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The Audit – Export Licences of concern

Introduction

IN PREVIOUS AUDITS, section 3 has focussed on “trends and issues” in UK arms export controls, many of which were discussed in the context of implementing the UK Consolidated Criteria. Section 4, on the other hand, set out a detailed analysis of the full range of concerns that were relevant to considering the advisability of UK arms exports to a specified list of countries.

In this shorter version of the Audit, we have sought to combine the above approaches into one revised section 3. In an effort to make our analysis more concise and user-friendly, we have taken a more focussed approach in our assessment of UK arms export policy, pinpointing those cases that have given us greatest concern. Accordingly, on this occasion, we have carried out our analysis on a criterion-by-criterion basis¹ focussing, in each case, on particular countries where UK arms exports have given us cause for concern. The fact that we have concentrated on fewer examples, however, should not be taken as an indication that our concerns regarding the Government’s implementation of the UK Consolidated Criteria have abated in any significant way. Indeed, whilst our primary focus is on exports to recipients where our concerns are particularly acute, *under most of the criteria* we also set out an additional list of countries to which UK arms exports also raise significant questions under each criterion. In carrying out this analysis, Saferworld hopes that it will prompt a productive and focussed debate concerning the UK Government’s implementation of each of the Consolidated Criteria.

Criterion 1

Respect for the UK’s international commitments, in particular sanctions decreed by the UN Security Council and those decreed by the European Community, agreements on non-proliferation and other subjects, as well as other international obligations.

The UK subscribes to a number of national and international arms embargoes and sanctions regimes.² Whilst the UK Government’s overall adherence to such commitments is not in question, there are nevertheless some specific concerns that ought to be raised with regard to the implementation of the embargoes against China and Iran.

¹ Where the criteria are those set out in the UK Government Consolidated Criteria and the EU Code of Conduct on Arms Exports.

² A list of these commitments can be found each year in the *UK Annual Report on Strategic Export Controls*. For 2003, this is located in *Annex D: The United Kingdom’s International Commitments on Export Controls*, http://www.fco.gov.uk/Files/ktfile/ExportControls_AnnexesBackCover.pdf. An up-to-date list is available on the Export Control Organisation website, at <http://www.dti.gov.uk/export.control/>.

Criterion 2

The respect of human rights and fundamental freedoms in the country of final destination.

Implementation of criteria relating to human rights is often seen as one of the most politically sensitive issues in the field of arms export control. In this regard, the need to avoid exporting arms and security equipment where there is a risk of their being used for “internal repression” has become one of the most important challenges facing the government. Whilst questions could be raised with regard to the advisability of certain arms and/or security equipment exports to a number of countries including Brazil, Colombia, Egypt, Iraq, Jamaica, Jordan, Kenya, Kuwait, Morocco, Nepal, the Philippines, Russia, Saudi Arabia, South Korea, Sri Lanka, Tajikistan, Thailand, Turkey, Turkmenistan, Uzbekistan and Venezuela, we take particular issue with UK exports to Nepal, Saudi Arabia and Turkey.

Criterion 3

The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts.

The end of the Cold War was marked by a significant increase in the number of internal armed conflicts being waged around the world. Fifteen years later, many such conflicts are still underway, indeed according to the most recent PIOOM assessment there were 23 High Intensity conflicts (1000+ deaths) and 79 Low Intensity conflicts (100–1000 deaths) during 2001–2002 (the latest year for which figures are available). The need to avoid fuelling internal instability and internecine warfare is therefore a major concern for the UK and partner governments. Nonetheless, questions arise with regard to the licensing of particular strategic exports to countries such as Bangladesh, Colombia, Cote d’Ivoire, Indonesia, Israel, Kenya, Morocco, Nepal, Pakistan, the Philippines, Russia, Turkey, Saudi Arabia, Sri Lanka and Venezuela. Of these, the arms and security equipment licensed for export to Colombia, Indonesia and Morocco raise particular concerns and will be reviewed in more detail.

Criterion 4

Preservation of regional peace, security and stability.

The dynamic relating to the implementation of criterion 4 is peculiar in that, in many ways, it centres on the relationship between states, rather than on one state alone. Whilst the likelihood of conflict breaking out between a recipient of UK arms and another state is a major concern, the government is also required to take into account “the balance of forces between the states of the region concerned, their relative expenditure on defence, the potential for the equipment significantly to enhance the effectiveness of existing capabilities or to improve force projection, and the need not to introduce into the region new capabilities which would be likely to lead to increased tension”. With these considerations in mind, we have approached our assessment of the Government’s implementation of criterion 4 from the point of view of the dynamics of three important and comparatively volatile regions: South Asia (India and Pakistan), China-Taiwan, and the Middle East.

Criterion 6

The behaviour of the buyer country with regard to the international community, as regards in particular to its attitude to terrorism, the nature of its alliances and respect for international law.

Criterion 6 addresses a range of issues relating to a potential recipient's interaction with the international environment. The threat from international terrorism has emerged as a major concern for the UK and other governments, and, indeed, it is not the intention of this audit to question the UK Government's implementation of restrictions against entities that are suspected of supporting terrorist organisations. However, it is an ongoing concern of Saferworld that states that are seen as allies in the war against terror may be viewed as a more acceptable destination for UK arms than otherwise would be the case; this issue has been elaborated upon in detail in our previous two Audits.

In terms of the UK Government's implementation of criterion 6, of greatest concern to Saferworld is the application of restrictions on arms exports under international humanitarian law. One of the main reasons underlying these concerns relates to the level of restrictions that are actually embodied within the export guidelines. Despite the binding international commitment on states parties to "respect and ensure respect for" international humanitarian law, crucially, the Government is required under the Consolidated Criteria only to "take into account" a recipient's behaviour with respect to international humanitarian law. This opens up the possibility that arms could be transferred to a recipient that may use them to breach international humanitarian law. In this regard, Saferworld has potential concerns with regard to the licensing for export of strategic goods from the UK to Colombia, Indonesia, Israel and the Occupied Territories, Nepal, the Philippines, Russia and Turkey. Concerns are particularly acute with regard to Israel and the Occupied Territories, the Philippines and Russia.

Criterion 7

The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions.

Criterion 7 places particular emphasis on the likelihood that strategic goods exported from the UK may be transferred to an unauthorised end-user – whether within or outside the importing country. Accordingly, when licensing the export of strategic goods, the Government is required to make a judgement whether or not to be satisfied with any end-use assurances that are given by the prospective recipient and what the potential is for the goods to fall into the wrong hands. Looking at how the risk associated with re-export or diversion is quantified, a number of factors, can be highlighted. These include whether the recipient has a history of deliberately engaging in such activities, whether government security forces or associated groups are known in the past to have misused particular types of equipment, whether the export control policy and practices of the recipient are deemed suitably robust, and whether the quantity and quality of goods for export are compatible with the defensive requirements of the recipient.

In this regard, Saferworld has raised concerns with regard to the suitability of a number of states as recipients of strategic goods from the UK – including the Channel Islands, China, Cyprus, Hong Kong Special Administrative Region, India, Iran, Jordan, Malaysia, Malta, Paraguay, Qatar, Russia, Singapore, Sri Lanka, Syria and UAE. With regard to exports licensed during 2003 and the first half of 2004, however, we have particular concerns regarding Indonesia, Iraq, Israel and Pakistan.

Criterion 8

The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources.

The way in which criterion 8 is implemented by the UK Government and its EU partners has long been the subject of debate and controversy. The failure of the EU Code and the Consolidated Criteria to elaborate, in much detail, on those factors to be considered and moreover how they should be considered represents a significant weakness. This lack of clarity may have contributed to the situation whereby the first refusal of a UK export licence based solely on sustainable development grounds was made in 2003, despite the EU Code having been agreed nearly five years previously. Since then, it is encouraging to note that the UK Government announced that the cumulative impact of arms exports – not only from the UK but from other exporters – would be taken into account when arms export licences were being considered to poor countries.³ Moreover, steps taken by EU Member States to elaborate on a set of guidelines for interpreting the sustainable development criterion also represent a source of encouragement with regard to its effective implementation. It is to be hoped that these guidelines will shortly be agreed and made public in order to further genuine debate on this issue.

Whilst concerns arise with regard to UK arms exports to Angola, India, Jordan, Nigeria, Pakistan and South Africa, particular concerns relate to the value of strategic exports being licensed to India, Nigeria, Pakistan and South Africa.

³ Ministerial Statement, HC 310W, 26 September 2002.