated ground to refuse an export licence; it was identified as a basis for denial in 179 out of the 319 export licences denied in 2008. German export authorities made the majority of these denials (113 in 2008).

The User's Guide recommends that when assessing diversion risks EU exporting states take into account the effectiveness of control policies in the destination country as well as the importer's reputation in respecting re-export provisions. But European authorities are not guaranteed to have all information they need to make that judgement, since importers that have failed to honour a re-export provision in the past could as well fail to notify the country of first export about the military goods that went missing with or without their complicity. To avoid ill-informed European authorities continue approving licences to unreliable importers, all EU Member States are encouraged to exchange information regarding countries of concern on a case-by-case basis through COARM, and to seek 'additional information relevant to measuring diversionary risks from a wide variety of sources'.³⁵⁸

355 'Colombia seizes rocket launchers from FARC', *Jane's Intelligence Weekly*, 22 July 2009.

356 Private communication from the Swedish arms export agency, November 2009.

357 Recommendations quoted in this section are from the User's Guide, pp. 19-21.

358 User's Guide, p 87.

Table 8: European ML1 export licences approve and denied in 2008.³⁵⁹

Country	Value ML1 exports (in €million)	# approved ML1 licences / # all ML	# denied ML1 licences	# denials stating crit. 7
Austria	117	1326 / 1850	10	8
Belgium	282	631 / 1202	2	1
Bulgaria	129	99 / 438	0	0
Czech Republic	18	97 / 1044	0	0
Denmark	7	4 / 337	0	0
France	27	86 / 6159	4	1
Germany	177	4530 / 16054	46	42
Hungary	34	76 / 261	0	0
Italy	N/A	N/A / 1469	5	5
Poland	8	25 / 345	2	2
Portugal	21	N/A / 1131	3	3
Romania	16	108 / 589	0	0
Spain	45	215 / 693	0	1
Sweden	N/A	62 / 685	1	1
United Kingdom	184	2127 / 10417	9	6
Total	1069	10803/ 44634	81	69

The User's Guide moreover demands special caution when scrutinising applications to export advanced military hardware. These applications should be considered suspicious if the stated end-user is not assumed to have the level of development that is required to use and maintain that equipment. Applications of that nature could signal a potential problematic re-export. Additionally, exporting countries must consider 'the risk of such technology or equipment being diverted to terrorist organisations or to individual terrorists'.³⁶⁰ But such problematic end-users are probably more interested in items such as SALW and ammunition, most of which are in common use and would not be classified as of an advanced military nature.

Approving and denying exports of SALW

Exports of SALW of a smaller calibre are easily identified in the Consolidated Report, where they are categorised by the Common European Military List (ML) under ML1. According to the latest Consolidated Report, authorisations for such exports represented slightly less than a quarter of all the export licences EU authorities approved in 2008. The countries that reported export licences for small arms worth over €5 million in 2008 are listed in Table 8.

The authorities of Austria, Belgium, Bulgaria, Germany, Hungary, Italy, Romania and Spain are seen to devote a substantial share of their

359 Table built with data from the 11th Consolidated Report. In this table, only the EU countries reporting ML1 licences worth over €5 million are listed separately, but the bottom-most row on total number of licences and the value thereof incorporates the smaller value EU small arms exporters as well.

360 User's Guide, p. 88. Since 2001, the EU defines its own Terrorism List.

Table 9: ML1 licences approved/denied by region.³⁶¹

Region	Sub-region	# ML1 licences approved	# ML1 licences denied	Crit 7 among grounds for denial	% crit. 7 denials / # approved
Africa	Sub-Saharan Africa	323	10	10	3,1
	North Africa	62	5	2	3,2
America	Central America & Caribbean	109	3	2	1,8
	North America	2033	0	0	0
	South America	284	2	1	0,4
Asia	Central Asia	72	0	0	0
	North East Asia	247	4	2	0,8
	South Asia	212	16	13	6,1
	South east Asia	265	4	3	1,1
Europe	EU	2217	0	0	0
	Other European countries	3350	21	18	0,5
Middle East		771	20	18	2,3
Oceania		84	0	0	0

licence-processing capacity to small arms exports. Small arms exports are also important to Italy, though no precise data are reported on the number of ML1 export licences Italian authorities approved. The Czech Republic is another noteworthy small arms exporter. The number of ML1 licences approved by Czech authorities may not represent a large share of their total licences issued (e.g. less than 10 per cent in 2008), but these have included approvals for transfers to countries that few other EU Member States have considered advisable to supply.³⁶²

Criterion 7 was stated among the grounds of denial to 69 out of the 81 small arms exports that EU countries denied in 2008, making diversionary risk the most commonly stated ground for refusal. These denials statistics of 2008 compare well to the number of licences that European countries denied in previous years. Between 2005 and 2007, the number of ML1 export licences that were denied because of criterion 7 ranged between 68 and 88.

Small arms exporting countries differ substantially in terms of their respective approval/denial ratios. Spain and several Central European small arms exporters did not deny any small arms exports in 2008. In Belgium, the country that approved licences for a higher value than any other European small arms exporter, authorities denied only two ML1 licences out of 633 applications; in one case the risk of diversion was stated as the ground for denial. German and Austrian fears of diversion stopped a much larger share of small arms export applications. Germany was responsible for almost two-thirds of all EU small arms export licence applications

361 Data from the EU Council's 11th Consolidated Report.

362 In 2008, their clients included Sri Lanka. Five years earlier, the Czech were the only European authorities to approve small arms supplies to the Colombian armed forces.

denied due to criterion 7 concerns in 2008 and in previous years. The larger volume of small arms export licences these authorities considered, and approved, does not explain the proportionally larger denials ratio; 42 denials on criterion 7 to 4530 approvals boils down to a proportion of almost one per cent, far more than the denial ratio of other EU small arms exporters. One possible reason for this may be that German authorities have more information to alert them of diversionary risks when small arms are concerned than other EU Member States. As a large state, Germany is in a better position than smaller states to commit diplomatic resources to *in-situ* post-export controls and register previous unauthorised re-exports, so as to deny unreliable importers further licences. These experiences of exporting states are what the User's Guide encourages Member States to exchange. But the recommendation does not guarantee all small arms exporters absorb available information; or if they do absorb it that they act on it as appropriate.

Export screening practices are understood to be conducted differently in the different EU Member States. Some countries more commonly work on informal pre-licence notifications, whereby exporting companies can first test the ground, and thereby never reach the point of a formal decision being taken, in which case there may be fewer denials. This makes it mandatory to consider more than the naked numbers of denials and to look instead at overall trends in licence approvals to gain a better understanding of licensing policy and practice.

Locating the risk of diversion

In 2008, small arms exports were denied to Algeria, Andorra, Angola, Bangladesh, Bosnia, Botswana, Burkina Faso, Chad, Cyprus, Egypt, Georgia, Ghana, Guinea, Israel, Kenya, Libya, Mauritius, Republic of Moldova, Namibia, Nicaragua, Pakistan, Paraguay, Philippines, Russian Federation, Serbia, South Africa, Sri Lanka, Timor Leste, Trinidad and Tobago, Ukraine, Yemen, and 'embargoed' places such as China (both Mainland China and Macao), Iraq and Lebanon. Data on small arms export licences approved or denied in 2008 can be broken down by sub-region as in Table 9.

The number of denials is not of itself sufficient to draw conclusions on licencing policy, but information on denials can give pointers to where it may be worth investigating further. In that respect, the table clearly identifies Sub-Saharan Africa, South Asia, the Middle East and some non-EU European countries as destinations to which EU exporting authorities ascribed a higher risk of diversion, especially when the licences denied are set against the relatively few licences that were approved for these same regions. By the same measure, the Americas, Central Asia, the EU and Oceania stand out as regions to which EU small arms exporters appear to ascribe a low risk of diversion.

This pattern of risk perception appears to have undergone changes, when compared with reporting on previous years. A first change concerns Sub-Saharan Africa. Only two ML1 export licences were denied on criterion 7 grounds for that region in 2004, and not a single such licence was denied in 2005. By 2008, however, Sub-Saharan Africa ranked among the regions for which most small arms exports were denied, and each of these denials stated a risk of diversion. Note that the reasons EU licensing authorities had to adapt their export practice are not examined here.

A second set of changes concerns the evolution of the approval/denial rate for export licences with end-users in the Americas from 2004 to 2008, as indicated in Table 10.

Small arms export licences to both South and North America more than doubled in the observed five-year interval.³⁶³ In 2008, licences approved for North America represented a value of €485 million,³⁶⁴ of which €471 million worth of small arms was destined for the US. This increase has been as

363 Calculating the increase in small arms exports is problematic as some of the main SALW exporters do not report on exports.

364 11th Consolidated Report. The reported ML1 export value is underestimated, as the report does not include data on Italian small arms sales.

Table 10: ML1 export licences approved/denied to the Americas (2004, 2008).³⁶⁵

Region	# ML1 licences approved		# ML1 licences denied		Crit 7 among grounds for denial		% crit. 7 denials / approved licences	
	2004	2008	2004	2008	2004	2008	2004	2008
Central America & Caribbean	74	109	15	3	13	2	17,3	1,8
North America	949	2033	0	0	0	0	0	0
South America	114	284	15	2	14	1	12,3	0,4
Total	1137	2426	30	5	27	3	2,4	0,1

cribed to the expiring of a 10-year ban on the sale of assault weapons. Since the ban expired in 2004, the US began to import more assault weapons than before. EU small arms exports to the US are far more substantial than exports made to all other countries in the Americas taken together, or to any other country in the world. Not one single export licence was denied for that destination in any of the years considered here.

The table further indicates a shift in the ratio of approved versus denied export licences for SALW to Central America and the Caribbean as well as for South America. In 2004, these Americas south of the Rio Grande were the region for which most small arms export licences were denied for risk of diversion, i.e. 17.3 per cent to Central America and the Caribbean and 12.3 per cent to South America. But by 2008, that same part of the Americas was denied hardly any of the 393 requested small arms export licences. Moreover, the total number of approved licences for that region more than doubled, from 188 in 2004 to 393 in 2008. This trend appears to indicate European arms export authorities considered that region a far smaller cause for caution than in the past.

³⁶⁵ Data on export licences approved in 2004, as reported in the 7th Consolidated Report, in *OJ* of 23.12.2005, C 328/214.

Latin American small arms abuse

The impression that EU exporting states have liberalised small arms exports to the Americas is puzzling, given the lack of evidence that small arms exported to that region have become less likely to be diverted to end-users who put these weapons to problematic use. A wide range of reliable sources consistently depicts the Americas, and especially Latin America, as the region where small arms cause proportionally more harm than in any other part of the world. Nine out of the 10 countries that currently suffer the highest rates of firearm casualties per capita are in Latin America. The proportion of these victims shot by small arms is over 70 per cent, even if figures differ slightly from one country to the next and from year-to-year.³⁶⁶

Apart from Colombia, Latin America no longer suffers ‘armed conflicts’ in the sense of that word whereby a major proportion of the casualties are suffered and caused by the involved states’ regular armed forces. Those forces’ abuses of power have been recorded in some state- and country-specific data, which indicate that in the Brazilian state of São

³⁶⁶ According to the Colombian forensic institute Medicina Legal, firearms were used in 84.1 per cent of the homicides committed in Colombia in 2002, after which the percentage went down to 70.9 per cent of the homicides committed in 2008. In certain areas of Caracas, up to 94 per cent of the homicides were committed by firearms, according to *Radiografía del país más violento del mundo*. Alcaldía de Chacoa (Venezuela), 2007.

Paulo and in Venezuela as a whole, up to 10 per cent of the homicides may be attributed to police forces, who tend to categorise such casualties as ‘criminals resisting arrest’.³⁶⁷ But these figures imply that at least 90 per cent of killings are perpetrated by those not authorised to legal use of force.

Many of these unauthorised shooters are affiliated with a variety of organised crime syndicates, guerrilla groups, counter-guerrilla forces or other death squads. Even if few of these are dedicated to goals recognized as ‘terrorist’, and are absent from the terrorist list, European authorities are not believed to approve exports to non-state groups, whether ‘terrorist’ or other. Illegal non-state groups rather stage ‘grey deals’ using, for example, doctored end-user certificates, and buy on the black market. That market is supplied indirectly. It sells arms that were at one time produced in legitimate factories, e.g. in Europe, and sold to destinations known and approved by the relevant export control authorities. Diversion of these exports removes the arms from the controlled system, and supplies those who cannot access the controlled market. This should make the risk of diversion a prime concern when screening small arms exports to the Americas.

The difficulty in spotting diverted European-made small arms

EU-sourced exports of small arms to Latin America suggest licensing authorities are ill-informed about the role those arms play in the Latin American carnage. Open source statistics fail to provide reliable data on what is clandestine and therefore hidden. This makes it hard to determine quantities and types of EU-made small arms on the black market, and even harder to deduce what proportion of these arms are available because of diversion.

Small arms traded illicitly can be studied in indirect ways nevertheless. It is not impossible – though it is difficult – to reconstruct diversion routes from

arms found in the hands of a group that had no access to legal sales. In recent years, information has begun to be systematised about the types and origins of the arms used in Mexico by cartels that traffic illegal drugs from Latin America to the lucrative market in the US. Government sources from Mexico stated that 60,000 of the 75,000 firearms seized from criminal users in the past three years could be traced to sales on the legal market for firearms in the US.

There is evidence that European imports to that US market are among the arms that are diverted to the Mexican black market. Mexican Procuraduría inventories on arms seized from cartels include Italian-made Berettas and Browning pistols made in Belgium, as well as Llama Gabilondo pistols from Spain and Austrian Glocks.³⁶⁸ Additional sources on firearms purchased in the US and recovered in Mexico report large quantities of Romarms (Romanian manufactured) AK-47s and almost a hundred FN Fiveseven 5.7mm pistols,³⁶⁹ the side-arm accompaniment to the FN PS90. The Fiveseven and the PS90 submachine gun, both of which are produced by the Belgian Fabrique Nationale (FN), are known in Latin America as ‘matapolicias’ (‘police killers’) for their capacity to perforate bullet-proof jackets when using a specific type of 7.5mmx28mm ammunition. A request to export an older version of this submachine guns to end-users in Mexico caused considerable commotion in Belgium,³⁷⁰ yet the most problematic of users in Mexico now have access to these guns through diversion from the US market. These same types of arms have also been trafficked

367 *Radiografía del país más violento del mundo*. Alcaldía de Chacoa, 2007, p. 34; data on São Paulo (Brazil) are summarised from Estado da Segurança Pública Trimestrial statistics under ‘ocorrências envolvendo policia militares’.

368 (Mexican) Gobierno Federal, Procuraduría General de la República & SEDENA, *Tráfico de armas México-USA*, 27 November 2008 and 26 March 2009.

369 Goodman C & Marizco M, *US Firearms Trafficking to Mexico*. Woodrow Wilson International Center for Scholars – Mexico Institute, September 2010, pp. 20-21.

370 Export permit granted on 24 February 2000, according to Belgian Minister of Foreign Affairs Louis Michel, on quote in parliamentary report <www.dekamer.be/doc/PCRA/html/50/ap052N.html> Commotion in Parliament and the Belgian media caused the export licence to be put on hold. The Mexican government cancelled the import documents before Belgium took a formal decision to deny or authorize the corresponding export licence.

to Central America,³⁷¹ and have been recovered from crime scenes still further south, where local police have routed tracing requests through Interpol. Police authorities in the country where the arms are produced and exported facilitate these trace-requests to help identify the importer. Replies to the trace-requests are sent only to police or judicial authorities in the country where crimes were committed with the arms, and are not communicated to others or for different purposes, such as to help authorities in the exporting state determine the risk of diversion when dealing with particular importers.³⁷²

EU export authorities can still assess the risk of diversion by taking leads from the already-quoted open sources. But if they took such leads, these did not affect their small arms sales to the US. In 2008, as already mentioned, applications for all EU ML1 exports to that country were approved, as had been the case in previous years. EU-based exporters have appeared more likely to deny export of high-power SALW to smaller markets, which are now supplied indirectly through diversion from the US. The expanding, lucrative and liberal US small arms market thus appears to constitute a loophole for the EU arms control system.

More data are needed to determine to what extent EU small arms exports to the US, and elsewhere, end up supplying problematic users in Latin America. Systematic analysis of such data can help reconstruct trafficking patterns over longer periods of time, which in turn can help judge the risk for diversion on a sounder basis than haphazard media reports that EU export authorities currently have available, at best. A first such piece of analysis is in fact available from an independent investigation funded by the Belgian Federal Ministry of Foreign

Affairs.³⁷³ The investigation 're-mined' registers of stockpiles of arms seized from illegal non-state actors in Colombia. The next section explores what lessons EU small arms exporters might want to draw from these research findings, which were first published at the end of 2009.³⁷⁴

The Colombian job – a study of diversion

At first sight, Colombia is of little relevance to a study of EU arms exports. The country's imports from EU Member States decreased after the Colombian armed forces were issued Israeli Galil assault rifles in 1993, to replace the German-made HK G3s they had been using until then. Less than a decade later, according to information available from the Consolidated Report, EU Council-reported exports (all ML categories) to Colombia in 2002 amounted to zero, a historical low that some ascribed to stringent use of the EU Code vis-à-vis the Colombian armed conflict and rampant human rights violations. In 2004, Czech guns began to be exported to Colombia, but until 2006 such and other EU-sourced sales to the country were worth less €3 million a year.

Colombia enforces a monopoly on imports and sales of arms through the state-owned *Industria Militar* (INDUMIL). The register that is kept by INDUMIL in Bogotá of all arms imported and arms sold in Colombia confirms the relative modesty of European arms exports to Colombian end-users. Until recently, the only EU-made arms that INDUMIL sold on a regular basis were Spanish revolvers. The large share of the other EU arms found in Colombia had thus been supplied to others than those INDUMIL authorised to possess and use arms, that is the different branches of the Colombian arms forces, private security companies and private citizens who obtained permits if they pass a screening for judicial antecedents. Colombia therefore presents an environment of almost laboratory-like purity for

371 US Immigration and Customs Enforcement, 'Florida woman convicted of illegal gun exports to Honduras', March 2009; also covered in Weaver J, 'Naples woman convicted in weapons plot', *The Miami Herald*, 24 March 2009.

372 Information obtained from the Belgian Federal Police's illicit arms tracing unit, interviewed in Brussels, 14 June 2010.

373 Grant S 3.1/08-CP-25 awarded by the Belgian Ministry of Foreign Affairs' peace-building department to the University of Ghent by Royal Decree / A.R./ K.B./ 30 June 2008.

374 Vranckx A (ed.) *Arms Tracing – Perspectives on control, traffic and use of illegal weapons in Colombia*. Bogotá: Fundación Ideas para la Paz, November 2009.

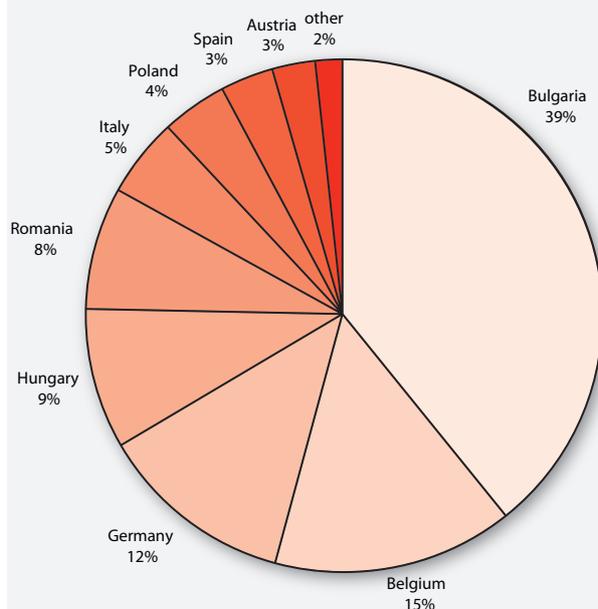
research on diversion of EU-made arms. The country was seen to present an even more interesting case after Colombian authorities and inspection teams from the Organization of American States (OAS) decommissioned thousands of arms from combatants that began demobilizing from 2003 onwards. These combatants had belonged to anti-guerrilla militias that had operated under the umbrella organisation *Autodefensas Unidas de Colombia* (AUC). The militia were held accountable for the killing and 'disappearing' of thousands of citizens in rural Colombia during the past two decades. Indirectly they are also responsible for the displacement of more than 3 million mostly rural Colombians. The AUC has been on the EU Terrorism List since 2001.

The entire AUC structure demobilised by mid-2006, at which point more than 31,000 combatants had handed in a total of over 18,000 pieces of armament. Almost 5,000 of these pieces were European-made, with more than 50 per cent of assault rifles made in Europe. A sample of half of these arms was analysed in detail by a team from the Colombian think tank *Ideas para la Paz* and with the help of independent researchers from Belgium, Germany and Norway. This analysis revealed that only a very small portion of the arms the AUC had held could be traced back to the regular Colombian armed forces, commonly assumed to have backed up the AUC until long after these militia were declared illegal (from 1989 onwards). More than 95 per cent of their arms were imported through other channels than INDUMIL, making these illegal imports by Colombian standards. These imported AUC arms could be traced to manufacturers in Europe from 16 different European countries. The proportions of the AUC arms stockpile each of these European countries sourced are identified in Graph 1.

These are not the only arms which EU exporting states failed to prevent being diverted to Colombian terrorist groups. Large quantities of arms have also been seized from the ELN and FARC guerrilla forces, but that stockpile has not yet been analysed in as systematic a way as have the arms decommissioned from the AUC, the result of which is recorded above.

That studied sample can suffice here to raise the question of how these arms were supplied to the groups that put them to highly lethal use in Colombia. The shortest route to an answer would go straight 'upstream' and simply ask the identified manufacturers of these arms to check the series against their registers. That would make it possible to identify those involved in the first step of what is no doubt a much longer diversion process. But as already noted, tracing requests are only facilitated via proper police work, not for statistical purposes. Police from the country where the arms are produced only consult with the arm's manufacturers within the scope of specific criminal investigations conducted by the authorities in the countries where the arms were found.³⁷⁵

Graph 1: Source countries of European countries found in the AUC arms stockpile.³⁷⁶



375 Information obtained through interview at the Belgian Federal Police's illicit arms tracing unit, Brussels, 14 June 2010.

376 Data reproduced from Vranckx, A (ed.) *Arms Tracing – Perspectives on control, traffic and use of illegal weapons in Colombia*, op. cit, 2009, Table 4.1. 'Countries of origin of the weapons surrendered by the AUC, and Figure 4.3: Percentages of European weapons in the sample by country', pp. 30-31.

Nevertheless, markings and other identifiers found on these arms make it possible for informed civilians to explore some hypotheses about how the arms came to be supplied to Colombian AUC combatants, in spite of the stringent EU arms transfer control regime.

A first hypothesis, that export authorities in Europe did not to know arms stood a large chance to be abused in Colombia, can be discarded immediately. EU Member States' authorities' awareness that something was amiss in Colombia is demonstrated by the fact that very little was supplied out of the EU and numerous export licences were denied on the grounds of several criteria of the EU Code, including the risk of diversion under criterion 7. But EU-sourced arms that were seized from the AUC were not exported to Colombia through legal pipelines. Legal imports would have passed through INDUMIL, which has no such records, and EU authorities would not have authorised transfers to illicit non-state groups such as the AUC.

The second hypothesis is the arms were approved for export to end-users in third countries, after which the arms were diverted with or without the complicity of those end-users. Several such third countries were identified by inspecting seized arms and photos taken of seized arms since destroyed. This has led to the identification of various US importers thereby adding weight to the hypothesis that the US civilian market has and continues to be an important 'loophole' through which small arms from the EU are diverted to Latin America. Markings on other arms, especially assault rifles, brought to light some of their former users' identification marks. These include the armed forces of several of Colombia's neighbours, including Ecuador, Panama, Peru and Venezuela. EU-based manufacturers shipped the arms to those countries, or allowed the arms to be manufactured on location. Controlling local manufacture is difficult, especially with production arrangements that while originally agreed in the early 1970s continue to generate output into the current millennium.

A variant of the second hypothesis can thus be considered in terms of 'EU' arms in the AUC sample that were in fact produced in states neighbouring

Colombia, where these were no longer within the bounds of the EU control system. But this explanation lets EU Member States' authorities off the hook too easily. Licensed production arrangements can take different forms, from arrangements that transfer the entire production of all components to a new location, to deals that allow local assembly of parts that continue to be shipped in from the country where the licensor is based. An example of the latter type of arrangement was concluded in the mid 1970s between the *Compania Anónima Venezolano de Industrias Militares (CAVIM)* manufacturer and the Belgian *Fabrique National (FN)* and regular exports began to be made to honour that contract. In 2002, Belgian ML1 exports categorised as 'parts' and worth nearly €20 million were sent to Venezuela. By that time, Belgian authorities had reasons to be cautious: in February 2001 the then Belgian Minister of Foreign Affairs, Louis Michel, had already been asked whether Belgian foreign relations took into account reports that 'in the last four years, semi-automatic small arms and ammunition had been supplied to the FARC guerrilla from pipelines in Venezuela, including arms that proceed from Belgian licenced production at CAVIM-facilities'. Green Party Member of the Flemish Parliament, Lode Van Oost, had put the question in writing, adding that "naturally, Venezuelan authorities deny trading with FARC, but rampant corruption and involvement in illegal trade (arms, drugs), explains why arms produced in Venezuela are now in the hands of the FARC guerrilla".³⁷⁷

A third hypothesis is necessary to explain the significant volume of Bulgarian-made arms in the studied sample. A large portion of these arms is a type of Kalashnikov calibre 5.56 produced by *Arsenalad Ksanlak* for which the Bulgarian authorities gave export permits in 1999. The importer was later proven to have employed a doctored end-user certificate signed by a retired Colombian army captain, who was subsequently prosecuted in Colombia. In that particular case, Bulgarian authorities were shown to be negligent in checking the end-user

377 Author translation of the parliamentary question that was formulated by senator Lode Van Oost, of the Flemish Green Party www.dekamer.be/qrva/50_3N.html.

certificate, which was not only signed by an officer too low in rank, but also concerned more than 7,500 assault rifles of a type not in use by the regular Colombian armed forces. As Bulgarian-made arms of still other types have been found in the AUC sample as well, these cannot all be traced to the aforementioned grey deal documented in court documents. More such deals may have been arranged, and Bulgarian-made arms could also have been diverted to Colombia through other routes.

The Colombian case study does not provide a full answer to the question how AUC came to have so many European arms. It does nevertheless give a clear indication about the effectiveness of the EU arms transfer control system in keeping arms away from inappropriate end-users engaged in an armed conflict. That effectiveness is seen to be compromised, as export authorities focussed on denying exports to end-users in Colombia, referring to different grounds stipulated in the EU Code/Common Position, while ignoring the risk small arms be diverted from exports to end-users in third countries nearby that EU authorities saw no reasons to deny.

Conclusions

The outcome of the 'Colombian Job' provides data specific to diversion of EU-made small arms into the Colombian conflict, but it also offers insight into wider patterns and enables an evaluation of the EU arms transfer control mechanisms vis-à-vis conflict regions. EU Member States' authorities were almost all seen to cautiously comply with the constraints that mechanism imposed for exporting arms to Colombia, where a violent armed conflict was in play and human rights were believed to be under serious threat, for example through 'internal repression'. For years, Colombia was seen to be under a de-facto embargo that included the regular armed forces tasked with protecting the Colombian population against a plethora of heavenly-armed illegal non-state groups. Yet those groups' combatants were seen to be in possession of a large variety of EU-made arms, which EU authorities had allowed to be shipped to other places in the American hemisphere, from where they were diverted into the Colombian conflict. This specific example suggests

that either the EU rules are not being properly implemented or that they are inadequate for the task of preventing diversion.

There is little indication that the situation will change in the near future. The risk of diversion seems to weigh ever more lightly on deliberations about the rapidly-increasing ML1 exports to the Americas. EU Member States' authorities appear either ignorant of or unable to respond appropriately to the almost 'epidemic' upsurge in firearms-inflicted criminal violence on the rise throughout much of Latin America in the past half-decade.

There are however steps, referred to above, that could be taken to begin to address this apparent problem with the EU system and thus reduce the risk of repeating a Colombian-type scenario in future. These include:

- better use of existing mechanisms and sources (e.g. Interpol; the International Tracing Instrument) to gather information on sources and routes of supply;
- systematic sharing of that information across the EU (ideally through the development of a central database on unauthorised re-exporters and cases of diversion that all Member States could access;
- improvements in national procedures for ensuring that relevant information is utilised effectively in the licence application process; and
- insist in sales contract that the exporting country be notified asap in case (some of) the exported goods have gone missing.

ANNEX: Criteria of the Common Position

1. Criterion One: Respect for the international obligations and commitments of Member States, in particular the sanctions adopted by the UN Security Council or the European Union, agreements on non-proliferation and other subjects, as well as other international obligations.

An export licence shall be denied if approval would be inconsistent with, *inter alia*:

- a the international obligations of Member States and their commitments to enforce United Nations, European Union and Organisation for Security and Cooperation in Europe arms embargoes;
- b the international obligations of Member States under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention;
- c the commitment of Member States not to export any form of anti-personnel landmine;
- d the commitments of Member States in the framework of the Australia Group, the Missile Technology Control Regime, the Zangger Committee, the Nuclear Suppliers Group, the Wassenaar Arrangement and The Hague Code of Conduct against Ballistic Missile Proliferation.

2. Criterion Two: Respect for human rights in the country of final destination as well as respect by that country of international humanitarian law.

– Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, Member States shall:

- a deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used for internal repression;
- b exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the military technology or equipment, to countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe;

For these purposes, technology or equipment which might be used for internal repression will include, *inter alia*, technology or equipment where there is evidence of the use of this or similar technology or equipment for internal repression by the proposed end-user, or where there is reason to believe that the technology or equipment will be diverted from its stated end-use or end-user and used for internal repression. In line with Article 1 of this Common Position, the nature of the technology or equipment will be considered carefully, particularly if it is intended for internal security purposes. Internal repression includes, *inter alia*, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

– Having assessed the recipient country's attitude towards relevant principles established by instruments of international humanitarian law, Member States shall:

- c deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law.

3. Criterion Three: Internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts.

Member States shall deny an export licence for military technology or equipment which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.

4. Criterion Four: Preservation of regional peace, security and stability.

Member States shall deny an export licence if there is a clear risk that the intended recipient would use the military technology or equipment to be exported aggressively against another country or to assert by force a territorial claim. When considering these risks, Member States shall take into account *inter alia*:

- a the existence or likelihood of armed conflict between the recipient and another country;
- b a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force;
- c the likelihood of the military technology or equipment being used other than for the legitimate national security and defence of the recipient;
- d the need not to affect adversely regional stability in any significant way.

5. Criterion Five: National security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries.

Member States shall take into account:

- a the potential effect of the military technology or equipment to be exported on their defence and security interests as well as those of Member State and those of friendly and allied countries, while recognising that this factor cannot affect consideration of the criteria on respect for human rights and on regional peace, security and stability;
- b the risk of use of the military technology or equipment concerned against their forces or those of Member States and those of friendly and allied countries.

6. Criterion Six: Behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law.

Member States shall take into account, inter alia, the record of the buyer country with regard to:

- a its support for or encouragement of terrorism and international organised crime;
- b its compliance with its international commitments, in particular on the non-use of force, and with international humanitarian law;
- c its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament conventions referred to in point (b) of Criterion One.

7. Criterion Seven: Existence of a risk that the military technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions.

In assessing the impact of the military technology or equipment to be exported on the recipient country and the risk that such technology or equipment might be diverted to an undesirable end-user or for an undesirable end use, the following shall be considered:

- a the legitimate defence and domestic security interests of the recipient country, including any participation in United Nations or other peace-keeping activity;
- b the technical capability of the recipient country to use such technology or equipment;
- c the capability of the recipient country to apply effective export controls;
- d the risk of such technology or equipment being re-exported to undesirable destinations, and the record of the recipient country in respecting any re-export provision or consent prior to re-export which the exporting Member State considers appropriate to impose;
- e the risk of such technology or equipment being diverted to terrorist organisations or to individual terrorists;
- f the risk of reverse engineering or unintended technology transfer.

8. Criterion Eight: Compatibility of the exports of the military technology or equipment with the technical and economic capacity of the recipient country, taking into account the desirability that states should meet their legitimate security and defence needs with the least diversion of human and economic resources for armaments.

Member States shall take into account, in the light of information from relevant sources such as United Nations Development Programme, World Bank, International Monetary Fund and Organisation for Economic Cooperation and Development reports, whether the proposed export would seriously hamper the sustainable development of the recipient country. They shall consider in this context the recipient country's relative levels of military and social expenditure, taking into account also any EU or bilateral aid.