



House of Commons

Business, Innovation and Skills,  
Defence, Foreign Affairs, and  
International Development  
Committees

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**Scrutiny of Arms Export Controls  
(2011): UK Strategic Export Controls  
Annual Report 2009, Quarterly  
Reports for 2010, licensing policy and  
review of export control legislation**

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**First Joint Report of Session 2010–11**

Fourth Report from the Business, Innovation and Skills Committee of Session 2010–11

Second Report from the Defence Committee of Session 2010–11

Fifth Report from the Foreign Affairs Committee of Session 2010–11

Sixth Report from the International Development Committee of Session 2010–11

*Report, together with formal minutes, oral and  
written evidence*

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## The Committees on Arms Export Controls

The Business Innovation and Skills, Defence, Foreign Affairs and International Development Committees are appointed by the House of Commons to examine the expenditure, administration, and policy of the Department for Business, Enterprise and Regulatory Reform, the Ministry of Defence, the Foreign and Commonwealth Office, the Department for International Development and any associated public bodies.

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## Summary

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This is our first report on arms export controls since the present Government took office in May 2010. As in previous years, we have reviewed the Government's policy on arms exports, its administration and enforcement, and the adequacy or otherwise of current legislation.

This year we have paid particular attention to the Government's policy of intensifying the promotion of arms exports. The policy has come under scrutiny following the uprisings and demonstrations in recent weeks in North Africa and the wider Middle East and the armed response made to them. We set out in Annex 4 selected licence approvals to a number of countries in the region from January 2009 to September 2010 of arms that could be used for internal repression. Since January 2011 the Government has been vigorously backpedalling on a number of arms export licence approvals to authoritarian regimes across the region as detailed in our Report. We conclude that both the present Government and its predecessor misjudged the risk that arms approved for export to certain authoritarian countries in North Africa and the Middle East might be used for internal repression. We welcome the revocation of a number of arms export licences to Bahrain, Egypt, Libya and Tunisia, and recommend that the Government extends immediately its review of UK arms export licences for countries in North Africa and the wider Middle East to authoritarian regimes worldwide. We also recommend that the Government sets out how it intends to reconcile the potential conflict of interest between increased emphasis on promoting arms exports with the staunch upholding of human rights.

We recommend that the Government states what specific steps it is taking to ensure that UK exporters take full advantage of the potential benefits of the Treaty on US/UK Defence Trade Co-operation, and also reviews the performance of the Export Control Organisation (ECO).

We recommend that the Government sets itself a much shorter timetable within which to make the UK's Consolidated Criteria for arms exports wholly consistent with the EU's Common Position.

On enforcement, we recommend that the Government states what precise action it will take against 'brass plate' companies registered in the UK but trading in arms from overseas locations. We also recommend that the Government carries out a full review of the case for a pre-licence register of arms brokers.

On extra-territoriality we conclude that there is no justification for allowing a UK person to conduct arms exports overseas that would be a criminal offence if carried out from the UK and we recommend that the Government extends extra-territoriality to all items on the Military List in Category C.

We recommend that the Government provides detailed information on the parameters of the torture end-use control it intends to propose to the EU. We found the revelation that sodium thiopental had been exported from the UK for use in executions in the United States deeply disturbing and we recommend that the Government states what monitoring and procedural changes it has made to prevent any similar avoidance of export controls occurring.

On applying criterion 8 of the Consolidated Criteria namely “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”, we recommend that the Government provides a full statement of the methodology it uses in relation to Criterion 8 in deciding whether or not a specific arms export licence should be approved.

On the Arms Trade Treaty, we recommend that the Government continues to try to achieve the strongest possible Treaty, including exports of ammunition, with the maximum number of key countries including the United States, as signatories, but should not adopt a strict consensus or lowest common denominator approach which is likely to result in an Arms Trade Treaty being ineffectual.

# Conclusions and recommendations

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## The Government's Annual Report on Strategic Exports

1. Given the key importance of the arms export control policy as demonstrated once again by recent events in North Africa and the Middle East, we recommend that the Government ensures that in future the Annual Reports on Strategic Exports be formally presented to Parliament by the respective four Secretaries of State. (Paragraph 6)

## The Government's policy

2. We conclude that the validity of the Ministerial evidence we took on 24 January and the wisdom of some of the export licences previously granted need to be assessed against the Government's subsequent abrupt changes in export licensing policy following the recent uprisings against authoritarian regimes in North Africa and the wider Middle East. We look at these issues at more depth later in this Report [chapter 10]. We recommend that the Government in its response to this report sets out how it intends to reconcile the potential conflict of interest between increased emphasis on promoting arms exports with the staunch upholding of human rights. (Paragraph 18)

## The Treaty on US/UK Defence Trade Cooperation

3. We recommend the Government sets out in its response to the Report what specific steps it is taking to ensure that UK exporters take full advantage of the potential benefits of the Treaty on US/UK Defence Trade Cooperation. We further recommend that the Government sets out the respective roles and responsibilities of the British Embassy in Washington and the British Consulate-General in New York in obtaining the maximum benefit for UK industry from the Treaty. (Paragraph 23)

## The Performance of the Export Control Organisation

4. We conclude that a well-functioning licence application system is vital to the promotion of arms exports and that the system should impose the least possible administrative burden on exporters, consistent with an effective control regime. We further conclude that it is a matter of concern that a prominent industry representative body, such as the Export Group on Aerospace and Defence (EGAD), has such a low opinion of the performance of the Export Control Organisation (ECO). We recommend the Government reviews the performance of the ECO and provide us with the results of this Review in its response to this Report. We further recommend that the Government reports to us the results of its review into the workings of the Open General Export License system. (Paragraph 31)

## Review of Arms Export Controls

5. We conclude that the Government's timetable of before the end of 2011 by which the wording of the UK's Consolidated Criteria will be updated to be wholly consistent with the EU Common Position is too protracted. We recommend that the Government sets itself a much shorter timetable in which to conclude this updating and to inform us of the revised timetable in its response to this report. We further conclude that, while the consolidated criteria appear robust their application seems to be less so. We therefore recommend that the Government ensures that the EU Common Position is rigidly and consistently applied. (Paragraph 36)

### 'Brass plate' companies

6. We conclude that the Government's current examination of ways to tackle concerns about brass plate UK companies in the UK trading in arms from overseas locations with virtual impunity because of difficulties of enforcement is welcome. We recommend the Government tells us in its response what precise action it will take, including the results of its exploration of the possibility of using powers under the Companies Act to dissolve a company which is operating against the public interest. (Paragraph 40)

### Pre-licence registration of arms brokers

7. We recommend that the Government carries out a full review of the case for a pre-licence register of arms brokers and that its review includes a public consultation and is concluded with a Ministerial decision within four months of the start of the consultation. (Paragraph 46)

### Extra-territorial arms export controls

8. We conclude it is disappointing that the Government's discussions with the industry and NGOs have not resulted in extra-territorial controls being extended to include specific items in Category C. We recommend that the Government re-engages with NGOs and industry groups on this important policy issue and lets us know of the progress being made in its response to this report. We further conclude, as did our predecessor Committees, that there is no justification for allowing a UK person to conduct arms exports overseas that would be a criminal offence if carried out from the UK. We note that extra-territorial legislation already applies to a number of areas, including sexual offences against children and young people, war crimes, terrorism, torture, bribery and corruption and taxation. We conclude that there is no reason why enforcing extra-territorial controls in connection with arms export controls should be more difficult to enforce than in these areas. We recommend that the Government extends extra-territoriality to all items on the Military List in Category C. (Paragraph 57)



### **Military end-use control**

9. We conclude it is disappointing that the Government appears not to have continued the previous Government's work and pressed for an expanded Military End-Use Control. We recommend that the Government immediately re-starts work in producing specific policy proposals and to ensure that it has the requisite support for them at EU level in time for the 2012 review of the EU Dual-Use Regulation. We recommend that the Government provides us with an update on how this work is progressing when replying to this report. We further recommend that the Government in the meantime makes the necessary amendments to UK legislation to rectify the present deficiencies in military end use controls. (Paragraph 61)

### **Torture end-use controls**

10. We conclude that the slow pace of progress towards an EU torture end-use control is very disappointing. We recommend that in its response to this report, the Government provides detailed information on the parameters of the torture end-use control it intends to propose to the EU. We further recommend that the Government simultaneously prepares draft UK legislation on this issue for public consultation. (Paragraph 65)

### **Sodium Thiopental – US for use in lethal injections**

11. We conclude that the export of sodium thiopental from the UK for use in executions in the United States is deeply disturbing as is the elapse of time between this information becoming public and the Government making an Order under the Export Control Act 2002 during which further shipments were reportedly made. We recommend that the Government in its response to this report sets out what monitoring and procedural changes it has made to prevent any similar avoidance of export controls occurring. (Paragraph 70)

### **'No re-export clauses and undertakings**

12. We recommend that the Government provides us with an assessment of how no re-export undertakings are working, and details of the Government's methodology for assessing their effectiveness. We also recommend that the Government provides us with information as to which other countries have no re-export clauses in their contracts, as opposed to in their undertakings, and the effects of such clauses. (Paragraph 79)

### **Enforcement**

13. We recommend that in its response to this report, the Government explains what action, if any, was taken in the 290 cases of misuse that did not result in a warning letter following the 836 enforcement visits in 2009. (Paragraph 81)

### **Civil Penalty regime: compound penalties**

14. We conclude that it is too early to assess fully the effectiveness of the compound penalty regime since it has been in operation for barely one year. However, we further conclude that even at this early stage the penalty system seems to lack clarity and therefore fairness. We recommend that the Government considers the industry's concerns and make public the criteria used for imposing compound penalties and how the amounts of such penalties are calculated. (Paragraph 86)
15. We also recommend that as compound penalties are applied to cases which would justify being referred to the Crown Prosecution Service for consideration for prosecution, the Government holds open the possibility of making public the names of companies and individuals who have breached arms exports controls sufficiently seriously to attract compound penalties. (Paragraph 87)

### **The UK Government's role in negotiations**

16. We conclude that the Government's statement that it is fully committed to securing a robust and effective Arms Trade Treaty is to be welcomed. We look to the Government to deliver on its commitment. (Paragraph 94)

### **A strong ATT or one based on consensus?**

17. We conclude that the Government seems to have adopted a different policy from its predecessor; appearing to be prepared to weaken the Arms Trade Treaty in order to try to ensure that key arms exporting countries become signatories. We recommend that the Government continues to try to achieve the strongest possible Treaty, including exports of ammunition, with the maximum number of key countries including the United States, as signatories, but should not adopt a strict consensus or lowest common denominator approach which is likely to result in an Arms Trade Treaty being ineffectual. (Paragraph 102)
18. We further recommend that the Government, in its response to this report, sets out its policy on including anti-corruption provisions in the Arms Trade Treaty with details of the provisions it would wish to see incorporated. (Paragraph 103)

### **Sustainable development—Criterion 8**

19. We conclude that deciding whether to approve arms exports to developing countries in relation to Criterion 8 can be difficult given that other policy considerations may need to be taken into account. However, we recommend that in its response to this report, the Government provides a full statement of the methodology it uses in relation to Criterion 8 in deciding whether or not a specific arms export licence should be approved. (Paragraph 107)

### **A specific Criterion**

We conclude that the Government has failed to demonstrate satisfactorily whether, and if so how, it assesses the risk that individual arms exports may be linked to

bribery and corruption during the licence approval process. We recommend that the Government sets out fully in its response to this Report whether such an assessment is made for all arms export licence applications, and if so how. (Paragraph 115)

20. We further recommend that, given that Criterion 8 applies only to developing countries and that bribery and corruption are not confined to such countries, the Government gives full consideration to proposing the insertion of an additional Criterion into the EU Common Position on arms exports obliging Member States to assess the risk of bribery and corruption before approving an arms export licence to any country. (Paragraph 116)

## Countries of Concern

### China

21. We recommend that in view of the continuing serious human rights violations taking place in China, the Government maintains its position of fully supporting the retention of the EU arms embargo on China. (Paragraph 120)

### Israel

22. We note that the previous Government obtained a categorical assurance from the Israeli Government, in writing, dated 29 November 2000, which included: “No UK originated equipment nor any UK originated systems/sub-systems/components are used as part of the Israel Defence Force’s activities in the Territories”. In a letter to the Chair of 10 February 2011, the FCO Minister, Mr Alistair Burt, says:

I can confirm that UK policy on the export of controlled goods and equipment to Israel has not changed since the Coalition Government took office. All export licence applications to Israel are considered on a case- by- case basis against the Consolidated EU and National Export Licensing Criteria.

It is far from clear how this assurance can be reconciled with the Government’s response referred to in paragraph 122 above. (Paragraph 124)

23. We conclude that the present Government’s policy on exporting arms or components of arms that could be used in the Occupied Palestinian Territories appears to be confused. Given that the Government in its response to the previous Committees’ last Report stated: “That the UK Government does not have a policy that UK arms exports to Israel should not be used in the Occupied Palestinian Territories”, we recommend that the Government re-states what specific arms or components of arms it is willing to approve for export to Israel that could be used in the Occupied Palestinian Territories. We further recommend that if the Government is unable to identify any such arms or components of arms, it formally withdraws the statement of policy quoted in this paragraph. (Paragraph 125)

## Saudi Arabia and Yeman

24. We recommend that the Government keeps its policy on approving arm exports to Saudi Arabia under review in the light of the specific allegations surrounding the 2009-10 conflict in Yemen and current events in Yemen, Bahrain, and the wider region. (Paragraph 130)

## Arms exports to authoritarian regimes in North Africa, Middle East and worldwide

25. The Government's policy on arms exports to a considerable number of individual countries, and on making arms exports generally a high Government priority, has been brought sharply into focus by the uprisings and demonstrations in recent weeks in North Africa and the Middle East, and the armed response made to them which has resulted in the death or injury of civilians. (Paragraph 131)
26. The government makes public on the BIS and FCO websites a quarterly list of those export licences it has granted. It also provides to the CAEC more detailed information on a confidential basis. Tables using information from the BIS and FCO websites of selected arms export licence approvals to countries in North Africa and the Middle east of arms and components of arms that could be used for internal repression are set out in Annex 4. (Paragraph 132)
27. The Government's policy on arms exports in relation to internal repression was clearly stated by the FCO Minister, Mr Alistair Burt, in his letter to the Chair of 10 February 2011:

The longstanding British position is clear. We will not issue licences where we judge there is a clear risk the proposed export might provoke or prolong regional or internal conflicts or which might be used to facilitate internal repression. (Paragraph 133)

28. Since the uprisings and demonstrations began, the Government has been vigorously backpedalling on its arms exports to North Africa and the Middle East, and up to the time this report was concluded has taken the following steps:
- On 17 February, the FCO Minister, Mr Alistair Burt, announced that all arms export licences to Bahrain were being reviewed.
  - On 18 February, the FCO Minister, Mr Alistair Burt, announced that a review of arms exports licences to the wider region, including Yemen was on-going.
  - On 26 February the UK Government supported the United Nations Security Council Resolution (1970) imposing an arms embargo on Libya

- On 28 February the UK Government supported a European Council Decision to impose an arms embargo on Libya.<sup>1</sup> (Paragraph 134)

29. We conclude that both the present Government and its predecessor misjudged the risk that arms approved for export to certain authoritarian countries in North Africa and the Middle East might be used for internal repression. We further conclude that the Government's decision to revoke a considerable number of arms export licences to Bahrain, Egypt, Libya and Tunisia is very welcome.

We recommend that, in its response to this Report:

- The Government provides us with full details on arms export licences it has revoked since the beginning of January 2011 when the recent uprisings and demonstrations in North Africa and the Middle East started;
- The Government states what specific and systematic consideration of arms exports is carried out within the National Security Strategy and at meetings of the National Security Council;
- The Government states the outcome of its review of arms exports to the wider Middle East region as announced by the FCO Minister, Mr Alistair Burt, on 18 February;
- The Government states what changes it will make to improve both its arms export control procedures and its judgements about the risk of arms exported from the UK being used for internal repression by authoritarian regimes.

We further recommend that the Government extends immediately its review of UK arms export licences announced by the FCO Minister, Mr Alistair Burt, on 18 February 2011 to authoritarian regimes worldwide in respect of arms or components of arms which could be used for internal repression. (Paragraph 135)

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<sup>1</sup> Details are available in Council Decision 2011/137/CFSP (published in the Official Journal of the European Union L58, 3.3.2011, p53). The Council Decision was given legal force by Council Regulation on 2 March 2011.

# 1 Introduction

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1. The four Committees that comprise Committees on Arms export Controls (CAEC)<sup>2</sup> are: Business, Innovation and Skills, Defence, Foreign Affairs and International Development. All Members of the four Committees are entitled to attend the CAEC, although for practical purposes each of the four Committees usually nominates three or four Members to receive CAEC papers and attend meetings of the CAEC.

2. Our main work throughout the year is to review Government policy on licensing arms exports, licensing decisions, and international arms control treaties. This work means that we examine the policy and licensing decisions related to military items going to sensitive destinations or end users. For example, we assess the licensing decisions that allow or refuse applications against the consolidated EU and national arms-exporting criteria and where necessary pursue individual cases: we may request further written information from Government departments or raise the issues in oral evidence with Ministers.

3. This is our first Report since the Coalition Government took office in May 2010. As in previous years, we have reviewed the Government's policy and administration on arms exports, including the performance of the Export Control Office, changes to the legislative framework, individual decisions related to licence decisions and exports to countries of concern. We have also considered the Government's arms export policy in relation to recent uprisings in North Africa and the wider Middle East and authoritarian regimes worldwide.

4. We issued our terms of reference on 11 November 2010 and in response received written evidence from the UK Working Group on Arms (UKWG)<sup>3</sup>, the Export Group on Aerospace and Defence (EGAD), the Campaign Against Arms Trade and Transparency International. We heard evidence from two sets of witnesses in December 2010: the UK Working Group on Arms (UKWG) and the Export Group on Aerospace and Defence (EGAD). We also heard evidence from two Ministers and their respective teams in January 2011: Mr Mark Prisk MP, Minister for Business and Enterprise at the Department for Innovation and Skills (BIS) and officials from the Export Control Organisation; and Mr Alistair Burt MP, the Minister of State, Foreign and Commonwealth Office and FCO officials. The oral and written evidence is printed with this report. All evidence is also available on the internet. We are grateful to those who provided this evidence and to our Special Adviser, Dr Sibylle Bauer.

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2 Until March 2008 the Committees were known as the "Quadripartite Committee".

3 UKWG is an NGO and lobby group, comprising representatives from the NGOs, Amnesty-UK, British American Security and Information Council (BASIS), Oxfam GB and Saferworld.

## 2 The Government's Annual Report on Strategic Exports

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5. Our annual reports are based on the Government's Annual Report on Strategic Exports and written and oral evidence. We questioned the Business, Innovation and Skills (BIS) Minister, Mr Mark Prisk and the Foreign and Commonwealth Office (FCO) Minister, Mr Alistair Burt, about an apparent downgrading in the status of the Government's Annual Report. We pointed out that the previous Government had produced more substantial reports, which had been duly presented to Parliament by the four Secretaries of State. However, the first Annual Report produced by the Coalition Government is less substantial and presented to Parliament by four junior Ministers. We asked whether these changes were indicative of a downgrading by the Coalition Government of the importance it attached to arms export controls and arms control generally. Both Ministers felt that the 2010 report was shorter than previous editions because it was concisely written rather than being less substantial than in previous years. Both Ministers were also unconcerned that the reports had not been presented to Parliament by the four Secretaries of State and suggested that it was appropriate that Ministers of State, who were closely and actively involved in the subject, with good support from their respective Secretaries of State, should sign off the reports.<sup>4</sup>

**6. Given the key importance of the arms export control policy as demonstrated once again by recent events in North Africa and the Middle East, we recommend that the Government ensures that in future the Annual Reports on Strategic Exports be formally presented to Parliament by the respective four Secretaries of State.**

## 3 Promoting arms exports

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### The Government's policy

7. The promotion of arms exports is a key part of the Government's business strategy. While in opposition, the current Defence Secretary, Dr Liam Fox, said that he would make it his policy to "maximise the UK's share of global defence exports"<sup>5</sup> while the Defence Equipment Minister, Mr Peter Luff, has reportedly said that, "There will be a very, very, very heavy Ministerial commitment to the process. There is a sense that in the past we were rather embarrassed about exporting defence products. There is no such embarrassment in this Government."<sup>6</sup>

8. The Government's emphasis on arms exports was reiterated during our oral evidence on 24 January 2011. The BIS Minister, Mr Mark Prisk, told us that arms exports were "an important part of the overall wish to see an increase in the export of manufacturers' goods and services".<sup>7</sup> The FCO Minister, Mr Alistair Burt, told us that "there are no worries about expanding the opportunity for exports."<sup>8</sup>

9. In February 2011, the Prime Minister led a delegation of senior arms exports executives, to the Middle East. At the same time, the Defence Minister, Mr Gerald Howarth, accompanied British company executives to an arms fair in Abu Dhabi.

10. This emphasis on arms exports has led to concerns among some non-governmental organisations (NGOs) that the Government might prioritise sales to the detriment of controls. The UK Working Group (UKWG) wrote to us expressing concern that "prioritising the establishment of a more commercial culture could come at the cost of conflict prevention and by a reduced emphasis on responsible arms transfer controls" and it was "not clear how the Government intends to reconcile these potentially competing sets of priorities."<sup>9</sup>

11. We asked UKWG to elaborate on its concerns over the promotion of arms exports. Mr Rob Parker of Saferworld highlighted that, while "we don't actually have a problem with promoting arms exports *per se*, there were specific concerns over the role of diplomats in promoting arms exports. Mr Rob Parker told us that:

In some contexts, the UK's diplomatic and political leadership and pressure would best be used in promoting the kinds of political and social development and reform processes that address the drivers and the causes of conflict.<sup>10</sup>

He went on to say:

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5 "The Strategic Defence and Security Review: A Conservative view of Defence and Future Challenges", *Speech to Royal United Services Institute*, 8 Feb 2010

6 *Defence News*, Ministry of Defence, 24 June 2010, and "UK plans arms export drive to offset cuts", Reuters UK, 23 June 2010

7 Q 74

8 Q 124

9 Ev 54

10 Q 2



If the same personnel who should on the one hand be providing Her Majesty's Government with an analysis of, say, the human rights situation on the ground in a country that is requesting UK arms and on the other hand they are being asked to promote UK exports, we would say that there is potentially a risk if that is not clear.<sup>11</sup>

12. He stated that this would potentially leave the UK in breach of its commitments under the EU Council Common Position, 2008/944/CFSP, which defines common rules governing the control of exports of military technology and equipment to all destinations.<sup>12</sup>

13. In written evidence, the Campaign Against the Arms Trade (CAAT) highlighted that:

The Government's arms sales unit, the UK Trade and Investment Defence and Security Organisation (UKTI DSO), has a list of priority markets for 2010/11. These are Algeria, Australia, Brazil, Brunei, India, Iraq, Japan, Kuwait, Libya, Malaysia, Mexico, Oman, Pakistan, Saudi Arabia, South Korea, Turkey, the United Arab Emirates and the USA.<sup>13</sup>

CAAT noted that this list:

worryingly, include[s] countries that give rise to grave concern on human rights, conflict or development grounds including Algeria, Iraq, Pakistan and Saudi Arabia. UKTI DSO is also working hard to promote military exports to Angola and Vietnam.<sup>14</sup>

14. All of our witnesses from NGOs stressed that the Government's view on the desirability of promoting arms exports had not yet been translated into substantial changes of policy. Mr Rob Parker of Saferworld commented that "it's perhaps not a policy change, but a continuation with a bit of refocusing"<sup>15</sup> and Mr Oliver Sprague of Amnesty noted "that many of the issues that were of concern to the previous Government remain as a focus of this Government."<sup>16</sup> He went on to highlight that

we are very early into the new Administration. I think that there have only been two quarterly reports published as yet, so it's actually quite difficult to look at specific cases of licensing to see whether there has been a shift in practice in licences.[...] It's certainly too early to tell.<sup>17</sup>

Mr Hayes of EGAD also noted that, "It is early in the new Government to be able to determine whether there have been any substantive changes."<sup>18</sup>

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11 Q 5

12 EU Council Common Position 2008/944/CFSP defines common rules governing control of exports of military technology and equipment and replaced the Code of Conduct on arms exports in June 1998. See also the EU's 12th annual report on arms exports ((2011/C 9/01). The EU Council Common Position is reproduced as Annex 2 of this Report.

13 See HC Deb, 28 June 2010, col 418-9W and Ev 35

14 Ev 39

15 Q 1

16 Q 1

17 Q 5

18 Q 47

15. The FCO Minister, Mr Alistair Burt, agreed with our witnesses that this Government had yet to adopt a radically different position from its predecessor, and he doubted whether, despite a more “commercial” outlook, there would be a fundamental change in attitude. He said that “The Government’s approach to strategic export controls will remain firmly based on a case-by-case assessment.”<sup>19</sup> He also assured us that “the Committee will see that our approach to arms controls matters will be very similar to that of the previous Government.”<sup>20</sup>

16. We questioned the BIS Minister, Mr Mark Prisk, about the concerns expressed by NGOs, including Amnesty and CAAT that the UK Government was promoting arms sales to states which posed concerns on human rights, conflict or development grounds. He told us that ultimately this would be “a judgement call based on the information [the Government] has”, and while he did not explicitly rule out arms sales to states such as Libya or Algeria he was confident that the Consolidated Criteria regulating arms exports would prevent arms sales to ‘undesirable’ areas.<sup>21</sup> He said that “the appropriate approach is to make sure that we look at the risk in each country on a case-by-case basis and use that judgement accordingly.”<sup>22</sup> The FCO Minister, Mr Alistair Burt, echoed this statement. He told us that “it is the criteria for arms export that trump everything” and “there is a firm belief that the robustness of the criteria will ... ensure that we do not run into trouble or put other people into trouble.”<sup>23</sup>

17. We also asked the FCO Minister, Mr Alistair Burt, how diplomats would cope with the competing set of priorities between supporting arms exports and raising concerns over human rights violations. He doubted that “any diplomat or Minister want[ed] to be placed in a position in which they could be accused of taking a decision for the wrong reasons, if something subsequently went horribly wrong”. He also hoped that a “sense of responsibility would also be a significant driving factor in decisions that colleagues were being asked to make.”<sup>24</sup>

**18. We conclude that the validity of the Ministerial evidence we took on 24 January and the wisdom of some of the export licences previously granted need to be assessed against the Government’s subsequent abrupt changes in export licensing policy following the recent uprisings against authoritarian regimes in North Africa and the wider Middle East. We look at these issues at more depth later in this Report [chapter 10]. We recommend that the Government in its response to this report sets out how it intends to reconcile the potential conflict of interest between increased emphasis on promoting arms exports with the staunch upholding of human rights.**

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19 Q 123

20 Q 123

21 Q 124

22 Q 69-70

23 Q 124

24 Q 125

## The Treaty on US/UK Defence Trade Cooperation

19. The Treaty on US/UK Defence Trade Cooperation, which was ratified in the UK in early 2008, was eventually ratified by the US Congress on 30 September 2010. The Treaty aims to streamline defence export procedures between the two countries. Essentially, under the Treaty exports from the US to the UK will mirror the current practice for authorising UK defence exports to the US, namely, the majority will be undertaken through open, as opposed to individual, licensing arrangements.<sup>25</sup> The UK's existing export control system will remain in force alongside the Treaty and UK arms exports to the US under the Treaty will still need to meet the Government's export control criteria. EGAD told us that the US is "a big and increasing market" and the indications are there would be increased sales to the USA.<sup>26</sup>

20. However, in written evidence, EGAD complains that there is uncertainty amongst companies in the UK and USA as to what steps they need to take to benefit from the Treaty.<sup>27</sup> In oral evidence, they said that the Treaty would not bring major benefits to British businesses for three main reasons. First, regulations needed to be implemented to bring the Treaty into force. Mr Hayes of EGAD complained that, "until we know the detail of these regulations ... it's difficult to brief industry."<sup>28</sup> Second, the Treaty negotiations had taken so long to be concluded that the position regarding exports to the US had improved "almost beyond recognition." The Treaty was described as "a solution to a problem that has largely gone away."<sup>29</sup> Third, the Treaty had limited scope and would be applied only to "material usable for a UK Ministry of Defence contract."<sup>30</sup> Overall, EGAD suggested that the Treaty would be of "value to ... maybe two or three UK companies" and would bring "a narrow benefit to a narrow population."<sup>31</sup>

21. We asked the BIS Minister, Mr Mark Prisk, about the benefits the Treaty would bring to British exporters. He called the Treaty a "stronger opportunity to press the case for good UK manufacturers."<sup>32</sup> The Head of the Export Control Organisation (ECO) told us that BIS was currently in the "implementation phase of the Treaty ... precisely to try to maximise the benefits" and the process would be completed by the middle of 2011.<sup>33</sup> EGAD sounded a note of caution over this timetable. They told us that they were preparing workshops to advise UK industry, but they had been informed that joint events would not be held until April/May 2011 "at the earliest."<sup>34</sup>

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25 Defence Committee, Third Report of Session 2007–08, *UK/US Defence Trade Cooperation Treaty*

26 Q 40

27 Ev 40

28 Q 48

29 Q 50

30 Q 48 – Q 51

31 Q 51

32 Q 80

33 Q 83 - Q 85

34 Q 48

22. The FCO Minister, Mr Alistair Burt, wrote to the Chair of the Committee on 10 February to clarify the Government's policy over implementation of the Defence Cooperation Treaty. He stated that:

I am aware that UK Industry representatives raised concerns with the CAEC about the length of time it has taken to adopt the Treaty and the possible benefits to industry of the Treaty during their evidence session of 1 December 2010. Officials at the MoD (who lead on the issue) are currently engaged in discussions with the US State Department about the implementation of the Treaty. We will keep the Committee updated with the progress of the necessary implementation work as it progresses.<sup>35</sup>

**23. We recommend the Government sets out in its response to the Report what specific steps it is taking to ensure that UK exporters take full advantage of the potential benefits of the Treaty on US/UK Defence Trade Cooperation. We further recommend that the Government sets out the respective roles and responsibilities of the British Embassy in Washington and the British Consulate-General in New York in obtaining the maximum benefit for UK industry from the Treaty.**

## 4 The Performance of the Export Control Organisation

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24. The Export Control Organisation (ECO), which is based within BIS, is responsible for “assessing and issuing (or refusing) export licences for a wide range of controlled so-called “strategic” goods. These include military and dual-use items.”<sup>36</sup> There are two main types of export licences: Standard Individual Export Licences (SIELs) and Open General Export Licences (OGELs). SIELs allow shipments of specified goods to a specified consignee up to the quantity specified by the licensee. OGELs are blanket approvals for certain goods which are intended to reduce administrative burdens on subsequent shipments. OGELs “allow the export of specified controlled goods by any exporter. They remove the need for exporters to apply for an individual licence, providing the shipment and destinations are eligible and the conditions are met.”<sup>37</sup>

25. In written evidence to us, EGAD highlighted delays in processing of export licence applications by the ECO. They complained that the poor performance of the ECO had led to contractual penalty clauses being enforced against UK companies and, “the situation does appear to be getting worse and is affecting the reputation of companies within the UK”.<sup>38</sup> EGAD considered that the ECO was “understaffed and overworked;”<sup>39</sup> and that it was receiving far more licence applications than it had capacity to process. Some 17,000 licence applications were expected for 2010 by the ECO, compared with some 15,000 that were processed in 2009.<sup>40</sup> According to EGAD, the ECO was resourced to process between 9,000 and 10,000 Standard Individual Export Licence (SIEL) applications per year.<sup>41</sup>

26. We asked EGAD to elaborate on their concerns about the performance of the ECO. They told us that the ECO faced problems with their workload for two main reasons. First, there was greater awareness amongst firms, especially those selling dual-use items,<sup>42</sup> which are more likely to be dual-use than arms, of the need to apply for an export licence. Second, the new generation of open general export licences had been made “incredibly complicated” and instead of reducing administrative burdens, had increased the bureaucratic workload for firms.<sup>43</sup> As a result, instead of applying for the open licences, firms were applying for separate individual export licences, partly to avoid the complexity of the OGEL application process.<sup>44</sup>

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36 ECO Website: <http://www.bis.gov.uk/exportcontrol>

37 Department of Business Innovation and Skills, “Introduction to the Export Control Organisation and to Export Controls”, March 2010 <http://www.bis.gov.uk/assets/biscore/eco/docs/intro-to-eco.pdf>

38 Ev 40

39 Q 38

40 Ev 40

41 Ev 40

42 Dual-Use items are goods, software or technology (documents, diagrams etc) which can be used for both civil and military applications. See [www.businesslink.gov.uk](http://www.businesslink.gov.uk) and also Council Regulation (EC) No 428/2009.

43 Q 34

44 Q 34

27. EGAD noted that “it will be difficult to have an export-led recovery if the licensable element of that recovery is hampered by the fact that companies cannot obtain licences in a timely and efficient manner.”<sup>45</sup> They were therefore pleased that the “forthcoming review of the open general licensing system will probably have the effect of reducing the number of individual licences” and hence, the workload for companies and the ECO. It was hoped that the process for applying for an OGEL would be simplified with less exceptions and caveats. EGAD requested that the Government produce a “model undertaking” that would clarify what compliance officers would accept as meeting the requirements of the licence.<sup>46</sup>

28. EGAD highlighted more general grievances with the work of the ECO. Mr Fletcher commented that the ECO was “putting obstacles in the way of UK exports.”<sup>47</sup> It was suggested that the ECO was applying regulations to goods, which were not intended to be covered by the various agreements and regulations;<sup>48</sup> and that export regulations were being applied too liberally to “dual-use” goods such as laptops, modems and routers, which was “not the intention” of the negotiated export controls.<sup>49</sup>

29. BIS told us that it was aware of the increase in the number of licence applications, but, while there was “room for improvement” it was confident that the ECO performed well. The Head of ECO, Mr Tom Smith, told us that:

I’ve looked at our main competitor systems—for example, in the USA, France and Germany. Our customers tell us that we compare very well; ... I think we’re a world leader.<sup>50</sup>

He conceded that the average time for processing applications had increased from “about 13 days to 19 days”, but he disagreed with EGAD’s figures that the ECO was resourced to handle only between 9,000 and 10,000 applications.<sup>51</sup> He said that overall the ECO “coped very well” and went on to dispute many of the complaints levelled by EGAD against the OGEL system.<sup>52</sup> While he agreed that there were problems around the “complexity and ease of use” he felt that the new open general licence was, on balance, “very successful”.<sup>53</sup> He also confirmed that the review of the OGEL system would include a rewriting in plain English of the licence application and the use of more standardised conditions of compliance. His overall assessment was that the system was “quite impressive”.<sup>54</sup>

30. We asked whether there were plans to introduce charging for licences: EGAD had asked for a “statement that they [the Government] have no intention of charging for export licences. That would be a great help to the industry, which is extremely worried about the

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45 Q 39

46 Q 37-Q 38

47 Q 42

48 Q 42

49 Q 41-Q 42

50 Q 75

51 Q 76

52 Q 76-Q 78

53 Q 76

54 Q 78

rumours that there may be charges for licences.”<sup>55</sup> The BIS Minister, Mr Mark Prisk, would not give an assurance that charges for licences would not be introduced. Instead he said that:

It is not the intention of the Government to do anything that would be any more than seeking to look at the possibility of charges for the costs of the service. This is not intended to be some sort of back-door charge over and above that, and we would want to consult industry. We must look at the balance of these issues to see whether, in fact, there is a different finance model which would make more sense.<sup>56</sup>

**31. We conclude that a well-functioning licence application system is vital to the promotion of arms exports and that the system should impose the least possible administrative burden on exporters, consistent with an effective control regime. We further conclude that it is a matter of concern that a prominent industry representative body, such as the Export Group on Aerospace and Defence (EGAD), has such a low opinion of the performance of the Export Control Organisation (ECO). We recommend the Government reviews the performance of the ECO and provide us with the results of this Review in its response to this Report. We further recommend that the Government reports to us the results of its review into the workings of the Open General Export License system.**

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55 Q 63

56 Q 77

## 5 Review of Arms Export Controls

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### Licensing Criteria

32. All arms exports require a licence from the ECO. The ECO assesses all applications for a licence according to specific criteria which are a consolidation of the UK's national criteria and the EU Code of Conduct on Arms Exports (agreed on 8 June 1998). The background on the establishment of the Consolidated Criteria is set out below.

#### UK Licence Decision Making - The Consolidated Criteria

After the May 1997 election, the Labour Government introduced new national export licensing criteria and supported the creation of a voluntary EU Code of Conduct on Arms Exports. The Code came into effect in 1998.

In October 2000 the Labour Government introduced the Consolidated EU and National Arms Export Licensing Criteria (henceforth, Consolidated Criteria), which brought together the UK's national export licensing criteria with those of the EU Code of Conduct on Arms Exports.<sup>57</sup> Since then, all applications to export arms and other strategically controlled goods that appear on what is known as the UK's Strategic Export Control Lists, also called the Consolidated List of Strategic Military and Dual-Use Items that require Export Authorisation (henceforth, Consolidated List) have been considered, on a case-by-case basis, against the Consolidated Criteria.

Final decisions about specific applications are issued by the Export Control Organisation (ECO), which is part of the Department of Business and Skills, following consultation with the Foreign and Commonwealth Office (FCO), the Ministry of Defence (MOD) and the Department for International Development (DFID).

The Consolidated List brings together into one document the UK's own lists and those that derive from the EU. It includes the UK Military List, the UK Dual-Use List, the EU Human Rights List, the UK Security and Paramilitary List, the EU UK Radioactive Sources List and the EU Dual-Use List.<sup>58</sup> It is regularly updated.

In terms of criteria set out in the Consolidated Criteria, the ECO website offers this summary of the Criteria:

- contravene the UK's international commitments
- be used for internal repression
- provoke or prolong armed conflicts or aggravate existing tensions in the destination

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<sup>57</sup> The Written Answer (26 October 2000c200W), announcing the establishment of the Consolidated Criteria is reproduced in Annex 1.

<sup>58</sup> All items on the Military List need an export licence to all countries, including those in the European Union (EU).



country

- be used aggressively against another country
- adversely affect the national security of the UK or allies
- be diverted or re-exported under undesirable conditions
- seriously undermine the economy
- seriously hamper the sustainable development of the recipient country.

*Source: House of Commons Library*

33. In December 2008, the EU adopted the Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment.<sup>59</sup> An extract of the Common Position is reproduced in Annex 1. In written evidence, the UKWG states that the UK's Consolidated Criteria are "in certain aspects weaker than the criteria set out in the Common Position, most notably with regard to the application of international humanitarian law."<sup>60</sup> In oral evidence, UKWG called for the Export Control Act to be updated as a matter of urgency to reflect the new requirements of the Common Position." Mr Oliver Sprague of Amnesty told the Committee:

The difference in the Common Position is that it says: "There is a requirement now to deny export licences where there is a risk that serious violations of human rights and international humanitarian law might occur." Under the Consolidated Criteria that UK licensing officials currently use, criterion 6 refers to an obligation to only "take into account" the recipient's record on international humanitarian law. That is clearly a weaker standard.<sup>61</sup>

34. Mr Oliver Sprague said that although the Common Position was legally binding, licensing officials use the Consolidated Criteria of 2000 and not the text of the Common Position. He added that adopting the EU Common Position as official guidance would be a simple task under the UK Export Control Act 2002.<sup>62</sup>

Mr Tom Smith, Head of ECO, responded to this point:

...in practical terms there is little or no difference. The main difference highlighted by the NGOs was the question of international humanitarian law under one of the criteria. I checked that specifically with the Foreign Office experts who look at these kinds of cases, and they assured me that they do, in practice, address considerations of international humanitarian law. It is not specifically spelled out in our criteria that that is what happens, but in practice that is what they do.<sup>63</sup>

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59 The text of the relevant extract from the EU Council Common Position is reproduced in full in Annex 2.

60 Ev 50

61 Q 6

62 Q 6

63 Q 88

He added that “there is going to be a revision of the Consolidated Criteria fairly soon and, when we do that, precise alignment of the criteria with the Common Position is, I think, one thing that will be looked at very closely.”<sup>64</sup>

35. In a letter to the Chair, dated 10 February 2011, the FCO Minister, Mr Alistair Burt, states the Common Position was “fully applied in the UK strategic export licensing process” and that, while the wording of the Consolidated Criteria did differ “in some minor respects” to the Common Position, “in practice the licensing decisions we make are fully in accord with the provisions of the Common Position”. He added: “We are currently examining these differences with a view to updating the wording of the Consolidated EU and National Arms Export Licensing Criteria before the end of 2011.”<sup>65</sup>

**36. We conclude that the Government’s timetable of before the end of 2011 by which the wording of the UK’s Consolidated Criteria will be updated to be wholly consistent with the EU Common Position is too protracted. We recommend that the Government sets itself a much shorter timetable in which to conclude this updating and to inform us of the revised timetable in its response to this report. We further conclude that, while the consolidated criteria appear robust their application seems to be less so. We therefore recommend that the Government ensures that the EU Common Position is rigidly and consistently applied.**

### ‘Brass plate’ companies

37. “Brass plate” companies exist in Britain in name only: “They have no presence in the UK other than the brass plate, employ no UK nationals and no part of their activity is actually conducted within the UK.”<sup>66</sup> The issue of ‘brass plate’ companies was raised in CAEC’s 2009 report after the Committees visited Ukraine and were provided with a document containing a list of UK-registered brokers to whom the Ukrainian State Service for Export Control had granted licences for strategic exports.<sup>67</sup> Four of those 12 companies were brass plate companies, though the Government said for legal reasons it was unable to provide information on whether the companies would be prosecuted for any breach of UK strategic export control legislation.<sup>68</sup> In 2010, our predecessor Committees again raised the issue, recommending that the Government “explore ways in which it would be possible to take enforcement action against brass plate companies, including consulting enforcement agencies in other countries on their approach to this problem.”<sup>69</sup>

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64 Q89

65 Ev 42

66 Committees on Arms Export Controls, Government Response to Committee Report, Scrutiny of Arms Exports Controls (2008). Cm 7938, p 6. ‘Brass plate companies’ do not have an operational presence in the UK but do have a UK-registered address.

67 *Scrutiny of Arms Export Controls (2009)*, Session 2008-09, HC (2008-09) 178, paras 20-22

68 *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202 Ev 62-63

69 *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202, para 47

38. In its written submission to this inquiry, the UKWG said that it “remains very concerned about the growing evidence that UK ‘brass plate’ companies are being used to facilitate the unlicensed supply of weapons to countries of concern.”<sup>70</sup>

39. In a letter to the Committees dated 10 February 2011, the FCO Minister, Mr Alistair Burt, said that any company registered in the UK was a UK legal person and subject to UK law, though in practice it could be hard to take enforcement action against a company with no meaningful physical presence in the UK. He went on:

You asked specifically what options the Government was considering to address the particular challenges posed by brass plate companies. The Government's position is that any company with a registered office address in the UK is a UK legal person and therefore subject to UK law. However, it can in practice be difficult to take enforcement action against a company which has no meaningful physical presence in the UK. The Government is exploring the possibility of using the Secretary of State's powers under the Companies Act 2006 to ask the Court to dissolve a company which is operating against the public interest. There would of course need to be an adequate level of evidence against a particular company before such a case could be brought.<sup>71</sup>

**40. We conclude that the Government's current examination of ways to tackle concerns about brass plate UK companies in the UK trading in arms from overseas locations with virtual impunity because of difficulties of enforcement is welcome. We recommend the Government tells us in its response what precise action it will take, including the results of its exploration of the possibility of using powers under the Companies Act to dissolve a company which is operating against the public interest.**

### Pre-licence registration of arms brokers

41. Article 4 of the EU Common Position 2003/468/CFSP on the control of arms brokering does not require the creation of a pre-licence register, but says that in addition to licenses, Member States “*may* also require brokers to obtain a written authorisation to act as brokers, as well as establish a register of arms brokers.”<sup>72</sup> UKWG say that such a register is considered best practice at EU and international level. At the international level, the Wassenaar statement on arms brokering<sup>73</sup> and the guidelines of the Organisation for Security and Co-operation in Europe (OSCE) also encourage states to develop registers.<sup>74</sup>

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70 Ev 51

71 Ev 43

72 EU Council Common Position 2003/468/CFSP, 23 June 2003. Brokering is where someone arranges or negotiates contracts (or agrees to do so) between other parties for trade in arms or components.

73 The Wassenaar Arrangement is presently composed of 40 countries and was established to contribute to regional and international security and stability, by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilising accumulations. Participating States seek, through their national policies, to ensure that transfers of these items do not contribute to the development or enhancement of military capabilities which undermine these goals, and are not diverted to support such capabilities.

74 The OSCE has established the Vienna Document which, among other things, requires the 56 participating states to share information on defence planning and budgets and exchange information on their armed forces, military organisation, manpower and equipment systems. <http://www.osce.org/fsc/74528>

42. Regarding the registration of companies involved in the defence or security sector, the UKWG said the Government needed to “take a wider view of the use of company registration in relation to arms brokering activities and consider tightening the rules governing and oversight over registration and incorporation procedures for companies involved in the defence or security sector.”<sup>75</sup>

43. In the last Parliament, our predecessor Committees repeatedly recommended that the Government establish a pre-licence register of arms brokers.<sup>76</sup> The then Government’s repeated response was that it was not convinced of the benefits of such a register, especially when the electronic system for applying for licences (SPIRE) acted as a de facto register.

44. The last Government also stated that it was “not opposed in principle to the idea of a pre-licensing registration system under which traders can be vetted before they can be registered.”<sup>77</sup> In 2009, the then Government said it would “be happy” to look at whether to introduce a register after it had assessed the effectiveness of other initiatives such as focussing awareness activity on traders and clamping down on those who misuse open licences.<sup>78</sup> In evidence to our predecessor Committees, the then Minister of State, FCO, Mr Ivan Lewis told the Committees the last review had been in 2007 and therefore “it may be worth having a look at it at some point in the near future”.<sup>79</sup> In response to our predecessor Committees’ 2010 recommendation for a pre-licence register, the present Government said:

As things stand, the Government does not believe that the case for a pre-licensing register has been made. It is not clear that the extra layer of bureaucracy involved in a registration system would add to the effectiveness of the UK’s trade controls. However, we will keep this under review in the light of any emerging evidence.<sup>80</sup>

45. During this inquiry, Mr Alistair Burt, the FCO Minister, told us again that the Government did not have a “completely closed mind on this issue” and that “the question is whether it would make any difference to the kind of rogues we are trying to deal with here...”<sup>81</sup>

**46. We recommend that the Government carries out a full review of the case for a pre-licence register of arms brokers and that its review includes a public consultation and is concluded with a Ministerial decision within four months of the start of the consultation.**

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75 Ev 51

76 *Scrutiny of Arms Export Controls (2008)*, Session 2007-08, HC 254, para 36 and para 51; *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202, para 42.

77 Committees on Arms Export Controls, Government Response to Committee Report, *Scrutiny of Arms Exports Controls (2009)* Cm7698, para 7.

78 Committees on Arms Export Controls, Government Response to Committee Report, *Scrutiny of Arms Exports Controls (2009)* Cm7698, para 7

79 Q 76, *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202.

80 Committees on Arms Export Controls, Government Response to Committee Report, *Scrutiny of Arms Exports Controls (2008)*. Cm 7938, p 5.

81 Q 105

## Extra-territorial arms export controls

47. Extra-territorial legislation enables UK persons to be prosecuted in the UK for actions overseas which, if carried out in the UK, would constitute a criminal offence. A substantial body of extra-territorial legislation already exists on the statute book. A summary of the legislation, indicating the Government's successively amended position on the matter, is reproduced as Annex 3. Successive CAEC reports have taken the view that in the matter as important as arms exports extra-territoriality should be expanded to all types of arms exports and that it would be irrational and inconsistent to apply extra-territoriality to some but not to others.

48. The Government's current position on extra-territoriality with regard to arms exports, is set out in secondary legislation, most recently in the Trade in Goods (Categories of Controlled Goods) Order 2008.<sup>82</sup> The current system is based on a three tier categorisation system where full range of controls apply to category A goods, but their scope is reduced for category B and reduced still further for category C. A summary of this system is set out below.

### Box A

**Category A goods** consist of cluster munitions, and specially designed components thereof; and certain paramilitary goods whose export the Government has already banned because of evidence of their use in torture, including electric shock batons, electric-shock belts, leg irons and sting sticks

*Any person within the UK, or a UK person anywhere in the world, is prohibited from supplying or delivering, or doing any act calculated to promote the supply or delivery of, Category A goods without a licence from the Secretary of State. These strict controls reflect the fact that the supply of many of these goods is inherently undesirable. Licences will not normally be granted for any trade in paramilitary goods listed because of evidence of their use in torture. However, as with physical exports of such goods, there will be rare circumstances in which one might be granted, (e.g. for the export of equipment for museum or exhibition display).*

**Category B goods** consist of Small Arms and Light Weapons (including ammunition); Long Range Missiles (LRMs) capable of a range of 300km or more (Note: this includes Unmanned Air Vehicles (UAVs)), Man Portable Air Defence Systems (MANPADS), specially designed production and field test equipment for MANPADS, and specialised training equipment and simulators for MANPADS, and specially designed components for any of the above

*Any person in the UK, or a UK person anywhere in the world, is prohibited from transferring, acquiring or disposing, or arranging or negotiating a contract for the acquisition or disposal of Category B goods without a licence from the Secretary of State. Financing, insuring, advertising and promotion for Category B goods will not be controlled, but active or targeted promotional activities aimed at securing a particular business deal will be.*

**Category C goods** consist of all goods contained within Schedule 2 of the Export Control Order 2008 that do not fall into either of the two categories above, and certain substances for the purpose of riot control or self-protection and related portable dissemination equipment.

*Trading between two countries in Category C goods is only controlled if carried out from within the UK.*

82 Trade in Goods (Categories of Controlled Goods) Order 2008 (SI 2008/1805)

Source: Based on the UK Strategic Export Controls, Annual Report 2009 and the Review of Export Control Legislation (2007) Supplementary Guidance Note on Trade ("Trafficking and Brokering") in Controlled Goods

49. The principle that extra-territoriality should be applied to arms exports was first conceded by the previous government when the Trade in Controlled Goods (Control) Order 2003 was given legal effect.<sup>83</sup> That Order introduced new controls on trade in military equipment between overseas countries (including 'trafficking' and 'brokering').<sup>84</sup> Under the Order any person within the United Kingdom, or a United Kingdom person anywhere in the world was prohibited from supplying or delivering, or doing any act calculated to promote the supply or delivery of, restricted goods without a licence from the Secretary of State. Extra-territorial controls (on the activities of United Kingdom persons anywhere in the world) were applied to trade to any destination in:

- long-range missiles (over 300 km) and their component parts;
- torture equipment the export of which had already been banned by the Government (including, for example, electric shock batons, and leg irons); and
- to any embargoed destination.<sup>85</sup>

50. Our predecessor Committees again recommended in their 2007 and 2008 Reports (and in previous Reports) that the Government should bring forward proposals to extend further extra-territorial provisions of the export control legislation to encompass trade in all items on the Military List.

51. The previous Government subsequently rejected proposals by our predecessor Committees and by NGO and industry stakeholders to further strengthen extra-territorial controls on Category C goods by extending them to UK persons overseas as part of efforts to combat international arms brokering. Instead, the then Government's preferred approach was to consider "targeted extensions to the extra-territorial controls where that is justified by evidence" and to reduce burdens on industry where appropriate using more targeted measures.<sup>86</sup>

52. From 1 October 2008 cluster munitions were added to the list of goods to be treated as Category A goods and Category B controls were widened to include small arms and man-portable air defence systems.<sup>87</sup>

53. The then Trade and Industry Minister, Ian Lucas, told our predecessor Committees in a letter dated 11 February 2010 that Anti-Vehicle Landmines would be added to Category B and therefore their trade by UK persons would be subject to extra-territorial controls.<sup>88</sup>

83 The Order was made under the Export Control Act 2002.

84 The Order covered not only companies or people trading between overseas countries on their own behalf, but also those negotiating contracts and arranging trade and related activities for a fee. The Order did not, however, control transportation, financial services, insurance or advertising—except where extra-territorial controls apply.

85 See Committees on Strategic Export Controls ((Quadripartite Committee), First Joint Report of Session 2002–03, HC 620, Chapter 4

86 *Scrutiny of Arms Export Controls (2010)*, Session 2009–10, HC 202, Ev 46

87 Trade in Goods (Categories of Controlled Goods) Order 2008 (SI 2008/1805) [check]

88 *Scrutiny of Arms Export Controls (2010)*, Session 2009–10, HC 202, Ev 63

Our predecessor Committees had called for this change in their Report of March 2010<sup>89</sup> Additionally, as a first step towards targeted extensions, the letter detailed how NGOs had agreed to

consider whether there are any particular goods that ought to be moved from Category C to Category B, based on the risks associated with trade in those specific items; and to consider whether there are particular countries of concern such that trading Category C goods to those destinations ought to be subject to extra-territorial control.<sup>90</sup>

54. The 2010 CAEC Report recommended the Government report back to its successor Committees by the end of October 2010 on the work undertaken to establish the items or regions where it would be appropriate to extend extra-territorial controls.<sup>91</sup> In its response to that Report, the present Government said that it

believes that extra-territorial controls should be the exception not the rule...it would be disproportionate to try to control all trade in military goods by UK nationals around the world. We are aware that this issue was the subject of long and detailed discussion involving the previous Government, business and interested NGOs. We will keep an open mind, in the light of emerging evidence, on whether the scope of UK extra-territorial trade controls should be amended.<sup>92</sup>

55. Anti-Vehicle Landmines were added to Category B through entry into force of the Export Control (Amendment) (No.2) Order 2010, on 31 August 2010. However no further information regarding discussions on specific list items has been forthcoming. We asked EGAD and the UKWG about progress in this area. Mr David Hayes of EGAD told us they had not had any discussions with the NGOs or Government in this regard.<sup>93</sup> Mr Alistair Burt, the FCO Minister, said that

Discussions [with NGOs] are sort of on an ongoing basis. Obviously, we saw the evidence that Amnesty gave in December to the effect that it wanted to move forward with these specific items. I have been meaning to contact Amnesty and the other NGOs pretty soon in any case to invite further proposals in this area.<sup>94</sup>

56. Mr Sprague of Amnesty said:

We would be keen to re-establish our working with industry to see if we can come up with a list – if it is not the entire military list, there must certainly be a case for

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89 *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202, Ev 63. CAEC also called for anti-vehicle landmines to be added to the list of Category B goods, which prohibits any person in the United Kingdom, or a United Kingdom person anywhere in the world, from transferring, acquiring or disposing, or arranging or negotiating a contract for the acquisition or disposal of Category B goods without a licence from the Secretary of State. Anti-vehicle mines were added to Category B with the entry into force of the Export Control (Amendment) (No. 2) Order 2010 on 31 August 2010.

90 *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202, Ev 63

91 *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202, Para 23

92 Committees on Arms Export Controls, Government Response to Committee Report, *Scrutiny of Arms Exports Controls (2008)*. Cm 7938, p 4,

93 Q 31

94 Q 107

putting things such as vehicles, attack helicopters and combat aircraft into Category B.<sup>95</sup>

57. We conclude it is disappointing that the Government's discussions with the industry and NGOs have not resulted in extra-territorial controls being extended to include specific items in Category C. We recommend that the Government re-engages with NGOs and industry groups on this important policy issue and lets us know of the progress being made in its response to this report. We further conclude, as did our predecessor Committees, that there is no justification for allowing a UK person to conduct arms exports overseas that would be a criminal offence if carried out from the UK. We note that extra-territorial legislation already applies to a number of areas, including sexual offences against children and young people, war crimes, terrorism, torture, bribery and corruption and taxation. We conclude that there is no reason why enforcing extra-territorial controls in connection with arms export controls should be more difficult to enforce than in these areas. We recommend that the Government extends extra-territoriality to all items on the Military List in Category C.

### Military end-use control

58. Military end-use control seeks to limit the ultimate consignee's intended use of the items being exported. Military end-use control already operates in relation to items or technology:

- for use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices or the development, production, maintenance or storage of missiles capable of delivering such weapons;
- for military end-use in an embargoed destination;
- as parts or components of an illegally exported military item.<sup>96</sup>

59. However, the current EU military end-use control does not control complete items that, whilst not strategically controlled, could nevertheless be of significant use to the military in an embargoed destination; neither does it control any exports to non-embargoed destinations, some of which might be of considerable concern.<sup>97</sup> In CAEC's 2010 Report, an additional concern was noted: that the Government intended to implement a system based on lists of goods, but not expanded to include components or unfinished vehicle kits. Examples of items which would not be caught under the Government's proposal, such as electronic components for Improvised Explosive Devices in Iraq and Afghanistan have been provided in previous reports.<sup>98</sup>

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95 Q 24

96 Dual-Use items are goods, software or technology (documents, diagrams etc) which can be used for both civil and military applications. See [www.businesslink.gov.uk](http://www.businesslink.gov.uk) and also Council Regulation (EC) No 428/2009.

97 *The UK strategic export controls annual report 2007*, Cm 7451, p 8

98 HC (2008-09) 178, para 69; *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202, Ev 27.



60. Our predecessor Committees expressed concern about the lack of progress in both their 2009 and 2010 Reports.<sup>99</sup> Up until the publication of the 2010 CAEC Report, the Committees were told that there were continuing discussions within Government and informally with some of the UK's EU partners.<sup>100</sup> However, in response to the Committees' 2010 recommendation that the Government report back to the successor Committees by October 2010, the Government said:

As the Committees will be aware, any change to the Military End-Use Control would require amendment to the EU Dual-Use Regulation – the Regulation was amended in 2009 and is not due to be reviewed until 2012 and so any EU proposal would be unlikely to be adopted quickly.<sup>101</sup>

In a letter to the Chair of 10 February 2011, the Foreign Minister, Alistair Burt, confirmed that on the issue of military end-use controls that “there have been no further discussions on this issue and we have nothing to report to the Committees at this time.”<sup>102</sup>

**61. We conclude it is disappointing that the Government appears not to have continued the previous Government's work and pressed for an expanded Military End-Use Control. We recommend that the Government immediately re-starts work in producing specific policy proposals and to ensure that it has the requisite support for them at EU level in time for the 2012 review of the EU Dual-Use Regulation. We recommend that the Government provides us with an update on how this work is progressing when replying to this report. We further recommend that the Government in the meantime makes the necessary amendments to UK legislation to rectify the present deficiencies in military end use controls.**

## Torture end-use controls

62. Our predecessor Committees praised the Government's 2008 announcement that they would seek to amend the current EU regulations to introduce a ‘torture end-use control’ requiring an exporter to submit an export licence application where they had reason to believe, or had been informed, that the items could be used for capital punishment, torture or other cruel, inhuman or degrading treatment. However, our predecessor Committees concluded that if it was not possible to achieve end-use controls through the EU, the UK should introduce them unilaterally.<sup>103</sup> The Government accepted that it might be necessary to do this.<sup>104</sup>

63. At the time of our predecessor Committees' 2010 Report, the then Government had acknowledged the slow progress but emphasised the Government's preference for EU wide control, noting that there was significant support for the proposal amongst Member

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99 HC (2008-09) 178, para 171; *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202, para 59.

100 *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202, para 58.

101 Committees on Arms Export Controls, Government Response to Committee Report, *Scrutiny of Arms Exports Controls (2008)*. Cm 7938, p 6.

102 Ev 43

103 *Scrutiny of Arms Export Controls (2008)*, Session 2007-08, HC 254, para 38.

104 Committees on Arms Export Controls, Government Response to Committee Report, *Scrutiny of Arms Exports Controls (2009)* Cm7698, p.6;

States.<sup>105</sup> The then FCO Minister, Mr Ivan Lewis, had informed the Committees that the proposal was with the EU Commission Legal Service for their comments. In its Response of October 2010, the present Government updated the CAEC on the progress:

We have sought and obtained comments from the EU Commission Legal Service in respect of the proposed Torture End-Use Control. The comments raised a number of legal difficulties around such a new control; specifically the compatibility with WTO regulations and the new twin track approach to the legislative process post-Lisbon. Subsequent to these comments the European Parliament has debated the implementation of the Torture Regulation and in conclusion has urged the Commission to take forward action on a Torture End-Use Control. We are currently awaiting a response from the Commission as to how they plan to take this forward and specifically whether this will require a complete re-draft of the Regulation.<sup>106</sup>

The situation had not changed as of 10 February 2011 when the FCO Minister, Mr Alistair Burt, wrote to the Chair as follows:

We will continue to monitor progress on this issue and to make whatever interventions are appropriate, at an EU level, to expedite the matter. Should it prove impossible to secure an EU-wide control (and we are certainly not at that point yet), we could consider introducing a control at a national level. We would need to be sure that any proposed national control would be effective.<sup>107</sup>

64. The UKWG expressed disappointment at the delay in progress on torture end-use control, recommending that “if such a catch-all clause is likely to take more than six months, or is rejected by EU partners, it should be introduced unilaterally in the UK level.”<sup>108</sup>

**65. We conclude that the slow pace of progress towards an EU torture end-use control is very disappointing. We recommend that in its response to this report, the Government provides detailed information on the parameters of the torture end-use control it intends to propose to the EU. We further recommend that the Government simultaneously prepares draft UK legislation on this issue for public consultation.**

### Sodium thiopental – UK exports to the US for use in lethal injections

66. In the course of our inquiry, it was reported that a UK company, Dream Pharma, was exporting sodium thiopental, an anaesthetic drug, to the United States for use in capital punishment.<sup>109</sup> The UKWG said that this case highlighted the urgency with which the UK should proceed to secure a torture end-use control: “if the Government had delivered on its 2008 commitment in this area, it would have been able to control exports of sodium

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105 *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202, Ev 61

106 Committees on Arms Export Controls, Government Response to Committee Report, *Scrutiny of Arms Exports Controls (2008)*. Cm 7938, p 7

107 Ev 43

108 Ev 53

109 See, “Vince Cable restricts export of drugs used in US executions”, *The Guardian*, 29 November 2010

thiopental and any other similar drug or items, as soon as it became known that they were being used in executions.”<sup>110</sup> In the event, the Government took more than one month to make an Order under the Export Control Act 2002 during which time Dream Pharma is reported to have exported more shipments of sodium thiopental to the US.<sup>111</sup>

67. We asked the Minister about the speed with which the Government had introduced the emergency Order. He said:

When we looked at the United States, this was a substance that actually was not being used for any purpose other than execution, so it was a relatively straightforward decision.<sup>112</sup>

...we received an allegation and request to ban sodium thiopental at the end of October and on 30 November the ban was in place, so we can and do act promptly.<sup>113</sup>

In response to the allegation that the Government had acted too slowly the BIS Minister, Mr Mark Prisk, said:

Had it been three or four months, I think the allegation might carry greater weight, but we will certainly undertake, as you have requested, to come back to you with the dates, and so on, so that you can see precisely what was undertaken within the department and particularly by the FCO.<sup>114</sup>

68. Mr Oliver Sprague of Amnesty outlined how a torture end-use control would work:

when [the exporter] became aware that sodium thiopental was at risk of being used in death penalty cases in the United States, at that point a torture end-use control provision would have kicked in.<sup>115</sup>

However, Mr Oliver Sprague also noted that the Government’s idea of a torture end-use control is not the same as the NGO’s idea:

From our discussions with the Government, there is a difference of opinion between what we think a torture end-use catch-all control clause is and what they might think it is. We think that it is about risk: it is about reasonable knowledge and where the exporter has—or ought to have—knowledge that their goods might be used to facilitate torture in death penalty cases. It seems that the Government’s view is that the burden of proof in these cases is extremely high, so that the knowledge has to be almost certain for them to think that the torture end-use control would kick in. So it is not a risk-based system; it is a proof-based system.

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110 Ev 53

111 On 24 January 2011, the ‘Today’ programme aired allegations that a consignment of sodium thiopental was taken out of the Acton premises of Dream Pharma and sold to the US in the period between notification of the trade for the purpose of execution and the Order being made  
[http://news.bbc.co.uk/today/hi/today/newsid\\_9371000/9371415.stm](http://news.bbc.co.uk/today/hi/today/newsid_9371000/9371415.stm) See also <http://www.guardian.co.uk/commentisfree/cifamerica/2010/nov/29/capital-punishment-vincentcable>;

112 Q 114

113 Q 115

114 Q 118.

115 Q 25

There is a difference of opinion there that we need to work through, because certainly we have always looked at this as a risk-based system. Where there is credible evidence to suggest that this might happen, a licensing option should kick in—not if it will happen; but if there is reasonable risk that it might. That is a very important distinction.<sup>116</sup>

69. Mr Sprague of Amnesty said the sodium thiopental case highlighted the need for more urgent action than seems possible at the EU-level.<sup>117</sup>

**70. We conclude that the export of sodium thiopental from the UK for use in executions in the United States is deeply disturbing as is the elapse of time between this information becoming public and the Government making an Order under the Export Control Act 2002 during which further shipments were reportedly made. We recommend that the Government in its response to this report sets out what monitoring and procedural changes it has made to prevent any similar avoidance of export controls occurring.**

### **‘No re-export’ clauses and undertakings**

71. On several occasions, our predecessor Committees recommended that a standard licensing clause be inserted in export contracts for goods on the Military List; the clause should prevent re-export of the goods to a destination subject to a UN or EU embargo. Those predecessor Committees have also recommended that the contracts should include a subrogation clause, which would allow the UK Government to stand in the place of the exporter to enforce the contract in the British or foreign courts in the event that the exporter was unwilling or unable to enforce the contract against the buyer.<sup>118</sup>

72. The previous Government long resisted the idea of no re-export clauses, arguing that the existing licensing process was efficient in preventing undesirable re-export of goods as it included an assessment of the risk of re-export by the recipient country, and that enforcement would be very difficult.<sup>119</sup> The then Government also rejected the idea of a subrogation clause.<sup>120</sup>

73. However, on 16 December 2009, the Government advised our predecessor Committees that it had decided to add a no re-export provision to the undertakings that exporters are required to obtain from end users prior to export.<sup>121</sup> The revised undertakings became compulsory from July 2010. The then Minister for Business and Regulatory Reform, Ian Lucas, told our predecessor Committees that

exporters already have to obtain undertakings that the exports will not be used for any WMD purposes, nor be re-exported or otherwise re-sold or transferred if it is

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116 Q 25

117 Q 25

118 *Scrutiny of Arms Export Controls (2008)*, Session 2007-08, HC 254, paras 39-40

119 *The UK strategic export controls annual report 2007*, Cm. 7451, p7; Committees on Arms Export Controls, Government Response to Committee Report, *Scrutiny of Arms Exports Controls (2009)* Cm7698, p6

120 *The UK Strategic Export Controls Annual Report 2007*, Cm. 7451, p8

121 *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202, Ev 50

known or suspected that they are intended or likely to be used for such purposes. In the future, exporters will have to obtain a more general end user undertaking that the exports will not be re-exported or otherwise sold or transferred if they are intended for use in contravention of a UN, OSCE or EU embargo.<sup>122</sup>

74. In addition, the then Government said it was interested in knowing how the no re-export clauses required by other countries export controls worked and how effective they were considered to be by those states.<sup>123</sup> In a letter dated 8 February 2010, the then FCO Minister, Ivan Lewis, told our predecessor Committees:

Although we have information on other Member States' policies in this area, detailed information regarding how these work in practice is not readily available. We have therefore requested that the issue of 'no re-export' provisions be added to the agenda for the next meeting of the EU Working Group on Conventional Arms (COARM) on 26 February. In addition, we have asked EU Member States for a summary of their experience, prior to the next meeting of COARM.<sup>124</sup>

75. He also added that he would update the Committees and provided the information in a letter dated 6 April 2010 to our predecessor Committees:

Our findings show that the decision by the Minister for Business and Regulatory Reform Ian Lucas MP ... to add a no re-export provision to the undertakings which exporters are required to obtain from end users prior to export, brings the UK no re-export provisions into line with the majority of our EU partners.

While some EU Member States (EU MS) such as Italy and Bulgaria do have mandatory no re-export provisions as part of their export control policy, the majority of EU MS include no re-export provision in their end-user assessment or documentation. In most cases EU MS apply these provisions to re-exports to all third countries but in some circumstances EU or NATO member states are excluded. Some EU MS, such as France and Netherlands, have their own permitted country list and differentiate between different types of exports such as "systems" and "components".

Although EU MS include these provisions in their national legal and administrative frameworks, all recognise the difficulties inherent in implementing and enforcing such provisions in cases where provisions on undertakings are breached. This is particularly the case with regard to hard measures such as imposing criminal or civil penalties. Some EU MS therefore use soft measures such as the revocation of licences and/or the inclusion of breaches in future case-by-case assessment decisions.

I believe that these findings demonstrate the UK was right to make a change to end-user undertakings to bring us into line with our EU partners but, based on the

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122 *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202, Ev 50

123 Q 38, HC (2008-09) 178

124 *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202, Ev 60

evidence we have gathered, there does not appear to be a case for the UK going further at this time.<sup>125</sup>

76. In written evidence to us, the UKWG welcomed the Government's decision "to require end-use declarations to prohibit re-export to embargoed destinations without permission" but says it is of

extremely limited scope and likely impact given that UK concerns about the appropriateness of arms transfers extends, rightly, far beyond embargoed destinations....In such cases, *transfers are already prohibited* regardless of whether the UK introduces this new requirement.<sup>126</sup>

77. The UKWG also noted that currently arms transfers are embargoed to 17 states under UK law, and only 9 under UN embargoes. In 2009, the UK denied licences for exports to 89 states not under embargo, including for example Algeria, Israel and Ukraine.<sup>127</sup> Mr Rob Parker of Saferworld was not able to say how the undertakings were working so far, but did provide an explanation of why a contractual clause (as opposed to the undertakings) would assist in making risk assessments:

We see the value of a no re-export clause essentially as raising the bar in terms of the tools that you have available for your risk assessment. It is not so much about on-the-spot enforcement—there is not a lot the UK can do to stop another country exporting UK equipment. It is more about having that on a contractual basis, so that the burden of proof for your risk assessment is less about where someone may have re-exported UK equipment to, but more about the fact that they breached contractual obligations to consult with the UK before they did so.<sup>128</sup>

78. Mr David Wilson of EGAD agreed with Mr Oliver Sprague of Amnesty, saying that they were

happy with the idea that the controls are being introduced contractually so that if something is supplied to a foreign country, a third party of whatever, and that foreign country then breaches the terms under which the items were supplied, then both the company supplying it from the UK and the UK Government would take a strong view on where that puts the recipient Government or country in terms of their ability or willingness to comply with international contract law and common sense.<sup>129</sup>

However Mr Wilson of EGAD also said that the US position, "which is to make it explicit that if a company or country wishes to re-export a specific item, they go back to the US Government for approval to do so. The Americans realise that that places a huge restraint on US trade."<sup>130</sup>

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125 Letter to the then Chairman of the CAEC from FCO Minister, Ivan Lewis, dated 6 April 2010.

126 Ev 52

127 Ev 52

128 Q 29

129 Q 33

130 Q 33

**79. We recommend that the Government provides us with an assessment of how no re-export undertakings are working, and details of the Government's methodology for assessing their effectiveness. We also recommend that the Government provides us with information as to which other countries have no re-export clauses in their contracts, as opposed to in their undertakings, and the effects of such clauses.**

## 6 Enforcement

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80. Our predecessor Committees recommended that information in annual reports on the number of seizures by HM Revenue and Customs and the trend and type of misuses of open licenses should be published in the annual reports on strategic controls.<sup>131</sup> The statistics provided in the 2009 annual report show the number of companies and sites holding open licenses increased from 1,600 in 2007 and 2008, to 1,800 in 2009. The figures also show that the number of enforcement visits undertaken also increased, rising from 675 in 2008 to 836 in 2009. A total of 290 misuses were found and 56 warning letters were issued to Company Directors informing them of the errors which had been found during visits and the steps necessary to ensure compliance at revisit.<sup>132</sup>

**81. We recommend that in its response to this report, the Government explains what action, if any, was taken in the 290 cases of misuse that did not result in a warning letter following the 836 enforcement visits in 2009.**

### Civil penalty regime: compound penalties

82. Our predecessor Committees recommended that the Government implement a civil penalty regime for breaches of strategic export controls.<sup>133</sup> On 31 March, shortly after the 2010 report was published, the then Business Minister Mr Ian Lucas wrote to the CAEC advising that the Government had decided to implement a revised policy for issuing compound penalties instead of introducing a civil penalty regime.<sup>134</sup> The present Government's response to the 2010 Report said

as a result, HMRC put in place a revised compounding policy expanding its use for minor breaches of export controls, in agreement with the Crown Prosecution Service, from 1 April 2010. We are satisfied this delivers the original objectives of a civil penalty regime with the advantages of not requiring new legislation and of being implemented immediately without significant additional resource. The ECO in coordination with HMRC now publishes notifications of recent compound penalty offences on the Department for Business website.<sup>135</sup>

83. The BIS website, which publishes a list of cases since 2009 where compound penalties have been made, says:

Compounding is the means by which HMRC can offer the exporter the chance to settle a case which would justify being referred to the CPS for prosecution, therefore saving the taxpayer and company time and legal fees.

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131 *Scrutiny of Arms Export Controls (2008)*, Session 2007-08, HC 254, paras 50 and 57; *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202, para 92.

132 *Strategic Export Controls*, 2009 Annual Report, HC 182, para 1.6

133 *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202, para 96.

134 According to the BIS website: "Compounding is the means by which HMRC can offer the exporter the chance to settle a case which would justify being referred to the Crown Prosecution Service for prosecution, therefore saving the taxpayer and company time and legal fees."

135 *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202, para 16



Compounding should not be viewed as a light option as there is no maximum compound penalty limit. The largest fine currently awarded for an export control related offence was for £575,000 in 2009.<sup>136</sup>

84. In evidence to the Committees, EGAD called the system of compound penalties “completely opaque” and added that EGAD had “absolutely no idea” what criteria were used for imposing the penalty or how the penalties were arrived at.<sup>137</sup> EGAD went on to complain of a lack of “give-and-take or feedback” so exporters were left unaware of their non-compliance until a penalty was issued.<sup>138</sup> When asked how the system was working, the BIS Minister, Mr Mark Prisk, said: “it is early days...but we have seen a number of cases brought with a range of fines, one, as I understand it, in the region of £500,000. So, so far so good.”<sup>139</sup> As regards the uncertainty for determining the size of civil penalties, the Minister said:

we hear a variety of opinions on that, ... but if that is their concern, it’s certainly my assurance to make sure that the people who should be aware are, and I will certainly be establishing whether in fact that is followed across Government.<sup>140</sup>

85. We also asked the BIS Minister, Mr Mark Prisk, whether he thought it appropriate to make the names of individuals and companies who had breached arms export controls public, along with the information regarding the size of their compound penalty. The Minister said he did not think names should be released.<sup>141</sup>

**86. We conclude that it is too early to assess fully the effectiveness of the compound penalty regime since it has been in operation for barely one year. However, we further conclude that even at this early stage the penalty system seems to lack clarity and therefore fairness. We recommend that the Government considers the industry’s concerns and make public the criteria used for imposing compound penalties and how the amounts of such penalties are calculated.**

**87. We also recommend that as compound penalties are applied to cases which would justify being referred to the Crown Prosecution Service for consideration for prosecution, the Government holds open the possibility of making public the names of companies and individuals who have breached arms exports controls sufficiently seriously to attract compound penalties.**

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136 <http://www.bis.gov.uk/policies/export-control-organisation/eco-press-prosecutions/compound-penalties>

137 Q 60

138 Q 61

139 Q 92

140 Q 98

141 Q 95-97

## 7 The UK Government and the Arms Trade Treaty

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88. The progress towards an international Arms Trade Treaty (ATT) was of interest to our predecessor Committees. The first two preparatory committees (PrepComs), which looked at recommendations to the Diplomatic Conference on the contents of the treaty, took place from 12-23 July 2010. The dates of the subsequent PrepComs are: 28 February – 4 March 2011 and 11-15 July 2011. The four-week long final Diplomatic Conference will be in 2012. During our inquiry, we considered several aspects of the ATT negotiations and the particular concerns raised by the NGOs and the industry.<sup>142</sup>

### The UK Government's role in negotiations

89. Our predecessor Committees commended the last Government for their support of an ATT and the leadership role played by the UK over a number of years.<sup>143</sup> However, in evidence from the NGOs we heard that the Coalition Government appeared to have stopped performing that leadership role. Mr Martin Butcher of Oxfam said:

It does seem that the new Government have pulled back somewhat. There is a difference in positioning on the ATT, and the leadership role appears to be waning. There is a reluctance to commit, for example, to specific aspects of treaty content. In the strategic defence and security review, and in recent responses to parliamentary questions, the Government have said that they are supportive of the ATT, but not that they are leading. During the July PrepComs, some states that looked to the UK for leadership over the past few years have been concerned that in contrast to previous ATT discussions within the UN, the UK has been taking a back seat. It was very noticeable, for example, at the first committee that the UK was very reluctant to make a statement at all. There is an international perception that the UK is stepping back from leadership. Because the leadership has been so marked over the past four years, that shift is being interpreted as a change in the level of support for the treaty.<sup>144</sup>

Mr Rob Parker of Saferworld, added:

...in addition to the lower profile, the content of the [UK's] statements is also less around the need for the treaty to be based on human rights and humanitarian issues and perhaps more hinting at the idea that it's a trade agreement, as opposed to something more.<sup>145</sup>

90. Mr Martin Butcher of Oxfam also feared an absence of leadership of the UK's negotiating team if the Geneva-based post of Ambassador for Multilateral Arms Control and Disarmament was removed. He said:

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<sup>142</sup> See for example Q47 of EGAD Written Evidence

<sup>143</sup> E.g. HC (2008-09) 178, para 122

<sup>144</sup> Q 16

<sup>145</sup> Q 17

We do have significant concerns; there seems to be a strong possibility that when Ambassador Duncan leaves his role at some point in the first half of next year [2011], he won't be replaced, and that role of arms control, non-proliferation and disarmament ambassador will be at least suspended, if not done away with. We have strong concerns that that would lead to a lack of co-ordination of British policy and a lack of ability to input strongly into the process.<sup>146</sup>

91. The NGOs also questioned the adequacy of the level of specialist resources being deployed during the negotiations and of the instructions given to the relevant personnel. Mr Rob Parker of Saferworld suggested the UK had reduced its support for the ATT:

...it might also be a case of conflicting priorities. At crucial points in the process, the nuclear non-proliferation treaty was running at a similar time. Some of the personnel were pulled in different directions.<sup>147</sup>

And:

I also wonder if it's an issue of prioritisation, in terms of the resources put into thinking through what's coming up. It feels that in some respects, the UK Government is on the back foot as opposed to the front foot in terms of the issue of consensus, thinking through scenarios of how to build support among reluctant states and actually taking this issue by the scruff of the neck, if you like, and being proactive as opposed to reacting to things.<sup>148</sup>

92. The NGOs also expressed concern about the tight timescale for the preparatory stage, and the intensive, specialist resources this would require of the UK's negotiating team.<sup>149</sup> They told us that the timescale was unlikely to "slip," but rather the "quality of the product" might suffer.<sup>150</sup> Mr Rob Parker of Saferworld said:

Our concern is that unless progressive states, like the UK, start putting the time into developing draft treaty text and applying that at the preparatory committees over the next year or so, very soon the negotiating conference is going to be upon us and there will be little chance of getting something with teeth at that conference. That's where the leadership role comes back in, because we would very much welcome stronger leadership on the drafting of treaty text, the running through of scenarios and ideas, and producing a strategy on how to bring on board some of the more reluctant states in the very short time that we have.<sup>151</sup>

93. The FCO Minister, Mr Alistair Burt, in a letter to the Chair of 10 February 2011 stated:

The Government is fully committed to securing a robust and effective Arms Trade Treaty (ATT) and hence is keen to ensure sufficient resources are in place for the

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146 Q 18

147 Q 17

148 Q 18

149 Q 35. See also *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202, p44.

150 Q 20

151 Q 20

negotiation of the Treaty. I can confirm that multilateral arms control and disarmament continue to be a high priority for FCO.

Following an internal reorganisation to our multilateral diplomatic posts in Switzerland, the responsibilities currently held by the Ambassador for Multilateral Arms Control and Disarmament have been redistributed to ensure that FCO resources are best placed to service both Geneva and non-Geneva based work. When the current ambassador's term ends in July 2011, we will continue to retain a dedicated ambassador for the arms control and disarmament work that takes place in Geneva via the post of UK Permanent Representative to the Conference on Disarmament. However we have decided that leadership of the UK delegation to the ATT negotiations, which take place elsewhere, should revert to the head of Counter Proliferation Department at the Foreign and Commonwealth Office in London who will report to me as the Minister with lead responsibility. Hence I can confirm that leadership of ATT work will continue at the same level of seniority.

We will also continue to operate as a cross- government team under an FCO lead, including experts from BIS, MOD, DFID and others. This cross government team is proactively engaged in our efforts to achieve a robust and effective ATT, and continues to consult with, and draw in expertise from, NGOs and industry. This consultation, which is at both a strategic and technical level, greatly adds value to UK efforts on ATT by enabling us to benefit from the expertise of others outside government, and to work in a co-ordinated way as we approach the critical UN Negotiating Conference on an ATT in 2012.<sup>152</sup>

**94. We conclude that the Government's statement that it is fully committed to securing a robust and effective Arms Trade Treaty is to be welcomed. We look to the Government to deliver on its commitment.**

### **A strong ATT or one based on consensus?**

95. Our predecessor Committees considered the relative merits of a strong ATT and one which obtained the widest possible support.<sup>153</sup> In its 2010 report, our predecessor Committees noted that finding a consensus would be difficult.<sup>154</sup> In written evidence to this inquiry, the NGOs said:

- Comprehensive scope: cover all types of weapons transfer, and all types of conventional arms, ammunition, parts and components. It is of great concern that the US is currently opposed to the inclusion of ammunition.
- Robust criteria. the parameters of an ATT must include tough criteria around international human rights and humanitarian law and socio-economic development, which need to be translated into strong text (“a transfer shall not be authorised if...”).

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152 Ev 41

153 For example, see CAEC, *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202 pp42-44; and CAEC, *Scrutiny of Arms Export Controls (2009)*, Session 2008-09, HC 178 pp43-44.

154 CAEC, *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202 p43

Some states are already arguing for language (“take into account”) which would render these criteria extremely weak.

— A transparent and effective Implementation mechanism.<sup>155</sup>

96. Mr Sprague of Amnesty told us the UK and US Governments differed on the scope of the Treaty. He said that the NGOs “remain concerned that the US will want to remove ammunition from the scope of the arms trade treaty...” whereas the UK position was still in favour of including ammunition in the treaty.<sup>156</sup>

97. Transparency International (TI) said there was the need for an independent anti-corruption mechanism in any ATT. TI added:

without anti-corruption provisions in the ATT, bringing arms trading under closer control will create new incentives and opportunities for those who, either as suppliers or customers, would want to avoid or circumvent those proper controls. It will, in short, offer new opportunities for corruption.<sup>157</sup>

98. TI agreed that “a strong anti-corruption provision in the ATT would not create additional burdens for UK industry” as existing laws, including the new Bribery Act 2010, already applied to the UK arms industry:

A strong anti-corruption mechanism in the ATT will encourage other exporting countries to put in place similar measurements and legislations, ultimately creating a level playing field for UK firms who may currently be somewhat disadvantaged by other countries.<sup>158</sup>

99. At the first two PrepComs, the need for an anti-corruption mechanism was emphasised by many participants, including the EU, and ‘corruption’ was included in the Chair’s Draft Paper.<sup>159</sup> TI argues that a robust ATT would have ‘corruption’ as a stand-alone criterion/parameter as the “inclusion of corruption within only one parameter risks ignoring the important cross-cutting role that corruption plays...”<sup>160</sup> As regards the tension between a strong and a consensus-based treaty, Mr Rob Parker of Saferworld said “I think we would agree that if everyone is happy to sign up to it, the chances are it’s not really going to take us much further.”<sup>161</sup> The previous Government had been committed to a “robust” ATT, even at the price of it not being consensus-based. For example, in its Response to our predecessor Committees’ 2009 Report, the Government agreed priority should be given to securing the strongest possible treaty rather than one based on consensus.<sup>162</sup>

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155 Ev 49

156 Q 155

157 Ev 46

158 Ev 46

159 Ev 46

160 Ev 47

161 Q 20

162 HC (2008-09) HC 178, para 122; Committees on Arms Export Controls, Government Response to Committee Report, *Scrutiny of Arms Exports Controls (2009)* Cm7698, p10

100. Our predecessor Committees made the same recommendation in their 2010 report. However, in its response to that report, the Coalition Government appeared to announce a shift in policy:

As for the Committee's conclusion, the Government will continue to strive for consensus to ensure that the correct balance is struck between the strongest possible treaty and the widest participation of states.<sup>163</sup>

101. In oral evidence before us, the FCO Minister, Mr Alistair Burt, discussed the balance further, saying he considered a "robust" treaty to be one that included key players:

If by consensus we mean that we want to ensure that it is a robust treaty because the key players are a part of it, that might in a way give you a sense, Mr Gapes, of squaring the difference. To have a treaty that doesn't have the major players involved and part of it will negate its value and all the work that's been done. Equally, to have something that isn't worth the paper it's written on won't do the job...

...I think at present, our position that we should strive to get both a robust and a consensual treaty is a good one. I don't think we've yet reached the point of saying, "We now have to decide between these two objectives," but certainly, if the treaty lacks the support of key and important players, then I'm not sure that our work won't have been in vain.<sup>164</sup>

**102. We conclude that the Government seems to have adopted a different policy from its predecessor; appearing to be prepared to weaken the Arms Trade Treaty in order to try to ensure that key arms exporting countries become signatories. We recommend that the Government continues to try to achieve the strongest possible Treaty, including exports of ammunition, with the maximum number of key countries including the United States, as signatories, but should not adopt a strict consensus or lowest common denominator approach which is likely to result in an Arms Trade Treaty being ineffectual.**

**103. We further recommend that the Government, in its response to this report, sets out its policy on including anti-corruption provisions in the Arms Trade Treaty with details of the provisions it would wish to see incorporated.**

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163 Committees on Arms Export Controls, Government Response to Committee Report, *Scrutiny of Arms Exports Controls (2008)*. Cm 7938, p11.

164 Q 132

## 8 Sustainable development—Criterion 8

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104. Criterion 8 of the Consolidated EU and National Arms Export Licensing Criteria as set out in Annex 1 to this report is:

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.

105. Our predecessor Committees considered how Criterion 8 of the Consolidated EU and National Arms Export Licensing Criteria was being applied by the UK Government when licence applications were being assessed, and the inconsistencies between different EU states' applications.<sup>165</sup> A seminar on the application of Criterion 8 within the EU was held in Brussels on 24 November 2010, hosted by the Dutch government.<sup>166</sup> The FCO Minister, Mr Alistair Burt, told us the seminar had been successful in its objective of sharing best practice amongst member states:

It was recognised that the criterion is one of the most difficult and complex of all the criteria to apply, and it was agreed that we would benefit from further discussion on the issue, particularly to ensure uniformity of applications. We will be returning to the issue.<sup>167</sup>

Regarding the UK's low use of Criterion 8, the FCO Minister, Mr Alistair Burt, said:

... our experience is that, in applications to the United Kingdom, a number of cases where ultimately criterion 8 might be applied are stopped from getting that far because, in the discussions taken forward, it becomes clear that a licence is not going to be issued. Accordingly, we rarely have to apply criterion 8 as the final decision maker.<sup>168</sup>

106. According to Oxfam, Pakistan's estimated combined budget for health, social protection and the environment for 2010-11 is €77 million, while the EU arms exports to Pakistan in 2008 were €685 million.<sup>169</sup> This example is presented as one case of how arms exports can affect the Government spending priorities of a developing country. We asked the FCO Minister, Mr Alistair Burt, about this. He responded:

Your concern about the potential risk of these exports, bearing in mind the development needs of the country, are very real and we share them. That is why the criteria are there, but there are also other factors to consider. In highlighting

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165 CAEC, *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202

166 Oxfam and DFID provided us with copies of their presentations.

167 Q 126

168 Q 127

169 Oxfam in November 2010 at an EU Seminar:

Pakistan, we are discussing a country with so many difficult issues, including security and protection. That is just an example of how difficult it can actually be.<sup>170</sup>

**107. We conclude that deciding whether to approve arms exports to developing countries in relation to Criterion 8 can be difficult given that other policy considerations may need to be taken into account. However, we recommend that in its response to this report, the Government provides a full statement of the methodology it uses in relation to Criterion 8 in deciding whether or not a specific arms export licence should be approved.**



## 9 Combating bribery and corruption

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108. The 2008 CAEC Report examined allegations of corruption in defence contracts in the 1970s and the challenges of bribery and corruption in the present day.<sup>171</sup> In evidence to that inquiry, and again to this inquiry, Transparency International (TI) highlighted findings of the US Department of Commerce that the defence sector accounted for 50% of all bribery allegations in 1994-1999 despite accounting for less than 1% of the world trade.<sup>172</sup> The CAEC's 2010 Report stated that the UK ranked 17<sup>th</sup> in the TI table of least corrupt countries in the world.<sup>173</sup> The International Development Committee, one of our constituent Committees, has recently launched an inquiry into financial crimes and development.<sup>174</sup>

### A specific Criterion

109. Mr Rob Parker of Saferworld told us that corruption was linked to Criterion 8 on sustainable development and therefore could be considered within that Criterion when considering licensing applications.<sup>175</sup> Our predecessor Committees in 2008 and 2010 made a series of recommendations relating to:

- the application of the Criterion 8 methodology to test whether the contract behind a licence application is free from bribery and corruption;
- the creation of a requirement for those seeking export licences to produce a declaration that the export contract has not been obtained through bribery or corruption;
- the revocation of licences where an exporter had been convicted of corruption; and
- the amendment of the National Export Licensing Criteria to make conviction for corruption by an exporter grounds for refusing an export licence.<sup>176</sup>

110. During this inquiry, TI put forward two reasons why consideration of corruption via Criterion 8 would be insufficient. First, corruption was a 'cross-cutting risk' affecting all eight criteria of the Common Position. The User Guide to European Council Common Position defining common rules governing the controls of exports of military technology and equipment considered best practice to include assessing corruption risks for Criteria 2, 5, and 7. TI said:

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171 *Scrutiny of Arms Export Controls (2008)*, Session 2007-08, HC 254, Chapters 6 and 7

172 US Department of Commerce Trade Promotion Co-ordinating Committee Report (March 2000)

173 CAEC, *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202, para 102

174 The terms of reference are available on the International Development Committee website..

175 Q 12- Q 13

176 CAEC, *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202, para 106; *Scrutiny of Arms Export Controls (2008)*, Session 2007-08, HC 254, para 112

Corruption facilitates the diversion of arms (Criterion 7) to regions for which UN sanctions are in place (Criterion 1) and where they threaten international humanitarian as well as human rights law (Criteria 6 and 2), hence posing a serious risk to “regional peace, security, and stability” (Criterion 4) and facilitating “the existence of tensions or armed conflicts” (Criterion 3). In the past, this has often also meant that states have not “achieve[d] their legitimate needs of security and defence with the least diversion for armaments of human and economic resources” (Criterion 8).<sup>177</sup>

111. Second, TI pointed out that corruption in the global arms trade is not confined to those countries which qualify for consideration under the sustainable development-focused Criterion 8.<sup>178</sup>

112. TI also questioned the way the UK used Criterion 8 (Sustainable Development) in relation to corruption. The Government’s Annual Report on Strategic Exports 2009 does not mention bribery or corruption at all, and that no Standard Individual Export Licence (SIEL) and Standard Individual Trade Control Licence (SITCL) applications have been refused or revoked because of Criterion 8 in 2009, 2008 or 2007.<sup>179</sup> TI recommends that Member States agree a new 9<sup>th</sup> criterion whereby prospective arms transfers would be refused where there was a clear risk that corrupt practices might exist.<sup>180</sup>

113. Other NGOs were supportive of such a proposal, but questioned whether it was likely to happen.<sup>181</sup> Mr Martin Butcher of Oxfam, said:

Clearly, within the EU, having this in some way included in the common position would be the best way of dealing with the issue of corruption. Whether it is possible to do that by an entirely new criterion, as Rob has said, or whether it needs including in one of the existing criteria is open to debate.<sup>182</sup>

114. In response to the suggestion of a separate Criterion 9, specific to corruption, the BIS Minister, Mr Mark Prisk, said:

I don’t think it’s something that we would be minded to support, and I doubt whether it would be successful. I think on the whole we’ve got to distinguish here between dealing with the risks of an unacceptable use or an illegal use, and how a contract is secured, and they’re actually two distinct things, so I think we shouldn’t confuse in law those two different elements. My instinct is that this is something that is unlikely to progress, and it’s not something that we would support.<sup>183</sup>

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177 Ev 45

178 Ev 45

179 *Strategic Export Controls*, 2009 Annual Report, HC 182, p23; *Strategic Export Controls*, 2008 Annual Report, p23; *Strategic Export Controls*, 2007 Annual Report, p27.

180 Ev 45

181 For example, see Q 23

182 Q 23

183 Q 119

When pushed further on where in the Common Position, corruption considerations would be found, the BIS Minister, Mr Mark Prisk, said:

That depends on whether you're talking about, as I have said, the way in which a deal is secured. The questions in my mind are, "What is the use we're dealing with? Who is the organisation we're dealing with? What are the country and region? And what are the potential risks?" I regard those as being distinct from the specific issue of corruption. I think once we start confusing those two as being one and the same, there's a danger of actually losing our focus on making sure that we're involved in responsible and legitimate exports.<sup>184</sup>

**115. We conclude that the Government has failed to demonstrate satisfactorily whether, and if so how, it assesses the risk that individual arms exports may be linked to bribery and corruption during the licence approval process. We recommend that the Government sets out fully in its response to this Report whether such an assessment is made for all arms export licence applications, and if so how.**

**116. We further recommend that, given that Criterion 8 applies only to developing countries and that bribery and corruption are not confined to such countries, the Government gives full consideration to proposing the insertion of an additional Criterion into the EU Common Position on arms exports obliging Member States to assess the risk of bribery and corruption before approving an arms export licence to any country.**

## 10 Countries of Concern

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### China

117. The EU arms embargo to China was adopted by the European Council on 27 June 1989 in response to the events in Tiananmen Square in June 1989.<sup>185</sup> The arms embargo, was adopted in the form of a European Council Declaration (or Common Policy) prior to the creation of the EU's Common Foreign and Security Policy (CFSP) and so is not legally binding on member states. Our predecessor Committees examined the arms embargo in detail and concluded that it was of political importance in that it provided a strong message in relation to the promotion of human rights in China.<sup>186</sup>

118. The potential lifting of the embargo was first discussed at an EU-level in 2004, when both France and Germany argued that the reasons for first imposing the embargo (chiefly Tiananmen Square) were out-dated. The 2004 European Council “reaffirmed the political will to continue to work towards lifting the arms embargo” and recalled the importance of the EU Code of Conduct on Arms Exports in particular criteria regarding human rights, stability and security in the region and the national security of friendly and allied countries in preventing an increase in arms sales to China from EU member states.<sup>187</sup> Some in the EU, led by France and Spain, have again called for the lifting of the embargo.<sup>188</sup>

119. During this inquiry, we asked the Government for its view on maintaining the arms embargo with China. The FCO Minister, Mr Alistair Burt, told us that “the position of the British Government is that they fully support the embargo, which is intended to continue.”<sup>189</sup>

**120. We recommend that in view of the continuing serious human rights violations taking place in China, the Government maintains its position of fully supporting the retention of the EU arms embargo on China.**

### Israel

121. The previous CAEC's report, which was published in March 2010, included the following recommendation:

We repeat our conclusion that it is regrettable that arms exports to Israel were almost certainly used in Operation Cast Lead. This is in direct contravention to the UK Government's policy that UK arms exports to Israel should not be used in the Occupied Territories. We further conclude that the revoking of five UK arms exports licences to Israel since Cast Lead is welcome, but that broader lessons must be

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185 EU Declaration on China Arms embargo - European Council: Madrid, 26-27 June 1989

186 CAEC, *Scrutiny of Arms Export Controls (2010)*, Session 2009-10, HC 202

187 Brussels European Council, 16/17 December 2004, Presidency Conclusions

188 For example, see “The EU and arms for China”, *The Economist* 1 February 2010

189 Q 178

learned from the post conflict review to ensure that UK arms exports to Israel are not used in the Occupied Territories in future. (Paragraph 141)

We recommend that the Government, in its Response to this Report, set out clearly the longer term lessons learnt post Operation Cast Lead and how they will impact in practice on the issuing of future licences for arms exports to Israel. (Paragraph 142).<sup>190</sup>

122. Surprisingly, the present Government's response to that report stated: "The UK Government does not have a policy that UK arms exports to Israel should not be used in the OPTs [Occupied Palestinian Territories]"<sup>191</sup> We asked the Foreign Office Minister, Mr Alistair Burt, to clarify whether the UK's policy that arms exports to Israel could not be used in the occupied territories had changed. He told us:

The use of arms in a specific area or a specific territory is not part of the criteria. What the criteria seek to make clear is that it's the end use of the arms which is the determining factor.

And he added:

The criterion as drawn, because it allows us to look at past behaviour and to take into account what has happened, is sufficiently robust to ensure that, in a situation where arms may have been used in the occupied territories, it would be highly likely that the criterion that affects the application would ensure that there probably would not be an export licence granted. What we seek to make clear is that it isn't about the territory, at the end of the day; it's the end use. The criterion is sufficiently robust to cover any external factor like the territory in which arms might be used; and that would always be covered by the criterion. Our policy has not changed from the previous Government's in relation to the use of arms in the occupied territories, or the criteria that would be applied in making a decision about whether or not an arms export to Israel would be likely to end up being used there.<sup>192</sup>

123. When asked about monitoring the situation on the ground, the FCO Minister, Mr Alistair Burt, said:

In the current process, as you will know as well as most, there is intense scrutiny of what happens on the ground in the occupied territories, and rightly so. That information feeds back to posts. If information comes in that indicates that a licence criterion has been breached, it would result in an inquiry that would allow for the revocation of a licence. I do not believe it is a process that, at present, we need to be more proactive on than is already the case. There is an extensive and, as I indicated, quite proper network of scrutiny of what happens in the occupied territories to give us the information we need. It is important for the Committee[s] to know that we

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190 Committees on Arms Export Controls, First Joint Report of Session 2009-10, Scrutiny of Arms Export Controls (2010): UK Strategic Export Controls Annual Report 2008, Quarterly Reports for 2009, licensing policy and review of export control legislation, HC 202

191 Government Response to Committees on Arms Export Controls, First Joint Report of Session 2009-10, Scrutiny of Arms Export Controls (2010): UK Strategic Export Controls Annual Report 2008, Quarterly Reports for 2009, licensing policy and review of export control legislation, HC 189

would take exactly the same view of breach of criteria as that taken in the past, because, again, the criteria allow for that. Where information is found that shows that there has been a breach of the criteria, existing licences can be revoked and that feeds into information on new licences.<sup>193</sup>

124. We note that the previous Government obtained a categorical assurance from the Israeli Government, in writing, dated 29 November 2000, which included: “No UK originated equipment nor any UK originated systems/sub-systems/components are used as part of the Israel Defence Force’s activities in the Territories”.<sup>194</sup> In a letter to the Chair of 10 February 2011, the FCO Minister, Mr Alistair Burt, says:

I can confirm that UK policy on the export of controlled goods and equipment to Israel has not changed since the Coalition Government took office. All export licence applications to Israel are considered on a case- by- case basis against the Consolidated EU and National Export Licensing Criteria.<sup>195</sup>

It is far from clear how this assurance can be reconciled with the Government’s response referred to in paragraph 122 above.

125. We conclude that the present Government’s policy on exporting arms or components of arms that could be used in the Occupied Palestinian Territories appears to be confused. Given that the Government in its response to the previous Committees’ last Report stated: “That the UK Government does not have a policy that UK arms exports to Israel should not be used in the Occupied Palestinian Territories”, we recommend that the Government re-states what specific arms or components of arms it is willing to approve for export to Israel that could be used in the Occupied Palestinian Territories. We further recommend that if the Government is unable to identify any such arms or components of arms, it formally withdraws the statement of policy quoted in this paragraph.

## Saudi Arabia and Yemen

126. In its submission, UKWG expressed concern at the possibility that UK-supplied weapons were used by Saudi armed forces in attacking Northern Yemen in 2009/10. UKWG told us:

Eyewitness testimony, including photographic evidence, clearly conveys a scene of near total devastation, with sustained and intensive bombardment by Saudi Arabian planes reported to have killed hundreds of people, caused widespread damage to homes and infrastructure and displaced up to 280,000 people.<sup>196</sup>

127. UKWG went on to say that Amnesty International was

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193 Q 163

194 See letter from the Israeli Government to the Foreign and Commonwealth Office on Nov. 29, 2000,

195 Ev 41

196 Ev 55

particularly concerned that two days after publication of its findings, a new Open General Export License (Military Goods: Collaborative Project Typhoon) entered into force, allowing inter alia for the maintenance of Typhoon combat aircraft in Saudi Arabia. It is of serious concern that such a permissive general licence with minimal scrutiny should be available for end-use in Saudi Arabia....Current UK arms export control policy is designed to prohibit the supply of military equipment where there is a clear risk that such equipment will be used in human rights violations or violations of international law, the kind of attacks that appear to have taken place in Yemen.<sup>197</sup>

128. In his letter to the Chair of 10 February 2011, the FCO Minister, Mr Alistair Burt, said:

It is clear from the reports we have received that Royal Saudi Air Force Tornado aircraft, supplied by the UK, were used during the recent border conflict in 2009.<sup>198</sup>

129. In addition and according to information provided to us by the Government in 2010 in response to our questions on licences in the first quarter 2010 report, UK licences granted to Saudi Arabia included aircraft accessories for Tornado aircraft. We asked the FCO Minister, Mr Alistair Burt about the allegations of illegal acts against Yemen, specifically the risk assessments the Government had made when determining whether to provide licences for arms exports to Saudi Arabia. The Minister told us that the “robustness of the criteria” remained the guide and that all licence applications were determined “on a case-by-case basis”.<sup>199</sup> We also asked what view the FCO had taken of the allegations of illegal acts against Yemen at the time the licensing decisions were being approved and whether the FCO had carried out a thorough risk assessment before granting these licence applications. In response the FCO Minister, Mr Alistair Burt said:

We do believe that Saudi Arabia had a legitimate right to respond proportionately to incursions into its territory resulting from the conflict between the Houthi rebels and the Government of Yemen. The Government followed the situation closely at the time and, after consulting a number of information sources, concluded that the Saudi response and the use of British-supplied military equipment was not inconsistent with the export licensing criteria. So, the short answer to your question is that we use the same criteria as we do for everyone else, which take into account past behaviour, in considering any new licences.<sup>200</sup>

130. We note that military operations ended during January 2010 and have not resumed since February when a ceasefire was agreed. There are also reports that Houthi forces have withdrawn from Saudi territory. However, given the fragility of the situation, there is some risk that the conflict may flare up again in the region. There is currently a serious crisis in Bahrain where a “State of National Safety” has been declared. Saudi and other Gulf Co-operation Council forces entered Bahrain in March. **We recommend that the**

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197 Ev 55

198 Ev42

199 Q166

200 Q166

Government keeps its policy on approving arm exports to Saudi Arabia under review in the light of the specific allegations surrounding the 2009-10 conflict in Yemen and current events in Yemen, Bahrain, and the wider region.

### Arms exports to authoritarian regimes in North Africa, Middle East and worldwide

131. The Government's policy on arms exports to a considerable number of individual countries, and on making arms exports generally a high Government priority, has been brought sharply into focus by the uprisings and demonstrations in recent weeks in North Africa and the Middle East, and the armed response made to them which has resulted in the death or injury of civilians.

132. The government makes public on the BIS and FCO websites a quarterly list of those export licences it has granted. It also provides to the CAEC more detailed information on a confidential basis. Tables using information from the BIS and FCO websites of selected arms export licence approvals to countries in North Africa and the Middle east of arms and components of arms that could be used for internal repression are set out in Annex 4.

133. The Government's policy on arms exports in relation to internal repression was clearly stated by the FCO Minister, Mr Alistair Burt,

The longstanding British position is clear. We will not issue licences where we judge there is a clear risk the proposed export might provoke or prolong regional or internal conflicts or which might be used to facilitate internal repression.<sup>201</sup>

134. Since the uprisings and demonstrations began, the Government has been vigorously backpedalling on its arms exports to North Africa and the Middle East, and up to the time this report was concluded has taken the following steps:

- On 17 February, the FCO Minister, Mr Alistair Burt, announced that all arms export licences to Bahrain were being reviewed.<sup>202</sup>
- On 18 February, the FCO Minister, Mr Alistair Burt, announced that a review of arms exports licences to the wider region, including Yemen was on-going.<sup>203</sup>
- On 26 February the UK Government supported the United Nations Security Council Resolution (1970) imposing an arms embargo on Libya<sup>204</sup>
- On 28 February the UK Government supported a European Council Decision to impose an arms embargo on Libya.<sup>205</sup>

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201 "Foreign Office Minister comments on review of arms exports" FCO press notice, 18 February 2011

202 "Foreign Office Minister comments on review of arms exports" FCO press notice, 18 February 2011

203 "Foreign Office Minister comments on review of arms exports" FCO press notice, 18 February 2011

204 UN Security Council Resolution on Libya of 26 February (UNSCR 1970/2011)

205 Details are available in Council Decision 2011/137/CFSP (published in the Official Journal of the European Union L58, 3.3.2011, p53). The Council Decision was given legal force by Council Regulation on 2 March 2011.



In answer to a Parliamentary Question asking how many arms export licences had so far been revoked as a result of the Government's review, and to which countries, the BIS Minister, Mr Mark Prisk, replied:

As at 3 pm on 3 March 2011 the following export licences have been revoked under this review:

#### Tunisia

One Standard Individual Export Licence (SIEL) was revoked on 27 January and Tunisia was removed as a permitted destination from one Open Individual Export Licence (OIEL) on 28 January.

#### Egypt

36 SIELs were revoked between 7 February and 11 February and Egypt was removed as a permitted destination from eight OIELs between 10 February and 1 March.

#### Libya

62 SIELs were revoked between 18 February and 3 March and Libya was removed as a permitted destination from nine OIELs on 23 February.

#### Bahrain

23 SIELs were revoked on 18 February and Bahrain was removed as a permitted destination from 16 OIELs between 18 February and 2 March.

The review is ongoing as we continue to monitor how the situation develops in this region.<sup>206</sup>

**135. We conclude that both the present Government and its predecessor misjudged the risk that arms approved for export to certain authoritarian countries in North Africa and the Middle East might be used for internal repression. We further conclude that the Government's decision to revoke a considerable number of arms export licences to Bahrain, Egypt, Libya and Tunisia is very welcome.**

**We recommend that, in its response to this Report:**

- **The Government provides us with full details on arms export licences it has revoked since the beginning of January 2011 when the recent uprisings and demonstrations in North Africa and the Middle East started;**
- **The Government states what specific and systematic consideration of arms exports is carried out within the National Security Strategy and at meetings of the National Security Council;**

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<sup>206</sup> HC Deb, 9 Mar 2011 col 1173W

- **The Government states the outcome of its review of arms exports to the wider Middle East region as announced by the FCO Minister, Mr Alistair Burt, on 18 February;**
- **The Government states what changes it will make to improve both its arms export control procedures and its judgements about the risk of arms exported from the UK being used for internal repression by authoritarian regimes.**

**We further recommend that the Government extends immediately its review of UK arms export licences announced by the FCO Minister, Mr Alistair Burt, on 18 February 2011 to authoritarian regimes worldwide in respect of arms or components of arms which could be used for internal repression.**

## Annex 1: The Consolidated Criteria

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The Consolidated Criteria are the consolidation of the UK's national criteria and the 1998 EU Code of Conduct on Arms Exports.

In a Written Answer (dated 26 October 200, c200W) Peter Hain, the then Minister of State in the FCO, announced the establishment of the Consolidated Criteria:

**Laura Moffatt:** To ask the Secretary of State for Foreign and Commonwealth Affairs what steps the Government have taken to consolidate the UK's national criteria against which the Government assess licence applications to export arms and dual-use equipment with those of the EU Code of Conduct on Arms Exports; and if he will make a statement. [135683]

**Mr. Hain:** Licences to export arms and other goods controlled for strategic reasons are issued by the Secretary of State for Trade and Industry, acting through the Export Control Organisation of the DTI. All relevant individual licence applications are circulated by DTI to other Government Departments with an interest, as determined by those Departments in line with their own policy responsibilities. These include the Foreign and Commonwealth Office, the Ministry of Defence and the Department for International Development.

In the Foreign Secretary's reply to my hon. Friend the Member for East Ham (Mr. Timms) on 28 July 1997, Official Report, column 27, he set out the criteria which would be used in considering advance approvals for promotion prior to formal application for an export licence, applications for licences to export military equipment, and dual-use goods where there are grounds for believing that the end-user will be the armed forces or internal security forces of the recipient country. As my right hon. Friend said then, the Government are committed to the maintenance of a strong defence industry as part of our industrial base as well as of our defence effort, and recognise that defence exports can also contribute to international stability by strengthening collective defence relationships; but believe that arms transfers must be managed responsibly. We have since taken a range of measures designed to ensure the highest standards of responsibility in our export control policies. These include the adoption during the UK's Presidency of the EU of a Code of Conduct on Arms Exports; the publication of Annual Reports on Strategic Export Controls which are among the most transparent of those of any arms exporting country; the ban on the export of equipment used for torture; the ratification of the Ottawa Convention on anti-personnel landmines and the passage of the Land Mines Act; and our many efforts to combat illicit trafficking in and destabilising accumulations of small arms.

Since the Council of the European Union adopted the EU Code of Conduct on Arms Exports on 8 June 1998, all relevant licence applications have been assessed against the UK's national criteria and those in the Code of Conduct, which represent minimum standards that all member states have agreed to apply. The criteria in the EU Code of Conduct are compatible with those which I announced in July 1997. At the same time there is a large degree of overlap between the two. It is clearly in the interests of Government Departments involved in assessing licence applications, British exporters and other interested parties that the criteria which are used should be set out as clearly and unambiguously as possible.

With immediate effect, therefore, the following consolidated criteria will be used in considering all individual applications for licences to export goods on the Military List, which forms Part III of Schedule 1 to the Export of Goods (Control) Order 1994; advance approvals for promotion prior to formal application for an export licence; and licence applications for the export of dual-use goods as specified in Annexe 1 of Council Decision 94/942/CFSP when there are grounds for believing that the end-user of such goods will be the armed forces or internal security forces or similar entities in the recipient country, or that the goods will be used to produce arms or other goods on the Military List for such end-users. The criteria are based on those in the EU Code of Conduct, incorporating elements from the UK's national criteria where appropriate. As before, they will not be applied mechanistically but on a case-by-case basis, using judgment and commonsense. Neither the fact of this consolidation, nor any minor additions or amendments to the wording of the two sets of criteria used before, should be taken to imply any change in policy or in its application.

An export licence will not be issued if the arguments for doing so are outweighed by the need to comply with the UK's international obligations and commitments, by concern that the goods might be used for internal repression or international aggression, by the risks to regional stability or by other considerations as described in these criteria.

#### CRITERION ONE

*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 Government will not issue an export licence if approval would be inconsistent with, inter alia:

- a. The UK's international obligations and its commitments to enforce UN, OSCE and EU arms embargoes, as well as national embargoes observed by the UK and other commitments regarding the application of strategic export controls;
- b. The UK's international obligations under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention;
- c. The UK's commitments in the frameworks of the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement;
- d. The Guidelines for Conventional Arms Transfers agreed by the Permanent Five members of the UN Security Council, and the OSCE Principles Governing Conventional Arms Transfers and the EU Code of Conduct on Arms Exports;
- e. The UK's obligations under the Ottawa Convention and the 1998 Land Mines Act;
- f. The UN Convention on Certain Conventional Weapons.

#### CRITERION TWO

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

Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, the Government will:

- a. Not issue an export licence if there is a clear risk that the proposed export 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 equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU.

For these purposes equipment which might be used for internal repression will include, inter alia, equipment where there is evidence of the use of this or similar equipment for internal repression by the proposed end-user, or where there is reason to believe that the equipment will be diverted from its stated end-use or end-user and used for internal repression.

The nature of the 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, arbitrary or extra-judicial executions; disappearances; arbitrary detentions; and other major suppression or 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.

The Government considers that in some cases, the use of force by a government within its own borders, for example to preserve law and order against terrorists or other criminals is legitimate and does not constitute internal repression, as long as force is used in accordance with the international human rights standards described above.

### CRITERION THREE

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

The Government will not issue licences for export which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.

### CRITERION FOUR

*Preservation of regional peace, security and stability.*

The Government will not issue 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. However, a purely theoretical possibility that the items concerned might be used in the future against another state will not of itself lead to a licence being refused.

When considering these risks, the Government will 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. Whether the equipment would be likely to be used other than for the legitimate national security and defence of the recipient.

The need not to affect adversely regional stability in any significant way, taking 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.

#### CRITERION FIVE

*The national security of the UK, or territories whose external relations are the UK's responsibility, and of allies, EU Member States and other friendly countries.*

The Government will take into account:

- a. The potential effect of the proposed export on the UK's defence and security interests or on those of other territories and countries as described above, while recognising that this factor cannot affect consideration of the criteria on respect of human rights and on regional peace, security and stability;
- b. The risk of the goods concerned being used against UK forces or on those of other territories and countries as described above;
- c. The risk of reverse engineering or unintended technology transfer;
- d. The need to protect UK military classified information and capabilities.

#### CRITERION SIX

*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*

The Government will take into account inter alia the record of the buyer country with regard to :

- a. its support or encouragement of terrorism and international organised crime;
- b. its compliance with its international commitments, in particular on the non-use of force, including under international humanitarian law applicable to international and non-international conflicts;
- 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 sub-para b) of Criterion One.

**CRITERION SEVEN**

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

In assessing the impact of the proposed export on the importing country and the risk that exported goods might be diverted to an undesirable end-user, the following will be considered:

- a. the legitimate defence and domestic security interests of the recipient country, including any involvement in UN or peace-keeping activity;
- b. the technical capability of the recipient country to use the equipment;
- c. the capability of the recipient country to exert effective export controls.

The Government will pay particular attention to the need to avoid diversion of UK exports to terrorist organisations. Proposed exports of anti-terrorist equipment will be given particularly careful consideration in this context.

**CRITERION EIGHT**

*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 Government will take into account, in the light of information from relevant sources such as United Nations Development Programme, World Bank, IMF and Organisation for Economic Cooperation and Development reports, whether the proposed export would seriously undermine the economy or seriously hamper the sustainable development of the recipient country.

The Government will consider in this context the recipient country's relative levels of military and social expenditure, taking into account also any EU or bilateral aid, and its public finances, balance of payments, external debt, economic and social development and any IMF- or World Bank-sponsored economic reform programme.

**OTHER FACTORS**

Operative Provision 10 of the EU Code of Conduct specifies that Member States may where appropriate also take into account the effect of proposed exports on their economic, social, commercial and industrial interests, but that these factors will not affect the application of the criteria in the Code.

The Government will thus continue when considering export licence applications to give full weight to the UK's national interest, including:

- a. the potential effect on the UK's economic, financial and commercial interests, including our long-term interests in having stable, democratic trading partners;

- b. the potential effect on the UK's relations with the recipient country;
- c. the potential effect on any collaborative defence production or procurement project with allies or EU partners;
- d. the protection of the UK's essential strategic industrial base.

In the application of the above criteria, account will be taken of reliable evidence, including for example, reporting from diplomatic posts, relevant reports by international bodies, intelligence and information from open sources and non-governmental organisations.



## Annex 2: EU Council Common Position

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### COUNCIL COMMON POSITION 2008/944/CFSP of 8 December 2008

defining common rules governing control of exports of military technology and equipment

[Extract]

#### Article 1

1. Each Member State shall assess the export licence applications made to it for items on the EU Common Military List mentioned in Article 12 on a case-by-case basis against the criteria of Article 2.

2. The export licence applications as mentioned in paragraph 1 shall include:

- applications for licences for physical exports, including those for the purpose of licensed production of military equipment in third countries,
- applications for brokering licences,
- applications for 'transit' or 'transshipment' licences,
- applications for licences for any intangible transfers of software and technology by means such as electronic media, fax or telephone.

Member States' legislation shall indicate in which case an export licence is required with respect to these applications.

#### Article 2

##### Criteria

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.

#### Article 3

This Common Position shall not affect the right of Member States to operate more restrictive national policies.

#### Article 4

1. Member States shall circulate details of applications for export licences which have been denied in accordance with the criteria of this Common Position together with an explanation of why the licence has been denied. Before any Member State grants a licence which has been denied by another Member State or States for an essentially

identical transaction within the last three years, it shall first consult the Member State or States which issued the denial(s). If following consultations, the Member State nevertheless decides to grant a licence, it shall notify the Member State or States issuing the denial(s), giving a detailed explanation of its reasoning.

2. The decision to transfer or deny the transfer of any military technology or equipment shall remain at the national discretion of each Member State. A denial of a licence is understood to take place when the Member State has refused to authorise the actual sale or export of the military technology or equipment concerned, where a sale would otherwise have come about, or the conclusion of the relevant contract. For these purposes, a notifiable denial may, in accordance with national procedures, include denial of permission to start negotiations or a negative response to a formal initial enquiry about a specific order.

3. Member States shall keep such denials and consultations confidential and not use them for commercial advantage.

#### Article 5

Export licences shall be granted only on the basis of reliable prior knowledge of end use in the country of final destination.

This will generally require a thoroughly checked end-user certificate or appropriate documentation and/or some form of official authorisation issued by the country of final destination.

When assessing applications for licences to export military technology or equipment for the purposes of production in third countries, Member States shall in particular take account of the potential use of the finished product in the country of production and of the risk that the finished product might be diverted or exported to an undesirable end user.

#### Article 6

Without prejudice to Regulation (EC) No 1334/2000, the criteria in Article 2 of this Common Position and the consultation procedure provided for in Article 4 are also to apply to

Member States in respect of dual-use goods and technology as specified in Annex I to Regulation (EC) No 1334/2000 where there are serious grounds for believing that the end-user of such goods and technology will be the armed forces or internal security forces or similar entities in the recipient country. References in this Common Position to military technology or equipment shall be understood to include such goods and technology.

#### Article 7

In order to maximise the effectiveness of this Common Position, Member States shall work within the framework of the CFSP to reinforce their cooperation and to promote their convergence in the field of exports of military technology and equipment.

#### Article 8

1. Each Member State shall circulate to other Member States in confidence an annual report on its exports of military technology and equipment and on its implementation of this Common Position.

2. An EU Annual Report, based on contributions from all Member States, shall be submitted to the Council and published in the 'C' series of the Official Journal of the European Union.

3. In addition, each Member State which exports technology or equipment on the EU Common Military List shall publish a national report on its exports of military technology and equipment, the contents of which will be in accordance with national legislation, as applicable, and will provide information for the EU Annual Report on the implementation of this Common Position as stipulated in the User's Guide.

#### Article 9

Member States shall, as appropriate, assess jointly through the CFSP framework the situation of potential or actual recipients of exports of military technology and equipment from Member States, in the light of the principles and criteria of this Common Position.

#### Article 10

While 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.

#### Article 11

Member States shall use their best endeavours to encourage other States which export military technology or equipment to apply the criteria of this Common Position. They shall regularly exchange experiences with those third states applying the criteria on their military technology and equipment export control policies and on the application of the criteria.

#### Article 12

Member States shall ensure that their national legislation enables them to control the export of the technology and equipment on the EU Common Military List. The EU Common Military List shall act as a reference point for Member States' national military technology and equipment lists, but shall not directly replace them.

#### Article 13

The User's Guide to the European Code of Conduct on Exports of Military Equipment, which is regularly reviewed, shall serve as guidance for the implementation of this Common Position.

Article 14

This Common Position shall take effect on the date of its adoption.

Article 15

This Common Position shall be reviewed three years after its adoption.

Article 16

This Common Position shall be published in the Official Journal of the European Union.

Done at Brussels, 8 December 2008.

For the Council

The President

B. KOUCHNE

## Annex 3: Extra-territoriality (offences)

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The following is a list of offences committed overseas for which a British citizen could be prosecuted in this country. The list is based on *Archbold Criminal Pleading, Evidence and Practice 2007*:

- a) Sexual offences committed against children and young people under the age of 16 (Sexual Offences (Conspiracy and Incitement) Act 1996 and Sexual Offences Act 2003 s.72 and Schedule 2);
- b) Offences of dishonesty and blackmail where property is despatched from, or received at, a place in England and Wales; or where there is a communication of information etc. sent by any means from a place in England and Wales to a place elsewhere, or from a place elsewhere to a place in England and Wales (Criminal Justice Act 1993 ss.1-6);
- c) Offences connected with aircraft (Civil Aviation Act 1982 s.92);
- d) Homicide (Offences Against the Person Act 1861 s.9-10);
- e) Offences in connection with taxation etc. within the European Community (Criminal Justice Act 1993, s.71);
- f) Offences by servants of the Crown (Criminal Justice Act 1948 s.31(1));
- g) Offences in connection with the slave trade (Slave Trade Act 1873);
- h) Offences under the Merchant Shipping Act 1995 (Merchant Shipping Act 1995 ss.279-281) offences committed by British seamen (Merchant Shipping Act 1995 s.282) and offences in the Admiralty jurisdiction;
- i) Offences on offshore installations (Petroleum Act 1998 s.22);
- j) Bribery and corruption committed outside the UK (Anti-Terrorism, Crime and Security Act 2001, s.109)
- k) Torture (Criminal Justice Act 1988, ss.134-135);
- l) International Criminal Offences (International Criminal Court Act 2001);
- m) Offences against the Geneva Convention (Geneva Convention Act 1957);
- n) Explosives offences (Explosive Substances Act 1883 ss.2-3);



- o) Treason
- p) Offences under the Terrorism Act 2000:
  - Membership of a proscribed organisation (Terrorism Act 2000 s.11)
  - Weapons training (Terrorism Act 2000 s.54)
  - Directing a terrorist organisation (Terrorism Act 2000 s.56)
  - Collecting information likely to be useful to a person committing or preparing an act of terrorism (Terrorism Act 2000 s.58)
  - Inciting terrorism overseas (Terrorism Act 2000 s.59)
  - Terrorist bombing (Terrorism Act 2000 s.62)
- q) Offences under the Terrorism Act 2006:
  - Encouragement of terrorism and dissemination of terrorist publications (Terrorism Act 2006 ss1-2)
  - Preparation of terrorist acts (Terrorism Act 2006 s.5)
  - Terrorist training and attendance at a place used for terrorist training (Terrorism Act 2006 ss.6, 8)
- r) Offences against United Nations personnel (United Nations Personnel Act 1997)
- s) Offences against the safety of Channel Tunnel trains and the tunnel system (Channel Tunnel (Security) Order 1994 [S.I.1994/570])
- t) Offences against the Foreign Enlistment Act 1870
- u) Offences against the Official Secrets Acts 1920 and 1989
- v) Fraudulent evasion of duty etc. (Customs and Excise Management Act 1979 s.170(2) (b))
- w) Bigamy (Offences against the Person Act 1861 s.57)
- x) Offences covered by the War Crimes Act 1991

- y) Offences involving the supply or delivery of restricted goods without a licence from the Secretary of State (Trade in Goods (Control) Order 2003 SI 2003/2765)
- z) Corporate manslaughter (Corporate Manslaughter and Corporate Homicide Act 2007, s28)

The report of the Home Office Steering Committee's Review of Extra-Territorial Jurisdiction includes the following list of criteria used by the Government in deciding whether or not to take extra-territorial jurisdiction in respect of particular offences:

Against this background, it is suggested that consideration should be given to taking extra-territorial jurisdiction only where at least one of the following tests was satisfied:

- Where the offence is serious (this might be defined, in respect of existing offences, by reference to the length of sentence currently available);
- Where, by virtue of the nature of the offence, the witnesses and evidence necessary for the prosecution are likely to be available in UK territory, even though the offence was committed outside the jurisdiction;
- Where there is international consensus that certain conduct is reprehensible and that concerted action is needed involving the taking of extra-territorial jurisdiction;
- Where the vulnerability of the victim makes it particularly important to be able to tackle instances of the offence;
- Where it appears to be in the interests of the standing and reputation of the UK in the international community;
- Where there is a danger that the offences would otherwise not be justiciable.

The fact that an offence satisfied one or more of the above guidelines would not positively determine the extension of jurisdiction. But it would suggest that action might be justified, particularly if the practical enforcement issues did not appear to be insurmountable.

*Source:* This Note is supplied by the House of Commons Library

## Annex 4: Selected arms export licence approvals to countries in North Africa and the Middle East of arms or components of arms that could be used for internal repression

From the information on the BIS and FCO websites, since 1 January 2009.

**Table A by calendar years**

Country	Examples of approved UK arms exports in 2009	Examples of approved UK arms exports in 2010 up to 30 September being the latest date up to which this information is currently available
Algeria	Components for combat helicopters, components for military utility helicopters	Components for military utility vehicles, combat helicopters, military utility helicopters
Bahrain	Assault rifles, components for combat aircraft, small arms ammunition, submachine guns, weapon sights, aircraft cannons, shotguns	Rifles, shotguns, small arms ammunition, submachine guns, sniper rifles, CS hand grenades, smoke ammunition, smoke canisters, smoke hand grenades, stun grenades, tear gas/irritant ammunition, tear gas/riot control agents
Egypt	Training small arms ammunition, general purpose machine guns, imaging cameras, components for armoured personnel carriers, unfinished products for grenade launchers, components for submachine guns, electronic warfare equipment, equipment for the operation of military aircraft in confined areas	Components for semi-automatic pistols, components for submachine guns, training small arms ammunition, unfinished products for armoured fighting vehicles, unfinished products for weapon night sights
Iran	Nil	Nil
Iraq	General purpose machine guns, assault rifles, small arms ammunition, stun grenades, components for general purpose machine guns	small arms ammunition, semi-automatic pistols, smoke cannisters, fragmentation rockets, large calibre artillery ammunition, small calibre artillery ammunition

Jordan	Armoured personnel carriers, assault rifles, CS hand grenades, submachine guns, tear gas/irritant ammunition, armoured fighting vehicles, arranging the acquisition of small arms ammunition	Assault rifles, combat shotguns, grenade launchers, small arms ammunition, sniper rifles, imaging cameras, armoured personnel carriers
Kuwait	Small arms ammunition, signal hand grenades, submachine guns, technology for the use of grenade launchers, armoured personnel carriers, software for the use of combat helicopters	grenade launchers, signal hand grenades, military utility vehicles
Libya	artillery computers, combat shotguns, tear gas/irritant ammunition, military cargo vehicles, ground vehicle military communications equipment, command communications control and intelligence equipment	technology for the use of infrared/thermal imaging equipment, crowd control ammunition, small arms ammunition, tear gas/irritant ammunition
Morocco	Shotguns, components for combat aircraft	components for large calibre artillery, components for armoured fighting vehicles, components for armoured personnel carriers, components for combat helicopters
Oman	small arms ammunition, semi-automatic pistols, components for tanks, components for armoured fighting vehicles, submachine guns	tear gas/irritant ammunition, components for armoured personnel carriers, small arms ammunition, sniper rifles, submachine guns, CS hand grenades, signal hand grenades, stun grenades
Qatar	components for combat helicopters, components for combat aircraft, CS hand grenades, small arms ammunition, stun grenades, tear gas/irritant ammunition, submachine guns	components for heavy machine guns, heavy machine guns, small arms ammunition, CS hand grenades, stun grenades, tear gas/irritant ammunition
Saudi Arabia	components for combat aircraft, CS hand grenades, tear gas/irritant ammunition, tear gas/riot control agents, sniper rifles, small calibre artillery ammunition, small arms ammunition	components for combat aircraft, sniper rifles, armoured personnel carriers, small arms ammunition, components for combat aircraft,

Syria	equipment employing cryptography	small arms ammunition
Tunisia	components for assault rifles, components for general purpose machine guns, components for semi-automatic pistols, training small arms ammunition	components for assault rifles, training small arms ammunition, components for semi-automatic pistols
United Arab Emirates	assault rifles, components for general purpose machine guns, components for submachine guns, shotguns, small arms ammunition, submachine guns	components for air-to-surface missiles, components for armoured fighting vehicles, small arms ammunition, submachine guns, CS hand grenades, tear gas/irritant ammunition
Yemen	body armour, components for body armour	night vision goggles, components for military cameras, technology for the use of military cameras

**Table B by quarter for certain countries in Table A**

2009	Bahrain	Egypt	Libya	Tunisia
Q1	small arms ammunition	training small arms ammunition, equipment for the operation of military aircraft in confined areas, imaging cameras	artillery computers, command communications control and intelligence equipment	
Q2	assault rifles, components for combat aircraft, small arms ammunition, submachine guns, weapon sights	cryptographic software, general purpose machine guns	combat shotguns, teargas/irritant ammunition	
Q3		components for armoured personnel carriers, unfinished products for grenade launchers	military cargo vehicles	
Q4	shotguns, aircraft cannons	components for submachine guns, training small arms ammunition, electronic warfare equipment	ground vehicle military communications equipment	components for assault rifles, components for general purpose machine guns, components for semi-automatic pistols, training small arms ammunition
2010	Bahrain	Egypt	Libya	Tunisia
Q1	rifles, shotguns, small arms ammunition, submachine guns, sniper rifles	imaging cameras, components for semi-automatic pistols, components for submachine guns, training small arms ammunition, unfinished products for armoured fighting vehicles, unfinished products for weapon night sights	technology for the use of infrared/thermal imaging equipment	components for assault rifles, components for semi-automatic pistols, training small arms ammunition
Q2			crowd control ammunition, small arms ammunition, teargas/irritant ammunition	
Q3	CS hand grenades, smoke ammunition, smoke canisters, smoke hand grenades, stun grenades, teargas/irritant ammunition, teargas/riot control agents		crowd control ammunition, small arms ammunition, teargas/irritant ammunition, military cargo vehicles	

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# Formal Minutes

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## Monday 21 March 2011

The Business, Innovation and Skills, Defence, Foreign Affairs and International Development Committees met concurrently, pursuant to Standing Order No. 137A.

Members present:

<i>Business, Innovation and Skills Committee</i>	<i>Defence Committee</i>	<i>Foreign Affairs Committee</i>	<i>International Development Committee</i>
Mr Adrian Bailey Paul Blomfield Margot James Nadhim Zahawi	John Glen Penny Mordaunt Sandra Osborne	Mike Gapes Sir John Stanley (in the Chair) Dave Watts	Richard Burden Malcolm Bruce Chris White

Sir John Stanley was called to the Chair, in accordance with Standing Order No. 137A(1)(d).

The Committees deliberated, in accordance with Standing Order No. 137A(1)(b).

### **Draft Report: Scrutiny of Arms Export Controls (2011): UK Strategic Export Controls Annual Report 2009, Quarterly Reports for 2010, licensing policy and review of export control legislation**

Draft Report (*Scrutiny of Arms Export Controls (2011): UK Strategic Export Controls Annual Report 2009, Quarterly Reports for 2010, licensing policy and review of export control legislation*), proposed by the Chair, brought up and read.

*Ordered*, That the Chair's draft Report be considered concurrently, in accordance with Standing Order No. 137A (1)(c).

*Ordered*, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 135 read and agreed to.

Annexes agreed to.

### BUSINESS, INNOVATION AND SKILLS COMMITTEE

The Foreign Affairs and International Development Committees withdrew.

Mr Adrian Bailey, in the Chair

Paul Blomfield

Margot James

Draft Report (*Scrutiny of Arms Export Controls (2011): UK Strategic Export Controls Annual Report 2009, Quarterly Reports for 2010, licensing policy and review of export control legislation*), proposed by the Chair, brought up and read.

*Resolved*, That the draft Report prepared by the Business, Innovation and Skills, Foreign Affairs and International Development Committees, be the Fourth Report of the Committee to the House.

*Ordered*, That the provisions of Standing Order No. 137A(2) be applied to the Report.

*Ordered*, That Sir John Stanley make the Joint Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No.134 (Select committees (reports)).

*Ordered*, The following written evidence be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 13 December and 24 January: Foreign and Commonwealth Office (February 2011).

[Adjourned till Tuesday 22 March at 10.30 a.m.]

#### FOREIGN AFFAIRS COMMITTEE

The Business, Innovation and Skills and International Development Committees withdrew.

In the absence of the Chair, Sir John Stanley, in the Chair

Mr Mike Gapes

Mr Dave Watts

Draft Report (*Scrutiny of Arms Export Controls (2011): UK Strategic Export Controls Annual Report 2009, Quarterly Reports for 2010, licensing policy and review of export control legislation*), proposed by the Chair, brought up and read.

*Resolved*, That the draft Report prepared by the Business, Innovation and Skills, Foreign Affairs and International Development Committees, be the Fifth Report of the Committee to the House.

*Ordered*, That the provisions of Standing Order No. 137A(2) be applied to the Report.

*Ordered*, That Sir John Stanley make the Joint Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No.134 (Select committees (reports)).

*Ordered*, The following written evidence be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 13 December and 24 January: Foreign and Commonwealth Office (February 2011).

[Adjourned till Wednesday 23 March at 2.30 p.m.]

#### INTERNATIONAL DEVELOPMENT COMMITTEE

The Business, Innovation and Skills and Foreign Affairs Committees withdrew.

Malcolm Bruce, in the Chair

Richard Burden

Chris White

Draft Report (*Scrutiny of Arms Export Controls (2011): UK Strategic Export Controls Annual Report 2009, Quarterly Reports for 2010, licensing policy and review of export control legislation*), proposed by the Chair, brought up and read.

*Resolved*, That the draft Report prepared by the Business, Innovation and Skills, Foreign Affairs and International Development Committees, be the Sixth Report of the Committee to the House.

*Ordered*, That the provisions of Standing Order No. 137A(2) be applied to the Report.



*Ordered*, That Sir John Stanley make the Joint Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No.134 (Select committees (reports)).

*Ordered*, The following written evidence be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 13 December and 24 January: Foreign and Commonwealth Office (February 2011).

[Adjourned till Tuesday 22 March at 10 a.m.]

## Tuesday 22 March 2011

### DEFENCE COMMITTEE

Mr James Arbuthnot, in the Chair

Thomas Docherty  
Jeffrey M. Donaldson  
John Glen  
Mr Dai Havard  
Mrs Madeleine Moon

Penny Mordaunt  
Sandra Osborne  
Bob Stewart  
Ms Gisela Stuart

Draft Report (*Scrutiny of Arms Export Controls (2011): UK Strategic Export Controls Annual Report 2009, Quarterly Reports for 2010, licensing policy and review of export control legislation*), proposed by the Chair, brought up and read

*Resolved*, That the draft Report prepared by the Business, Innovation and Skills, Foreign Affairs and International Development Committees, be the Ninth Report of the Committee to the House.

*Ordered*, That the provisions of Standing Order No. 137A(2) be applied to the Report.

*Ordered*, That Sir John Stanley make the Joint Report to the House.

*Ordered*, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No.134 (Select committees (reports)).

*Ordered*, The following written evidence be reported to the House for printing with the Report, together with written evidence reported and ordered to be published on 13 December and 24 January: Foreign and Commonwealth Office (February 2011).

[Adjourned till Tuesday 29 March at 2.00p.m.]

## Witnesses

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### Monday 13 December 2011

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**Rob Parker**, Head of Policy and Advocacy, Saferworld, **Oliver Sprague**, Programme Director, Military Security and Police, Amnesty, and **Martin Butcher**, Oxfam GB

Ev 1

**Mr David Hayes**, Chairman, Export Group for Aerospace and Defence, David Hayes Export, Controls, **Mr David Wilson**, Vice-Chairman, Export Group for Aerospace and Defence, Hewlett Packard, Enterprise Services, **Mr Brinley Salzmann**, Secretary, Export Group for Aerospace and Defence, AeroSpace, Defence and Security Group, and **Mr Barry Fletcher**, Executive Committee Member, Export Group for Aerospace and Defence, Fletcher International Export Consultancy

Ev 9

### Monday 24 January 2011

**Mr Mark Prisk MP**, Minister for Business and Enterprise, **Chris Chew**, Head of Policy, Export Control Organisation, and **Tom Smith**, Head of Export Control Organisation

Ev 16

**Alistair Burt MP**, Minister of State, Foreign and Commonwealth Office, **David Hall**, Deputy Head, Counter Proliferation Department (Strategic Export Controls), and **David Vincent**, Head of Arms Trade Unit, Counter Proliferation Department,

Ev 25

## List of printed written evidence

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1	The Campaign Against Arms Trade (CAAT)	Ev 35: Ev39
2	The Export Group for Aerospace & Defence (EGAD)	Ev 40
3	Foreign & Commonwealth Office	Ev 41
4	Transparency International	Ev 44
5	UK Working Group on Arms (UKWG)	

# Oral evidence

## Taken before the Committees on Arms Export Controls

on Monday 13 December 2010

Members present:

Sir John Stanley (Chair)

Malcolm Bruce	Margot James
Katy Clark	Mr Michael McCann
Mr Jeffrey M. Donaldson	Ian Murray
Mike Gapes	Mr Dave Watts
John Glen	Chris White
Richard Harrington	Nadhim Zahawi

### Examination of Witnesses

*Witnesses:* **Rob Parker**, Head of Policy and Advocacy, Saferworld, **Oliver Sprague**, Programme Director, Military Security and Police, Amnesty, and **Martin Butcher**, Oxfam GB, gave evidence.

**Q1 Chair:** Good afternoon, Mr Sprague, Mr Parker and Mr Butcher. Welcome to the first sitting of the Committees on Arms Export Controls in this Parliament. It is very good to see you. We want to put a number of questions to you. As this is the first Session under the new coalition Government, I shall start by asking each of you to highlight, in a few sentences, the policy differences between the present coalition Government and their predecessors. What are the policy differences that please you and what are the policy differences that displease you? What are the pluses and minuses, as you see it, of the change of Government? Mr Sprague, would you like to start?

**Oliver Sprague:** In general, the impression that we have had from Ministers and civil servants is that many of the issues that were of concern to the previous Government remain as a focus of this Government, with some caveats. For example, things such as the arms trade treaty remain as a policy commitment, although we have concerns that that may not be as strong a priority as it was. I am sure that we will elaborate on that later. There are other issues on which I think progress might be difficult—for example, military end-use controls. We are concerned about things such as the torture end-use control not being implemented yet.

**Rob Parker:** From our perspective, it's perhaps not a policy change, but a continuation, with a bit of a refocusing on working in contexts of fragility and where there are conflict-affected communities. The previous Administration certainly were interested in conflict prevention. There was some strong policy development in the Department for International Development, but recently some of those policies have been perhaps consolidated to a certain extent in the strategic defence and security review around the issue of upstream conflict prevention, as the Secretary of State called it. We're very keen to see the detail of that and to work with the new Administration on looking at what it looks like in terms of preventive diplomacy, boots on the ground and so on.

**Martin Butcher:** At this point, I would echo what my two colleagues have said. I don't have anything particular to add to that.

**Q2 Nadhim Zahawi:** Thank you for coming, gentlemen. You've raised concerns about the coalition Government's policy on prioritising the commercial potential of arms exports. Are there any specific areas where you suspect that this commercial potential may be prioritised at the cost of conflict prevention, sustainable development or a responsible arms trade? I want to push you on the specific areas where you think this may be problematic.

**Rob Parker:** If I could answer from my perspective, it is probably important to give a quick bit of context. No one on this panel is coming from the ideological perspective of being against the arms trade, so we don't actually have a problem with promoting UK exports per se. Our basis for engaging with the issue is more around restraint, risk analysis and regulation. With that in mind, there have been two recent policy commitments. One relates perhaps to commercial foreign policy, and UK arms exports may play a part in that. The other relates to the focus on conflict prevention. Both those policy commitments will entail using UK staff overseas in some way.

My concern is that, at the moment, the export control regime is based quite heavily on risk assessment. One vital element of that risk assessment, which the UK is rightly recognised for, is this country's diplomatic networks and its ability to use them to assess the appropriateness of potential UK arms exports and the risk that they may be diverted or misused. There is perhaps a concern that there is a dual role, with one hand potentially imposing some kind of restraint by looking at appropriateness and risk, and the other hand promoting. Without the detail of how that would be worked out, it is difficult to say how it will play out.

In terms of the conflict prevention aspect, one vital element of upstream conflict prevention is, again, the diplomatic networks—the soft diplomatic skills and the knowledge and analysis of what is actually going on in-country. In come contexts, the UK's diplomatic and political leadership and pressure would best be used in promoting the kinds of political and social development and reform processes that address the drivers and the causes of conflict. If the personnel involved are, at the same time, being asked to promote

arms exports, there are potentially competing or conflictual agendas.

I don't think that will play out geographically in the places where there is the most acute conflict, because I don't think for a minute that the UK is thinking of promoting arms exports in the likes of Somalia, Afghanistan or south Sudan. I don't mean to single places out, but in our experience, working in places such as Kenya, Uganda and Nepal, the UK can play a really strong role diplomatically and politically in promoting the processes that address the causes of conflict through the promotion of the rule of law, good governance, inclusion and the participation of the public in decision making on these issues. That is a really key role, which seems to be being prioritised, but it is not clear how the Government will reconcile the promotion of that role for its overseas personnel with the commercial foreign policy. That is by no means to say that the two can't co-exist; it is more a case of trying to flag up where there might be a conflict.

**Q3 Nadhim Zahawi:** Mr Sprague or Mr Butcher, is that how you feel?

**Oliver Sprague:** Yes, broadly. This isn't an area where a human rights organisation like Amnesty, with our mandate, has a great deal to say, other than we concur largely with what my colleague has just said.

**Martin Butcher:** I would echo those comments.

**Q4 Nadhim Zahawi:** Very briefly, have you had discussions with Ministers about those specific concerns?

**Rob Parker:** We've raised them broadly, but because the policy commitments on the table are fairly broad, we hope that we will be able to get engaged in some way in the new year in the development of the building stability overseas strategy if there is a consultation process. We can then raise the practicalities of how you go about delivering on these policy commitments.

**Oliver Sprague:** It's worth just adding as a quick follow-up point that Amnesty recognises that in certain conflict situations, the rule of law, the rule of policing, training, accountability, human rights standards etc. are all very important in improving democratic situations, but the key is that the risks are well managed and that when we talk about human rights training, we actually mean thorough, decent, robust human rights monitoring and standards.

**Q5 Chris White:** I have a supplementary question. You mentioned conflict and risk. Do you have any evidence that human rights are taken into account when these decisions are being made?

**Rob Parker:** UK exporting decisions?

**Chris White:** Yes.

**Rob Parker:** No. We are perhaps flagging a potential area that is not clear yet. If the same personnel who should on the one hand be providing Her Majesty's Government with an analysis of, say, the human rights situation on the ground in a country that is requesting UK arms and on the other hand they are being asked to promote UK exports, we would say that there is potentially a risk if that is not clear. The UK would

then potentially be at risk of breaching its commitments under the EU common position, whereby the promotion of exports should not in any way undermine the other criteria around human rights.

**Oliver Sprague:** It is also worth saying that we are very early into the new Administration. I think that there have only been two quarterly reports published as yet, so it's actually quite difficult to look at specific cases of licensing to see whether there has been a shift in practice in licences. That is something that will probably come across throughout our evidence on a lot of related issues. It's certainly too early to tell. So what we are doing here is flagging up concerns that we might have, which might appear over time.

**Chair:** We are now going to come to a question about the licensing criteria.

**Q6 Ian Murray:** You have already touched on the licensing criteria. The UK working group argued that the UK's consolidated criteria for assessing licences should be updated along the lines of the EU, particularly with regard to humanitarian aspects. What do you think should be changed in the Export Control Act 2002 and why, particularly with regard to the EU common position of 2008?

**Oliver Sprague:** The thing to recognise here is that in 2008 the EU code of conduct was turned into a common position, which is a legally binding obligation on member states to implement that agreement in their national licensing legislation. If you look at last year's UK annual report, the impression given is that it puts the common position as the policy guidance for arms export licensing. However, my understanding is that that is not the case and that the text of the common position is not used by licensing officials. Licensing officials use the consolidated criteria of 2000.

That is important because, as is pointed out in our evidence, the common position is stronger in a number of respects, specifically as related to international humanitarian law, which has been fed into the criteria on human rights violations. I will just quote you the difference. The difference in the common position is that it says: "There is a requirement now to deny export licences where there is a risk that serious violations of human rights and international humanitarian law might occur." Under the consolidated criteria that UK licensing officials currently use, criterion 6 refers to an obligation to only "take into account" the recipient's record on international humanitarian law. That is clearly a weaker standard.

You ask how this could be done under the 2002 Act. The 2002 Act makes it quite clear that the Secretary of State or the Government can produce policy guidance, which can be announced to Parliament, that will inform the licensing position. Also, there is a section of relevant consequences of the Act that we should not ignore. As far as I can see, it would be a relatively straightforward matter to reflect the exact text of the common position by issuing new guidance under the 2002 Act.

**Q7 Ian Murray:** Can I follow that up with a question about the broader debate on open licences? I take it

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13 December 2010 Rob Parker, Oliver Sprague and Martin Butcher

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from Mr Sprague's answer to that question that the Secretary of State could essentially promote stricter guidance, particularly with regard to the humanitarian parts of that particular legislation, in Parliament if he wished to take that forward.

I will move on to the export control organisations' encouragement, or apparent encouragement, of general licences rather than individual licences. Is there a legitimate case for that particular viewpoint and what would be your response to the concerns that exist about open licences rather than standard individual licences?

**Oliver Sprague:** It is worth stating, in line with what Rob was saying earlier about opposition to the arms trade in general, that we are not opposed to the use of open licences in certain circumstances. We agree that they are a way of easing the administrative burden both for the industry and for the Government, and they allow licensing officials to free up resources and to allocate more to higher-risk transfers and licensing decisions. The key for us, if there is to be a shift towards open licensing—we are told that there will be an increasing shift towards open licensing because of the increased pressure on licensing staff within the export control organisation—is that those licences are given only to very unproblematic areas that would have automatically received a yes decision anyway.

One concern of course is around transparency, not only for NGOs but for members of the Committee. The information that is available and reported is considerably less for open licences than for single individual licences, and some of the problems are compounded by the fact that much of the information resides at company level under open licences and not at Government level. There is a challenge for reporting on those licences.

**Chair:** We come to the sustainable development criterion.

**Q8 Malcolm Bruce:** Criterion 8 of the consolidated EU and national arms export licence criteria talks of compatibility of arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that the state should achieve its legitimate needs for security and defence with the least diversion for armaments of human and economic resources. That can be pretty broadly interpreted, I would have thought.

You say that the Government should ensure that it includes a full assessment of the risk of unaccountable spending, as well as corruption, as part of their arms export controls, and that it should take place case by case and not be restricted to the least developed countries. Do you have a particular context in mind? We have had issues relating to Tanzania, for example, and we have heard of growing involvement in conflict or post-conflict states, where interpretation of this criterion could cut either way. If you have to deal with conflict, you want a Government with the capacity to be secure. On the other hand, you don't want to supply a civil war.

The first point is this: can you give us a context as to how you think the criterion should be applied? Secondly, I gather that the UK used it only once but that France has used it 63 times, and although the

Netherlands has used it once, it was promoting a seminar to discuss it further. Do you have any information on whether that seminar has happened, and in particular why France has used it so much?

**Martin Butcher:** I can certainly talk about the second part. This issue is very much under discussion at the moment. The Netherlands did convene an informal session of the EU COARM working group on 24 November, following the regular COARM meeting. Several of our colleagues were asked to make presentations to that meeting but the debate that followed was closed to member states, so it is a little hard for us.

**Q9 Malcolm Bruce:** Were those presentations in written form?

**Martin Butcher:** They were.

**Q10 Malcolm Bruce:** It is possible for us to get copies?

**Martin Butcher:** Yes.

**Q11 Chair:** Would you send those to the Clerk?

**Martin Butcher:** Yes.

It was a little hard for us to know exactly what followed in the debate, as it was for member state representatives. We expect that there will be further consultations between EU member states and civil society and industry on this. In parallel, I would say that there are a number of Governments who are taking their own initiatives. For example, Spain is developing a process to look at how to apply criterion 8, and Germany is actively discussing with civil society and industry the appropriate methodology.

**Q12 Malcolm Bruce:** What is your view on what it's for and how it should be applied?

**Rob Parker:** I find it hard to delink criterion 8 from issues around corruption, as well, because I think, as you say, the wording is very broad and the interpretation can be very broad. The instances where we've come across something perhaps a bit more tangible are, for example, things like—in South Africa—a deal that went through and not only was subsequently revealed to have included a number of corrupt practices; it also had a huge impact on the ability of South Africa to develop in terms of primary education and anti-HIV-type work. The discussions we've had at EU level with officials around the corruption and sustainable development issues are that there's certainly an appetite and a willingness to look at how to address corruption more directly; but perhaps it's a slightly sliding scale between convenience—how easy it is to do—and effectiveness.

**Q13 Malcolm Bruce:** Can I push you by giving an example? We're in Afghanistan. Our objective in Afghanistan is to build up the capacity of both the army and the police to deliver security, yet people might be concerned if we started to supply the Afghan army with weapons—although it would be a bit odd if we say we want them to be effective but we won't supply them with weapons; they'll have to get them elsewhere. I'm just trying to get a feel for what you as a group of NGOs feel about these criteria. These

are developing countries with security issues. Should we or should we not be selling them arms at all, and if we are how does criterion 8 apply?

**Martin Butcher:** Afghanistan, to take your example, is a very difficult question. It's very hard to know what to do. You do have very well documented examples of weapons supplied to Afghan national forces, to the police and to the army, simply vanishing from stores—being either sold or handed over to the Taliban or to other armed groups; but at the same time, as you say, the objective is to build up the security of the Afghan Government, so that is clearly a major dilemma for the Government.

**Rob Parker:** The crux of it really is this balance between stabilisation and longer-term development. It's striking a balance between how you essentially stop the bullets flying—to enable conditions where longer-term development can gain some traction—and what role UK arms exports play. From our perspective on where the balance needs to be struck, I hark back to the upstream conflict prevention comments I made about political processes: if your stabilisation efforts, including potential UK arms exports, are actually part of an inclusive political process whereby you're not essentially shoring up an elite, which is going to continue protecting its own interests, but are part of an inclusive process whereby there is buy-in from more actors within the country, I think UK arms exports have a significant role to play. But where it falls down is where the process itself isn't transparent enough, and inclusive enough, so that you are actually re-equipping or rearming security services who perhaps were abusive in the past, or perhaps predatory, and who will actually maintain some of the existing problems. Basically our answer is probably that more needs to be done to unpack criterion 8, to look at how it impacts on these other issues of stability—

**Q14 Malcolm Bruce:** Was that what this Netherlands discussion was partly focused on, which is where your submissions have been of interest?

**Martin Butcher:** Yes, that's right—how it can be applied; what those words that you read out really mean, and how they can be applied in a common way.

**Oliver Sprague:** As a quick follow on: in terms of the role of the UK and other Governments in supplying fairly large amounts of military equipment to both Iraq and Afghanistan, Amnesty has published quite a lot of material in the past that shows how the accountability and the rules in place to ensure that the equipment is used properly, and that there is an adequate monitor on who is getting what, were not followed. There have been examples where UK companies have been working with the US Government. They weren't taking proper account of the serial numbers of huge numbers of assault rifles. Hundreds of thousands of assault rifles were given to both the Afghan police and the Iraqi security services without a proper check on who was getting them.

In our view, training of units of the police force, especially in Afghanistan, didn't follow the UN basic principles on the use of force and firearms—basic things like weapons being stored in a secure facility. Our understanding is that at least for one unit, training

lasted about five days, an assault rifle was given as part of that training and the weapon was taken home.

**Chair:** Dave Watts has a quick supplementary question.

**Q15 Mr Watts:** Is that realistic in an environment like Afghanistan? You seem to be applying the same standards that you would apply to a modern European country to the Afghan situation. It is difficult to understand whether the systems you are talking about could be set up in a place that's in so much turmoil.

**Oliver Sprague:** I certainly think that you should be responsible for the equipment that you supply. Something as basic as not properly logging the serial numbers of assault rifles is a basic error. That should have been done. There are minimum standards of training that are international standards. You are causing problems in terms of the threat to UK forces on the ground if proper safeguards are not in place to ensure that the training of the people being equipped is adequate.

**Chair:** We will now turn to the arms trade treaty. Mike Gapes.

**Q16 Mike Gapes:** The written memorandum from the working group contains a paragraph that I find quite worrying. You say the perception is that, rightly or wrongly, the new UK Government have ceased to provide leadership on the arms trade treaty negotiation process. Later, you say that the US, France and Australia are now beginning to dominate the process. Why do you think that is?

**Martin Butcher:** It does seem that the new Government have pulled back somewhat. There is a difference in positioning on the ATT, and the leadership role appears to be waning. There is a reluctance to commit, for example, to specific aspects of treaty content. In the strategic defence and security review, and in recent responses to parliamentary questions, the Government have said that they are supportive of the ATT, but not that they are leading. During the July precomms, some states that looked to the UK for leadership over the past few years have been concerned that in contrast to previous ATT discussions within the UN, the UK has been taking a back seat. It was very noticeable, for example, at the first committee that the UK was very reluctant to make a statement at all. There is an international perception that the UK is stepping back from leadership. Because the leadership has been so marked over the past four years, that shift is being interpreted as a change in the level of support for the treaty.

**Q17 Mike Gapes:** Is that due to a change of personnel, or are these the same people operating under different instructions?

**Rob Parker:** If I could just jump in, it might also be a case of conflicting priorities. At crucial points in the process, the nuclear non-proliferation treaty was running at a similar time. Some of the personnel were pulled in different directions. As I understand it, they are more or less the same personnel. Whether or not they are receiving instructions to step back, or whether they are simply not receiving as clear instructions around the leadership role to play, is unclear.

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To a certain extent, we need to own up; we cannot have it both ways. There was a time when we said that it was not necessarily the most productive thing for the UK to always be right at the front, because this is intended to be a global treaty that therefore needs support from many different areas. But I think that in addition to the lower profile, the content of the statements is also less around the need for the treaty to be based on human rights and humanitarian issues and perhaps more hinting at the idea that it's a trade agreement, as opposed to something more.

**Q18 Mike Gapes:** In the previous Parliament, we as a Committee discussed the issue of whether you wanted a treaty or a good treaty, in the sense that you might be able to get a treaty, but it might not actually be very strong in its content. We erred as a Committee on the side of a strong, effective treaty. We also, if I recollect, had a discussion about the change brought about by the Obama Administration coming in: the US was then engaged on this, whereas before they'd been very hostile. Is that part of the reason why the UK is stepping back—because the Americans are now seen to be crucial to getting an agreement?

**Martin Butcher:** That could certainly be part of the explanation. It's clear that the Government is working together with the US Administration now. To come back slightly to the point about personnel, the personnel haven't changed. We do have significant concerns; there seems to be a strong possibility that when Ambassador Duncan leaves his role at some point in the first half of next year, he won't be replaced, and that role of arms control, non-proliferation and disarmament ambassador will be at least suspended, if not done away with. We have strong concerns that that would lead to a lack of co-ordination of British policy and a lack of ability to input strongly into the process.

In meetings with Ministers at the Foreign Office, representatives from Oxfam and Amnesty have been told that Ministers are still supportive of the process. Obviously, there has been cross-party support over the past years as well. It may just be that at the moment—six months into a new Government with an awful lot on its plate—there hasn't been a good brief from Ministers down to civil servants as yet.

**Rob Parker:** I also wonder if it's an issue of prioritisation, in terms of the resources put into thinking through what's coming up. It feels that in some respects, the UK Government is on the back foot as opposed to the front foot in terms of the issue of consensus, thinking through scenarios of how to build support among reluctant states and actually taking this issue by the scruff of the neck, if you like, and being proactive as opposed to reacting to things. It's impossible for us to know what goes on in terms of discussions between Ministers and diplomatic staff, but the feeling we get is that sometimes, perhaps, the ideas aren't there, in a sense, to take that leadership role.

**Q19 Mike Gapes:** Can I press you on this relationship with the US? There were clearly differences in approach between the US Administration, even though they changed their

attitude to the treaty, and the UK Government's long-standing position. Is it still apparent that there are differences in approach, or are we, in a sense, moving behind the Americans?

**Oliver Sprague:** Both on the issue of consensus and, importantly, on the issue of content, there are a number of noticeable differences. As you'll have picked up in our submission, for example, we remain concerned that the US will want to remove ammunition from the scope of the arms trade treaty. In any treaty that has a humanitarian core—the treaty is to prevent arms-related suffering around the world—to remove the very item that is responsible for nearly all deaths in conflict from a case-by-case risk assessment process seems to me to be ludicrous.

From our joint discussions with the industry and with Government in technical meetings about what the UK Government's policy position on scope should be, the UK Government is very clear, in my understanding, that ammunition should form part of the arms trade treaty. There's a difference of opinion there, and we're not quite sure which way the decision will go in a consensus process, because with a consensus process, everybody is going to have to agree and if the US Government make ammunition a red line, we will be in trouble in two years' time.

**Q20 Mike Gapes:** Is the two-year time scale to 2012 still on course, or is it likely to slip?

**Rob Parker:** I don't know whether it can slip. It's more a case of, what are we likely to get at the end of it? What will probably slip is less the time scale and more the quality of the product. In relation to your earlier question about whether we want a good, strong, robust treaty but perhaps not with everyone in it or something that everyone can sign up to, I think we would agree that if everyone is happy to sign up to it, the chances are it's not really going to take us much further. Our concern is that unless progressive states, like the UK, start putting the time into developing draft treaty text and applying that at the preparatory committees over the next year or so, very soon the negotiating conference is going to be upon us and there will be little chance of getting something with teeth at that conference. That's where the leadership role comes back in, because we would very much welcome stronger leadership on the drafting of treaty text, the running through of scenarios and ideas, and producing a strategy on how to bring on board some of the more reluctant states in the very short time that we have.

**Q21 Mike Gapes:** You talk about reluctant states. There are 150 countries in favour, but India, China, Russia and Pakistan are not signed up, and there are a large number of others, particularly in the Muslim world, who don't seem to be on board. Are we heading for a situation in which a substantial part of the importing regions or the exporting regions or both will not be signed up to the treaty?

**Martin Butcher:** At the moment, there are probably only a couple of states, probably Iran and Pakistan, that are outright and adamantly hostile to even the

idea of the treaty. Other states—the ones you've mentioned—have concerns about different aspects of it. They would like to see, in some areas, a weaker treaty. But actual opposition to the treaty is really vanishingly small. There are concerns that trying to get all this done in the small amount of negotiating time that remains might put pressure on treaty content if people don't work very, very hard at it.

**Q22 Mike Gapes:** May I ask one last question? In relation to your own role as NGOs and civil society organisations, are you confident that you are continuing to have input, given that the whole idea came out of an NGO initiative 13 years ago? Is the NGO movement internationally still being listened to by the Government, or has it gone on to somewhere else?

**Martin Butcher:** NGOs certainly still have a strong role. We were very concerned in the summer at the first two prep comms that about 60% of the sessions were closed to us. We feel that at such an early stage, which was essentially a conceptual stage, with nations putting ideas into a basket for future discussion, rather than a detailed negotiating session, it wasn't appropriate that NGOs, as stakeholders in the process—as you say, as initiators of the process—were closed out of the room. That certainly impacted on our ability to assist, in particular smaller states—from, say, the Caribbean or Africa—which have come to rely on NGOs for expertise and support. Many of these countries will have just one person representing them and often covering several different things at once. It's very hard for them to be engaged in a treaty process, which is very important to them, without support from groups such as ours. As we understand it, that was an early sign of the consensus process operating, in that some of the sceptic states said, "NGOs out," and the Chair just said, "Oh, okay," to keep the sceptic states in for the moment. Yes, we have those concerns.

**Oliver Sprague:** It's certainly the case that in the UK—not just for the arms trade treaty but for a whole raft of interrelated UK arms export control policy decisions—we have been an important joint stakeholder in all discussions, both with Government and industry. I would say that everybody has benefited from that process and we've come out with a stronger agreement as a result. So we would be very concerned if the role of civil society is removed from the process, because from all sorts of aspects, as Martin and Rob have said, we have a lot to give to the process.

**Chair:** We have another four subjects to discuss and there are only 20 minutes. Just bear that in mind. We will turn now to corruption and bribery.

**Q23 Mr Donaldson:** Criterion 8 was mentioned earlier, gentlemen. In evidence, Transparency International recommended a new criterion 9 dealing specifically with corruption. What is your view on this proposal and do you think there is any realistic prospect of it being taken forward?

**Rob Parker:** Shall I kick off? On the one hand we're supportive of the proposal. As we say in our

submission, this would bring EU practice in line with global norms. I'm thinking in particular of the firearms protocol and the UN convention on corruption. But it's the art of the possible. Basically, when you talk to EU officials, as I mentioned before, there is certainly a willingness to look at the issue, but there is more of an appetite to look at it perhaps in the users' guide or in the context of an addition to an existing criterion rather than creating a new criterion 9. I think it's actually a bit of a sliding scale between convenience and effort. While the corruption criterion would potentially be the most effective, it would also obviously be the most difficult to enforce. We're at the stage of promoting discussion of what is feasible and what needs to happen if our collective interest is in ensuring that arms exports generated from within the EU area do not lead to corrupt practices and undermine the sustainable development.

**Martin Butcher:** I would argue that the United Nations convention against transnational organised crime and its protocols, which came into force in 2003, have put an international obligation on all adherent states to work within international standards on corruption as set out in that agreement. The arms trade, unfortunately, is somewhat susceptible to corruption. Clearly, within the EU, having this in some way included in the common position would be the best way of dealing with the issue of corruption. Whether it is possible to do that by an entirely new criterion, as Rob has said, or whether it needs including in one of the existing criteria is open to debate.

**Q24 Chair:** May I turn to extra-territoriality? As you will recall, the previous Arms Export Controls Committee, in its final report at the end of the previous Parliament, concluded: "We conclude that we see no justification for allowing a UK person to conduct arms exports overseas that would be prohibited if made from the UK." The present Government, in their response to that report, have basically continued the policy of the previous Government and are refusing to extend extra-territoriality to all items on the military list. That refusal of this Government, continuing the refusal of the previous Government, has to be seen against the successful agreement between the NGOs and the representatives from the arms exporters—the agreement you successfully concluded on extra-territoriality. Notwithstanding the fact that you finally achieved an agreed position, both the previous and the present Government have turned down your agreed proposal. In the light of that, do you feel that we are now into a cul-de-sac on this issue, or do you wish to see continuing pressure for the extension of extra-territoriality to all items on the military list?

**Oliver Sprague:** The first thing I would say is that, as the UK Working Group, we have long supported the Committee's recommendation that there should be greater extraterritorial controls on brokering across the military list. The case is clear that there are certain categories of military equipment that are brokered and trafficked around the world that are not just small arms and light weapons.



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Of course, we were disappointed that our joint proposal, which we worked through with industry, was rejected. My understanding now is that the olive branch that has been given to us is that—maybe not every item on the military list—if we could come up with categories for inclusion in category B of the new transfer controls, those items will be looked at.

We have already had agreement from the response to last year in that anti-vehicle landmines will be included in category B. I'm afraid I have not checked to see whether they have been included, but I could do so and come back to you on that. But the commitment from the Government was to put anti-vehicle landmines, for example, into category B.

We would be keen to re-establish our working with industry to see if we can come up with a list—if it is not the entire military list, there must certainly be a case for putting things such as vehicles, attack helicopters and combat aircraft into category B.

**Chair:** Thank you very much. I am sure that the Committee would be interested to have any further evidence that you want to provide to us. If there are any specific items that you are going to offer to the Government under what you have described as their olive branch, we would appreciate being kept informed about which ones you think it would be appropriate to include.

**Q25 Margot James:** The UKWG has said that if the EU is going to take more than six months to introduce a catch-all clause amendment to torture end-use controls, the UK should act unilaterally. In evidence, you mentioned the export of sodium thiopental to the US for use in its executions. Have you had discussions with the UK Government since becoming aware of this situation, and do you detect a sense of urgency on their part?

**Oliver Sprague:** There are a number of parts to that question. The first is that the issue of sodium thiopental became subject to a judicial review, which, for obvious reasons, made it very difficult to have substantive discussions while that legal review was going on. The result of the review was that the Government were asked, under powers under the 2002 Act, to put in an emergency order to put sodium thiopental on to the control list.

Our argument—and we think that we won the case through our work on the review of the export control list, and it was certainly a Government commitment—was that in cases where there was a reasonable risk of goods being used for torture or capital punishment, the way to control these dual-use items was through a catch-all clause. In our view, when they became aware that sodium thiopental was at risk of being used in death penalty cases in the United States, at that point a torture end-use control provision would have kicked in.

From our discussions with the Government, there is a difference of opinion between what we think a torture end-use catch-all control clause is and what they might think it is. We think that it is about risk: it is about reasonable knowledge and where the exporter

has—or ought to have—knowledge that their goods might be used to facilitate torture in death penalty cases.

It seems that the Government's view is that the burden of proof in these cases is extremely high, so that the knowledge has to be almost certain for them to think that the torture end-use control would kick in. So it is not a risk-based system; it is a proof-based system.

There is a difference of opinion there that we need to work through, because certainly we have always looked at this as a risk-based system. Where there is credible evidence to suggest that this might happen, a licensing option should kick in—not if it will happen; but if there is reasonable risk that it might. That is a very important distinction.

In terms of the timeline, there is already going to be a delay at the EU level, because the DG Trade, the Commission and the External Action Service are reorganising from 1 January, so the actual EU committees that regulate the regulations—the catch-all clause will come into the EU torture regulation—are unlikely to meet in the next six months because of the ongoing restructuring at the European level. Progress on the issue at the EU level will be slow anyway so, given that this was a commitment made in 2008 and that we have had this case with sodium thiopental, which included, first, a court case and, secondly, a decision to put an emergency order into the export control legislation, we think it probably is high time that the Government act first to put this in place as best practice.

Does that answer your question? Sorry, it was a very long answer.

**Margot James:** Thank you—it was very informative.

**Chair:** We have one or two countries that are of concern to us—John Glen.

**Q26 John Glen:** In your evidence, you said that arms supplied by the UK to Saudi Arabia have subsequently, apparently, been used in illegal acts against Yemen—or our aircraft have been involved in illegal acts against Yemen. Similar concerns have been expressed about strategic exports to Israel and Sri Lanka. What is your view about the export control system generally, and the licensing criteria? They are clearly not fit for purpose if you can point to such clear breaches. Following on from that, if you do think that the whole system generally isn't working, what improvements would you suggest?

**Oliver Sprague:** In the case of Yemen, Amnesty produced a report in August 2010, in which we highlighted in great detail the role of aerial bombardment against the villages of the Houthi groups in northern Yemen. It is very clear to us that there was an intensive aerial bombardment, to the point of destroying infrastructure, religious places and marketplaces, and flattening buildings—an extremely extensive aerial bombardment, which we believe raises severe questions about international legal obligations, international humanitarian laws and such things, in which there are express prohibitions on deliberately targeting, for example, civilian infrastructure.

We think there is credible risk that Saudi Arabia used military equipment of a type supplied by the UK—so, attack aircraft—in those aerial bombardments. The consolidated criteria, the common position and the Export Control Act 2002 are very clear that licences will be denied if there is a reasonable risk that crimes of this nature might take place. In that case, we have asked for an immediate investigation and review into the use of UK or Saudi-supplied equipment, and a suspension of export licences while that review takes place.

One of the things that we were concerned about in particular, referring back to the open general licensing and the open licensing discussions that we had earlier, was that two days after our report was launched, a new open general licence was issued, and one of the things that it allowed was for spare parts and components to be supplied to Saudi Arabia in support for the Typhoon Eurofighter project. In our view, in light of real, credible risk that this military equipment was used in ways that would breach the EU common position and the UK relative consequences for the 2002 Export Control Act, we think it inappropriate to have a country such as Saudi Arabia as a permitted destination on something like an open general export licence. We think that there are already powers to revoke, suspend and amend those licences, to make sure that no transfers take place until an investigation has taken place.

**John Glen:** Is that before it is proven one way or the other?

**Oliver Sprague:** Yes. We are not saying, “Ban all exports to Saudi Arabia.” We are saying that exports should be suspended while an investigation is done into the role that the Saudi Arabian air force may have played in the attacks.

**Rob Parker:** I wonder whether I might add a little supplementary information. We don’t categorise the system as being broken, in that sense. The role of this Committee and of us giving evidence are testament to the fact that the system is open to scrutiny, and that we have an opportunity to try to make incremental improvements to it by raising issues around the things we have been talking about today. I would not want to give the impression that we think otherwise, because we also praise this system as being one of the most robust of the many that we work with.

**Q27 Chair:** I would like to put another question on another country. In their response to the previous Committee’s report, the Government referred to lessons learned from Georgia. Are you aware of any breaches of arms export licensing controls by UK persons or businesses as far as Georgia is concerned?

**Rob Parker:** I am not aware of any.

**Oliver Sprague:** This may not be a very satisfactory answer, but it is probably a true one. We are in the very early stages of a new Administration, so it is very difficult to pinpoint specific licences of concern, but we could certainly come back to you in writing on the Georgia question.

**Q28 Mike Gapes:** I wanted to follow up on the issue of Sri Lanka. The previous Committee was very critical of the fact that arms exported during the

ceasefire period were subsequently used in the civil war in Sri Lanka. Has there been a change of policy on Sri Lanka in recent months? If you cannot answer now, perhaps you could send us a note with your assessment of the current position on Sri Lanka.

**Oliver Sprague:** We can certainly do that. I am mindful that the Government responded to the Committee and gave explanations that the licence applications that they issued were such that there were no risks of the arms being used in the conflict. There is a wider point there about transparency and end use. It is actually quite helpful to have that kind of detailed breakdown across the whole spectrum of problematic arms licences, probably in annual reports. We could certainly come back to you in more detail specifically on the Sri Lanka case, and on whether you as a Committee were satisfied with the responses.

**Q29 Chair:** One final question, if I may. As you will recall, the previous Committee was very firm that our arms export control structure would be greatly enhanced if we had “no re-export” clauses in our arms export contracts, yet although the number of other countries that adopt that as standard practice is quite striking, we were not able to persuade the previous Government, and I do not think that we have so far persuaded the present one, that that is a good route to take. Instead, they have come up with a halfway house in terms of end-use undertakings. We have had that system running for a year or so. Do you have any observations as to how well or not well it is working?

**Rob Parker:** In terms of the impact of those commitments, the question is probably one for the Government to answer, but it seems very unlikely to us that someone would ring up to announce that they plan to re-export UK equipment to an embargoed destination. I am not being flippant. It seems a back-to-front approach to the issue, when we are talking about destinations that are already prohibited. It seems unlikely that a UK clause on re-exports would influence the actions of a state that is set on exporting to an embargoed destination in the first place.

We see the value of a no re-export clause essentially as raising the bar in terms of the tools that you have available for your risk assessment. It is not so much about on-the-spot enforcement—there is not a lot the UK can do to stop another country exporting UK equipment. It is more about having that on a contractual basis, so that the burden of proof for your risk assessment is less about where someone may have re-exported UK equipment to, but more about the fact that they breached contractual obligations to consult with the UK before they did so.

There are a number of elements that would be useful in terms of sharing information with EU counterparts, for example, and raising a flag, not necessarily to show that there was an egregious occurrence as a result of the transfer, but just the fact that the state or end user was not sticking by its contractual obligations. It seems to us that it is normal standard operating procedure for legitimate trade, and people are happy to follow standard operating procedure.

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There will not be a significant number of cases when the UK feels it needs to step in and enforce this; it is more that it is just part of the bigger picture of good practice.

**Chair:** Thank you very much Mr Sprague, Mr Parker and Mr Butcher for joining us this afternoon. Your evidence has been very useful, and we will be glad to have the follow-up material that we have requested.

### Examination of Witnesses

*Witnesses:* **Mr David Hayes**, Chairman, Export Group for Aerospace and Defence, David Hayes Export Controls, **Mr David Wilson**, Vice-Chairman, Export Group for Aerospace and Defence, Hewlett Packard Enterprise Services, **Mr Brinley Salzmann**, Secretary, Export Group for Aerospace and Defence, AeroSpace, Defence and Security Group, and **Mr Barry Fletcher**, Executive Committee Member, Export Group for Aerospace and Defence, Fletcher International Export Consultancy, gave evidence.

**Q30 Chair:** Thank you very much Mr Fletcher, Mr Wilson, Mr Salzmann and Mr Hayes for joining us this afternoon. As you know, this is the first oral evidence session of the new Committee on Arms Export Controls, and we are very glad that you are able to join us. We will start on the thorny issue, which we have discussed with you at length many times before, of extraterritorial controls. Jeffrey Donaldson will start.

**Q31 Mr Donaldson:** The Committee previously recommended that all extraterritorial controls be extended to all items in category C. However, the coalition Government and the previous Government have both rejected that. On the other hand, in August anti-vehicle landmines were formally added to category B. Have you or the NGOs had any talks with the new Government about extending extraterritorial control to any other specific items and how does the working group propose to take this issue forward?

**Mr Hayes:** We have not had any discussions with either the NGOs or the Government on taking this forward.

**Q32 Mr Donaldson:** And have you no plans to do so, or any ideas about how it might be addressed?

**Mr Hayes:** In terms of the whole concept of extraterritoriality, our position is unchanged. We do not regard extraterritoriality as an efficient way of enforcing export controls. It is interesting that at the present time, even the US Government are looking at relaxing their own extraterritorial controls. It is now perceived that, in a particular respect, those controls are damaging to US national security, because of the deterrent effect they have on other companies becoming involved in dealings with the UN.

**Q33 Mr Donaldson:** As a working group, have you taken a formal position on the recommendations that were made by the Committee last time round?

**Mr Hayes:** Not a formal position as such, but it is fair to say that our position remains unchanged from the evidence that we gave to the International Development Committee.

**Mr Wilson:** Our continuing position is that we have been working with Government, and that the changes to the end-use control go a long way. As Oliver Sprague was saying, we are happy with the idea that the controls are being introduced contractually so that if something is supplied to a foreign country, a third party or whatever, and that foreign country then

breaches the terms under which the items were supplied, then both the company supplying it from the UK and the UK Government would take a strong view on where that puts the recipient Government or country in terms of their ability or willingness to comply with international contract law and common sense. It is moving in the right direction and far enough to apply extraterritoriality in the way in which the US has hitherto done, which is to make it explicit that if a company or country wishes to re-export a specific item, they go back to the US Government for approval to do so. The Americans realise that that places a huge constraint on US trade, and it is the UK Government position that they do not recognise US statements of extraterritoriality. Where items are purchased from the US and the UK recipient party provides a statement to the US Government, the UK Government do not necessarily underwrite that. If items are provided for the UK Ministry of Defence, for example, the UK Ministry of Defence does not necessarily recognise officially the US statement of extraterritoriality on that issue.

**Chair:** We have now an issue that is dear to your heart—delays in the export licence system. Margot James will lead on that one.

**Q34 Margot James:** This is clearly a huge problem. In Defence questions this afternoon, we heard of companies experiencing serious delays in obtaining export licences. Even when they have had a licence for a service or a product approved, the follow-up service to that sale of equipment requires its own licence. Everything is delayed. What has caused this huge increase in the number of licensed applications in the first place, and what is your view of the current state of play with these huge delays?

**Mr Wilson:** Two-part question, two-part answer. One is that the increase in the number of licences is a problem that we have not been able to get to the bottom of, but there are two possible theories. First, as the UK export controls begin to get better known among those parts of the community who are on, if you like, the soft end of what are controlled military goods but not universally perceived as arms exports—such as military software, a subject dear to my heart, which is an arms export and subject to military controls—and if an open general licence is not applicable to them then an individual licence has to be applied for. There is more understanding among the community, particularly in the dual-use sector, that licences are required, which means, therefore, that

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people are applying for licences. The open general licences have, hitherto, been a godsend for the export control organisation because they have taken out of the individual licensing process those items being sent to countries that are perceived as low risk. With low-risk items to low-risk countries, the open general export licence happens simply and seamlessly.

What has started to happen is that the new generation of open general export licences has been made incredibly complicated. I commend to the Committee an examination of the newly-issued Open General Export Licence (Military Goods: Government or NATO End-Use) and Open General Export Licence (Military Goods), which replaced a single, simple licence. A number of companies looked at it and thought, "This is so complicated that we cannot put ourselves at risk by applying to use it, so we will go back to using single, individual export licences." There are some quite large companies who have elected not to use those two new open general export licences, because they are so complicated. Bear in mind that the person who makes the licensing decision in most companies is not the high-powered corporate lawyer; it's the poor soul sat on the export control desk who has to read through this. If the licence is written in terms that can only be understood by somebody with a law degree several times over, it's not going to get used. It's going to be simpler to apply for a single licence and the Export Control Organisation will get swamped.

**Mr Hayes:** There is another specific element that we also think has contributed to the build-up of licence applications. It also reflects something said by the NGOs. Most of the companies that were exporting on the Typhoon project, prior to Saudi Arabia becoming a signatory to the contract, were using an open general export licence—the previous Open General Export Licence (Military Goods: Government or NATO End-Use)—at a time when all the end-user countries were covered by that licence. When Saudi signed up, that licence was no longer available, because the terms and conditions couldn't be met. Between then and the issuing of the open general export licence for the Typhoon there was no option open to companies but to use individual licences on that programme, which of course is a large programme. We can't actually substantiate the number of licences that relate to that programme, because we're not Government and we're not in a position to do that, but it's a reasonable supposition that licences on that programme made a significant contribution to the number.

**Q35 Margot James:** Could I clarify, Mr Wilson, what you were saying? The open general export licence was a system designed to improve or lessen the bureaucratic burden of, for example, low-risk items going to low-risk countries.

**Mr Wilson:** Yes.

**Q36 Margot James:** But it has had the reverse effect.

**Mr Wilson:** In this particular case, yes. It's a particularly good example. The previous open general export licence allowed low-risk material to be passed to Government and NATO; and it was very simple. It referred to "any of the following persons or entities in

a country specified in Schedule 2: (a) its government; (b) a NATO Headquarters; or (c) a contractor"—provided that you met other bits and pieces. The new one starts off that way and then has an exception, and then has exceptions to the exception, so you do actually need to have a fairly legal turn of mind to make head or tail of it. A number of us have spent a considerable amount of time trying to draw up a flowchart, where you could go "Yes. No. Yes"—and you can't do it.

**Q37 Margot James:** What has your advice to the Government been?

**Mr Wilson:** Write it in plain English, please.

**Mr Hayes:** We did ask Government several weeks ago for some guidance to industry in terms of the use of the licence, and for a model undertaking, because of course with the use of these licences the compliance is always audited post-event by compliance officers. We need to standardise what it is that the compliance officers will expect to see in the companies. We asked for a model undertaking that BIS would accept as meeting the requirements of the licence, and I'm afraid we're still waiting.

**Q38 Margot James:** How is the co-ordination between different Departments in determining licence applications working?

**Mr Wilson:** Within Government?

**Margot James:** Yes.

**Mr Wilson:** We don't know, because we don't get visibility of that. The Government's licensing system—SPIRE—works in that you apply for a licence and you are allocated a case officer. But individual applying companies have no visibility of where in the process a licence has gone, and having come from the other side of the fence, I can understand why. For example, if a case is passed to the FCO or to the various bits of the Ministry of Defence, the BIS case officer fields the questions and covers for the various bits—he protects their interests quite carefully so that companies don't go and rattle the Foreign Office's cage or the Ministry of Defence's cage. That's probably fair and reasonable, and I don't really have any issues with it. It would be nice, as an applying company, to know exactly which adviser your application had stalled with, but as I said, having come from the other side of the fence, I can understand why people don't want to do things that way, and I don't really have any problem with that.

**Mr Fletcher:** I do. The issue I have is that however careful you are in putting in a series of licence applications on SPIRE—let's say that they're all for the same item but to different destinations—and you co-ordinate all the information in those applications, they are each dealt with separately. Again, like Mr Wilson, I used to be an MOD adviser on export controls, and I would have hated it if I had not had all the same applications on my desk in front of me—I know it's done electronically now—so that I could basically look at them all at the same time. There is just no co-ordination, because, I am told, the case officers just get allocated the next application. In my case, I put in 64 applications on behalf of a client one evening, so they had consecutive numbers. Some of

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them got case officers within a week, some within a month and some within two months, and they all went through the system as individual licences. That is not good for the exporter, it's not good for the advisers and it's just not good for the system.

**Mr Wilson:** That, of course, is not about co-operation between the various Government Departments; it is a symptom of the Export Control Organisation itself being—how can I put this?—understaffed and overworked.

**Mr Fletcher:** Yes.

**Mr Wilson:** It needs to sort out, and perhaps make better use of, its resources.

**Q39 Margot James:** I did have a question on staffing, which seemed inappropriate in the current economic circumstances. I was going to ask how you would suggest that staffing and resources increase to handle the increased number of applications efficiently.

**Mr Wilson:** My personal view is that the Export Control Organisation's forthcoming review of the open general licensing system will probably have the effect of reducing the number of individual licences and, in the very laudable American phrase, would put a bigger fence round a smaller backyard. In other words, the organisation would be more careful with those things for which a single individual licence is required, giving them greater scrutiny and making better use of the licensing staff who are there already. But it would open up a broader number of things, where, at the moment, a single individual licence goes through because those involved know, and I know as an applicant, that there are no issues with it.

**Mr Hayes:** It will be very difficult to have an export-led recovery if the licensable element of that recovery is hampered by the fact that companies can't get licences in a timely and efficient manner. We will just not be competitive enough to sustain the recovery that the Government expect.

**Margot James:** I trust that we will give this a great deal of emphasis in our report, Chairman. Thank you.

**Chair:** That illuminating exchange provides a very good springboard for our next subject, which is the Government's stated policy on expanding defence exports.

**Q40 Malcolm Bruce:** You mentioned export-led recovery. I think it would be fair to say that Defence Ministers are fairly ebullient in their statements. Liam Fox said the Government "will use defence exports as a foreign policy tool and we will seek to increase Britain's share of the world defence market" and "will make it its policy to maximise the UK's share of global defence exports". Peter Luff stated that the Government were not embarrassed to promote defence exports. That's fine, and our non-governmental organisations have made it clear that they have no ideological objection to developing our defence export industry, but the question arises: where are those orders going to come from? It isn't as if we're the only people in the business, and defence budgets are presumably under pressure. I might have a supplementary to that, but where are you looking

for export opportunities in this situation? It is fine for Ministers to say "We're all for it," but where are they?

**Mr Wilson:** The USA is a big and increasing market, as the USA is reducing its own internal—how can I put this?—protectionism. They are now evidently willing to purchase the most effective material, and in a lot of areas, the UK has a lead. One particular one, for example, is interoperability or joint operations: material that you need to put together, such as software systems or communication systems to allow interoperability between various NATO countries and individual operations, so that you don't get the situation of a policeman being unable to talk to another policeman because he's got a different radio set or whatever. That's one issue, and that takes it across NATO, of course.

**Q41 Malcolm Bruce:** We did have a number of debates in the last Parliament about what you've just stated as being what the Pentagon prefer, but Congress taking a rather different view. Congress, obviously, has changed its balance. While the Republicans, I can imagine, would be strong on defence budgets, they're also strong on buying American. Do you anticipate what you've just said finding enough space?

**Mr Wilson:** I think the answer to that can only be that we live in hope.

**Mr Fletcher:** I sometimes get confused about what people imagine defence exports are. Having negotiated on behalf of the Government as the head of the UK delegation to the Wassenaar export group, we were more inclined to be negotiating on dual-use goods which were used in the military scenario. There's a huge area of potential exports.

**Q42 Malcolm Bruce:** That's what drives Silicon Valley, isn't it?

**Mr Fletcher:** Yes, exactly. But what worries me in that particular area is that the Export Control Organisation is putting obstacles in the way of UK exports. I will give you two examples. Recently, Mr Hayes and myself were both on a crypto training exercise at the ECO. The technology assessment unit was represented, and it came out with two absolutely startling statements. A laptop computer, if you take it out of the country yourself as an export, won't be considered a crypto item. However, if you take it out with your family and your whole family is going to use it, it might be. I know, as somebody who negotiated the controls, that is not the interpretation.

**Mr Wilson:** That wasn't the intention.

**Mr Fletcher:** The second one was on routers and modems, which you've all got in your houses, with your computers, to give you your networks. If they're exported for an individual to install, they probably won't require an export licence, but if the IT department is going to install them, they will. That is just utterly ridiculous. As a result, I know that one company in UK—I suspect that there are many others—is placing a £20 million order every year with the US rather than the UK, because US export controls on cryptography are much more relaxed than the UK's. The US is much more relaxed—yes, I did say that—than the UK.

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**Q43 Malcolm Bruce:** That follows on from Margot James's questions as well. That is an interesting answer, and I am glad that I asked it that way around, because some people might be concerned that some markets might be emerging markets, where controls might be more difficult. Do you see emerging markets in terms of being able to purchase the equipment and pay for it, and it being appropriate, or is that likely to create more trouble than it's worth? Clearly, dealing with the United States is a different proposition from dealing with—but I shall not name any countries.

**Mr Wilson:** If you were to treat the new members of the European Community as an emerging market, the answer to your question would be yes, because they are very keen to bring themselves on line and bring themselves up to the standards of, and allow themselves to be interoperable with, the other parts of the European Community—and, indeed, the other parts of NATO. That inevitably means that they are going to have to upgrade their systems, their infrastructure. That, I think, is probably where the biggest spread will be—not in those matters that may be of most concern to the NGOs such as small arms and light weapons but in the high-tech infrastructure, technology systems and support bits. They are still arms and are still subject to arms export controls but, if you like, they are the soft end.

**Q44 Malcolm Bruce:** High-tech manufactured goods?

**Mr Wilson:** High-tech manufactured goods. There are not only military export controls or dual-use export controls, but companies that wish to maintain careful control over their intellectual property rights, because they have a good piece of kit that they want to sell and do not want to allow it to get overseas.

**Q45 Malcolm Bruce:** It is fair to summarise your answers by saying that you believe that there is potential—no doubt it is competitive—and you believe that it is in markets that shouldn't really cause significant concern?

**Mr Wilson:** That is my personal view, yes.

**Q46 Malcolm Bruce:** Does anyone disagree with that?

**Mr Salzmann:** No.

**Mr Hayes:** I would add that you may well see licence applications for very sensitive destinations, because of the amount of licensable equipment used by the oil and gas industries.

**Malcolm Bruce:** We have been there before.

**Mr Wilson:** Yes.

**Mr Hayes:** The point about that is having a proper licensing system.

**Q47 Chair:** Just before we finish this topic, I put to you the same question that I put to the NGOs. Since the arrival of the new coalition Government, are there any aspects of their policy in the arms export control area that please you or displease you?

**Mr Hayes:** Again, I reflect on what the NGOs said. It is early in the new Government to be able to determine whether there have been any substantive changes. We would welcome the continued support of

the arms trade treaty. The cutbacks are obviously part of Government policy, but their implementation is an area of concern because it appears to run counter to the expressed desire to have an export-led recovery. Apart from that, there is nothing.

**Chair:** I turn now to the UK-US Defence Trade Cooperation Treaty.

**Q48 Mike Gapes:** I suppose that it is good news that—after so many years of trying to get the US Senate to ratify that treaty, previous arguments about the ITAR waiver and all the other issues that have been going on for 10 or 12 years—in September, we finally got confirmation by the Senate. I understand that the US State Department is supposed to be undertaking some kind of consultation with regard to implementation.

My question is in two parts. First, has that happened yet? Secondly, what preparations are being made by our Government? You told us that there will be a series of workshops in 2011. Is that the first information that anybody—any company—will have received about this? In practice, what is being done by the Government to prepare industry and does the UK-US treaty make any difference?

**Mr Hayes:** The thing that changed materially was the way in which the treaty was implemented. It was always intended that the treaty would be self-implementing and there would be no need for US regulations to bring the treaty about. Because of the Bill that was proposed by Senator Kerry, there is now a need for regulations to be implemented to bring the treaty into force in the US. Really, until we understand the detail of those regulations, it's difficult. We have the treaty, we have the original implementing arrangements, but we don't know what the regulations will ultimately say.

It's difficult to brief industry at the moment on something that's still, to a significant extent, an unknown. That said, we at EGAD are working with the Society for International Affairs to prepare some workshops for advising UK industry and helping it when we have the detail on which to give it the advice.

**Mr Salzmann:** The SIA has intimated to us that it does not think that it will be in a position to support these joint events until about April/May time, so we stand waiting.

**Mr Wilson:** At the earliest.

**Q49 Mike Gapes:** Would I be being too cynical in thinking that we might end up with regulations that are difficult and, as a result, all the effort in getting the treaty will not amount to much?

**Mr Fletcher:** I don't think you're being cynical enough.

**Q50 Mike Gapes:** And that protectionist pressures in the US and people who are against us having the treaty in the first place will get at it another way?

**Mr Wilson:** I think you need to remember that the pressure for the treaty in the first place some 11 or 12 years ago was in the face of huge administrative delays in getting any information, technology or exports out of the US. That situation has improved

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almost beyond recognition. We have here a treaty that is incredibly complicated in its execution and detail but is a solution to a problem that has largely gone away.

**Q51 Mike Gapes:** Congressman Hyde and Senator Stevens are no longer there, either.

**Mr Fletcher:** I think that a lot of UK companies will be disappointed when they find that it will not do anything like what they were originally told it might do.

**Mr Wilson:** It is only going to be of value to—what did we think?—maybe two or three UK companies—*[Interruption.]* Because material passed under the terms of that treaty will only be usable for a UK Ministry of Defence contract and will not be usable for anything else. And then you've got to go back to the original supplier and get a standard US export licence if you want to use it for anything other than a UK Ministry of Defence contract. For a broader NATO contract it is of no use at all.

**Mr Hayes:** Another complication, albeit a welcome one, is the fact that the review instigated by President Obama and led by Secretary Gates is wide-ranging and potentially offers significant benefit to the whole of the UK industry, where the treaty offers a narrow benefit to a narrow population.

**Q52 Mike Gapes:** But does that benefit other European countries as well?

**All witnesses:** Yes.

**Q53 Mike Gapes:** So the difference is that, whereas in the past we were hoping that the special relationship would lead to some special relationship in terms of trade, the reality is that we are getting something completely different.

**All witnesses:** Yes.

**Q54 Mike Gapes:** Thank you.

**Q55 Chair:** A key issue is getting, hopefully, universal knowledge and awareness of the export control system, which I know is of much concern to the reputable companies in the business in the UK. Katy Clark will lead on this one.

**Q56 Katy Clark:** Last year, a study for the Department for Business, Innovation and Skills found that 53% of respondents were aware of SPIRE, and 46% of the Export Control Organisation website. Do you think that over the past year, the Government's efforts have been successful in making companies more aware of the licensing system generally, and in particular of SPIRE and the Export Control Organisation website?

**Mr Wilson:** I think that David has a splendid set of statistics to cover that.

**Mr Hayes:** One thing that struck me about the research done by the ECO at the time was that, from memory, about 80% of companies claimed to be compliant, but only around 40% had heard of SPIRE and were registered with it. Given that SPIRE is the only way to obtain an export licence, I would be

interested to know how the other 40% managed to be compliant.

**Q57 Katy Clark:** Do you think that they just didn't know the names?

**Mr Fletcher:** If you're complying, you know what SPIRE is—it's as simple as that. More people become aware of the need for export licences through high-profile court cases than they do through any publicity that the Government or BIS want to put out. That's the thing that makes people sit up and realise that export controls may affect them.

**Q58 Katy Clark:** Given that court cases are not necessarily completely in the Government's hands, what else can the Government do to make people aware of the processes?

**Mr Wilson:** I would perhaps like to see more work with local chambers of commerce. In a previous existence, I went round trade associations and chambers of commerce, and the level of understanding, except among the major defence exporters, was frankly woeful. I now find, working for an IT outsourcing company, that our clients do not understand that their data are subject to controls. That is not confined entirely to the UK; it's almost all the way across Europe. People say, "Oh, it's Europe. Everything gets moved around freely inside Europe", but they fail to realise that military material is not moved freely around and is subject to export controls. Quite large companies do not know that. They do not understand and are really quite boggled by the fact that the controls applied to them all the time and they did not know it.

**Mr Hayes:** There is a possibility of a better use of IT systems. One thing suggested in the past was to monitor the internet—not a difficult thing to do—and look at companies whose product ranges are apparently, from the information they provide on the internet, controlled. We could then match that against the licensing database.

Mr Fletcher and I are both consultants. We are both independent, and we work independently and collaboratively. We come across non-compliant companies on a regular basis. There is a correlation table between the harmonised tariff schedule which is a numerical description of any goods for export, and the export control list. It's very far from perfect, but it is at least a rough guide. Why isn't it possible for customs, in choosing its IT systems, to identify companies that are making export declarations of those tariff codes, and advise them that the goods may be affected by export controls?

**Q59 Katy Clark:** Would there be resource implications with that?

**Mr Hayes:** Absolutely. There would.

**Mr Fletcher:** Yes.

**Mr Wilson:** Going back to an earlier comment, it would increase the number of licence applications.

**Mr Fletcher:** Significantly.

**Mr Wilson:** And it would increase the burden on the Export Control Organisation and increase the costs to the companies concerned. At the moment, export compliance is largely a coalition of the willing. EGAD

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is, if you like, the public face of those companies that have realised that they need to comply with export controls, and are spending money on making sure that that happens.

**Q60 Katy Clark:** Thank you, that was helpful. Moving on to a slightly different issue, since this April, the Government have had in place a revised compound penalty system, expanding the use for minor breaches of export controls. It is obviously quite a short period since there has been this revised scheme, but what is your view in terms of how it is operating?

**Mr Hayes:** It is very difficult for us to have a view because, as we have said in our evidence to the Committee previously, the system used by the RCPO, the Revenue and Customs Prosecutions Office, to operate the compound penalty system is completely opaque. We have absolutely no idea what criteria it uses for imposing the penalty or how the penalties are arrived at.

**Q61 Katy Clark:** Have any of the organisations that you have had contact with had any dealings with this or been fined? Do you have any knowledge of its operations?

**Mr Fletcher:** Very little. Again, as Mr Hayes pointed out, both he and I are consultants. It is one of the questions that is always asked of a client: if I have to make a voluntary declaration, what is this going to mean? You can't advise them—you have absolutely no idea.

**Mr Wilson:** That really is a change for the worse because historically there has been a slightly more give-and-take approach between the regulatory authorities—the auditors from DTI, then BERR, then BIS, or whatever it is called this week—the prosecuting authority, which is Revenue and Customs, and the companies. An auditor would come in, find an error and say, “Ah.” It would slap wrists and say, “Don't do it again.” For a slightly less minor, more serious, error, you really need to go and make a voluntary disclosure. So you ring up customs at a clearly defined point and say, “I think I need to make a voluntary disclosure about so and so”, and it says, “Yes, you probably do.” It would then give you advice and it would come back. If it was serious, you would expect to get a serious kicking for it.

What is now happening is much closer to the American system—this is entirely anecdotal—where you submit a voluntary disclosure with no give and take or feedback, and there is no discussion between you and the auditor and between you and customs. So it is a one-way system: you throw it into the system and the penalty comes ricocheting back out of the system again, and I think that's a retrograde step.

**Q62 Chair:** Can I just come to bribery and corruption? That has the great difficulty, for law-abiding and reputable companies, of reputational risk—a bad apple tends to taint everyone in sight. It also has the capacity to face you with unfair competition. People are producing backhanders amongst your competitors and denying British exporters a fair and reasonable chance to get the

export contract. Is there any action that you would wish to see the present Government taking to deal with bribery and corruption, over and above what is already on the statute book? I am referring particularly internationally. What do you feel should be done to make certain that law-abiding and bribery and corruption-free British companies don't get beaten to the point of signing a contract by competitors that are engaged in bribery and corruption?

**Mr Hayes:** I don't think we necessarily see an additional criterion in the export control as being a way forward because, as you rightly say, the UK now has probably the strongest anti-bribery legislation in the world—certainly stronger than the US FCPA in terms of its scope. If we add an additional criterion, it will only be applicable across the EU, so we are really only addressing a subset of potential competitors. Coupled with that, we all know of examples in which the criteria are interpreted very differently by different member states.

**Mr Fletcher:** My main concern at this point in time, with the Act just coming in, is how a company will know how far it can go and what would be considered normal hospitality. It is totally different, from a company with half a dozen employees who know that that is not bribery, to a multinational company in which it is common practice, say, to lay on a dinner for people. Are both acceptable? I hope they are, but it is difficult, and I think the lawyers will make an awful lot of money advising companies on how far they can go.

**Q63 Chair:** I have another question I want to put to you. Present Ministers have been up front in trying to give priority to exports generally, including defence exports. Can you tell us what role you would like Ministers to take on defence exports? Do you want them to involve themselves personally in supporting particular contracts, or do you regard Ministers as more trouble than they are worth and prefer that they stay out of it? What do you expect Ministers to do to deliver the stated policy of strengthening defence exports?

**Mr Fletcher:** Personally, I would like them to come out with a statement that they have no intention of charging for export licences. That would be a great help to the industry, which is extremely worried about the rumours that there may be charges for licences.

**Mr Salzmann:** We would welcome Ministers actively supporting British companies and particular programmes pursuing potential export projects to help to counter-balance the high level of political support that our competitors in countries such as France and the United States receive. They receive a high level of support, and we are keen to see similar support from our Ministers.

**Mr Hayes:** There is a potential linkage between contracts for which the Government have expressed support at ministerial level, and the use of the open general licensing system, because it must necessarily follow that if the Government will the end, they must will the means.

**Q64 Margot James:** I want to revisit your response, Mr Salzmann. Could you fill the Committee in a bit



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more about the sort of support that the French and American Governments give their defence industries that you think we could learn from?

**Mr Salzmann:** Certainly. With regard to Brazil, in France President Sarkozy personally has been heavily lobbying his Brazilian counterpart for a whole range of potential defence projects out there. He has been very active in trying to lobby on behalf of the French industry. With regard to the Indian market, a whole host of international statespeople are queuing up to visit India to lobby in support of their industry for particular projects. The multi-role fighter programme in India is one instance. President Obama has just visited there, and I think President Sarkozy is about to visit there. They focus on trying to support their industries in particular markets at a very high level.

**Q65 Chair:** One last question, unless any of my colleagues want to come in on anything else. Do you want to put to the Committee any further changes or, as you would see it, improvements to the export licensing system? You obviously referred to the issue of delays and the very cumbersome nature of the new general open licences. Are there any other changes you would especially like to see?

**Mr Hayes:** There is a planned review of the current suite of open general licences, and there we would like to see genuine and open participation by everyone, including Government, and, if necessary, starting with a blank sheet of paper—not necessarily trying to make the best of the existing suite of licences, but maybe starting again and thinking about what we are trying to achieve today, not what we were trying to achieve when the system was first invented.

That is with the caveat that of course the use of OGLs should always be confined to only those exports where it is inconceivable that an individual licence would ever be refused.

**Mr Wilson:** Bear it in mind that over 90% of single individual export licence applications are approved. What we should be looking at more closely is trying to identify the 2% that are contentious and might be turned down, and making it easier to export the other 98%. Our open general export licensing system is the envy of my counterparts in business across the EU and across the US, because generally it is clear and simple. The US equivalent on the dual-use side is the licence exception system, which is written by lawyers for lawyers, generates a huge amount of revenue for legal companies and is incredibly difficult to understand. I would not wish our OGL system to go the same way, but our OGL system has done a Topsy. It started off simple; it has grown and become more complicated, and bits have been added on to it. We have a golden opportunity to review those that we have, make them simpler and make them broader in areas where there are no concerns.

**Mr Hayes:** But the system is so valuable to industry that we would certainly share the NGOs' view that the system must not be used for exports for which it is unsuitable, because if it is, that threatens the existence of the system.

**Chair:** Mr Fletcher, Mr Wilson, Mr Salzmann and Mr Hayes, thank you very much indeed. We have appreciated your evidence. We may wish to follow it up with one or two additional written questions. Thank you so much.

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**Monday 24 January 2011**

Members present:

Sir John Stanley (Chair)

Mr Bob Ainsworth  
Malcolm Bruce  
Richard Burden  
Katy Clark  
Thomas Docherty  
Mike Gapes  
John Glen  
Margot James

Mr Michael McCann  
Penny Mordaunt  
Ian Murray  
Anas Sarwar  
Mr Dave Watts  
Chris White  
Nadhim Zahawi

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**Examination of Witnesses**

*Witnesses:* **Mr Mark Prisk MP**, Minister for Business and Enterprise, **Chris Chew**, Head of Policy, Export Control Organisation, and **Tom Smith**, Head of Export Control Organisation, gave evidence.

**Q66 Chair:** Minister, may we welcome you to the first ministerial oral evidence session of the Committee on Arms Export Controls? We also welcome your colleagues, Mr Tom Smith and Mr Chris Chew.

Minister, I want to start by asking a question that I know you won't take personally in any way, because it is not meant in that way. The last report to this Committee and the House by the four Departments came under the names of the four Secretaries of State—David Miliband, Lord Mandelson, Douglas Alexander and Bob Ainsworth—and it was a substantial document of about 100 pages. The first report from the new coalition Government comes from yourself and junior Ministers in the other Departments—Alistair Burt, Alan Duncan and Nick Harvey—and it is half the size. I appreciate that size is not everything, but the Committee might conclude from that that the coalition Government attach less weight to arms export controls and arms control policy than the previous Government. How do you respond to that?

**Mr Prisk:** Thank you, Sir John, for your welcome. I wouldn't, and I certainly never have in my career before politics, measure the position of an organisation, let alone a Government, on the length of their documents, nor, indeed, on the specific signatories to a document. You will know that we are very keen to ensure that, while we promote exports vigorously as a Government, those exports must nevertheless be responsible exports. If the initial response to your substantive report is short, I hope that is because it is concise rather than insubstantial. Generally speaking, I hope that that will be a welcome quality in a Minister, although I will leave whether I achieve being concise but not insubstantial this afternoon to you and your fellow Committee members to judge.

**Q67 Chair:** What is the significance that under the previous Government this report was signed off by the four Secretaries of State—the four Cabinet Ministers—but that under this Government that is not the case?

**Mr Prisk:** Personally, I would not place any significance on that. If that is something that the

Committee feels is inappropriate, I will certainly take it back and report it to my Secretary of State. I am sure that Mr Burt, when he is before you, will wish to do so as well. My own personal view is that, when it comes to the details of how export controls are handled, Ministers of State, such as myself and others, are closely involved and have very good support from our Secretaries of State. I would not suggest to you that the fact that the signatories are not Secretaries of State means that somehow this is of no interest to the respective Secretaries of State of the Departments of which the Members present represent their Select Committees.

**Chair:** Thank you. Malcolm Bruce has some questions on the new Government's policy in this important field.

**Q68 Malcolm Bruce:** Good afternoon, Minister. I was taken to task after the last evidence session, which was with the industry and NGOs, because we asked them about the export promotion policy of the Government and were told that the target markets are basically the United States and the European Union. One of the NGOs that wasn't present complained that it was actually a much wider market than that, and we have since received a list of the Government's priority markets. It includes Algeria, Iraq, Libya, Pakistan—these are the ones that I have identified—and one might include Saudi Arabia and Mexico in brackets. In other words, these are not immediate, natural allies. What is the Government's policy, and what safeguards are there in promoting exports to countries such as the ones that I have identified?

**Mr Prisk:** If I may, Mr Bruce, you are absolutely right to ensure that that full list is there. Our view is that defence exports are legitimate—I suspect that that is also the view of many members of the Committee—not least if one looks at the UN charter, which is very clear that nations have the right to defend themselves. Sometimes, they will be in areas where there is considerable tension or, indeed, where there has been conflict—that is understood. We will wish to make sure that British manufacturers, who are successful, can export successfully, but that we will always look at this with due care and with particular attention to the risks in the market and the risks with the regime

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involved. Obviously, we will look at the local region into which the exports are being promoted, but the key issue is that we must always, and will always, seek to comply with our international obligations and the due process of law and make sure that we have taken the greatest care to look, for example at the question of the end-user, which is always very challenging.

**Q69 Malcolm Bruce:** Why do you think that the industry and, indeed, some of the NGOs were of the opinion, and comfortable with the fact, that you should promote arms exports and the arms trade? Clearly, some NGOs are totally opposed to the arms trade, but the ones we were talking to were not in that category. My response to them was that if we're talking about the EU and the United States, most of us are fairly comfortable, but some of the countries I have identified, which are on the Government's target promotion list, would, I think, be more questionable. First, was the industry trying to mislead us, or has it been misled? Secondly, what assurances can the Government give the wider public and those of us who, although not opposed to export promotion, are concerned that we might be selling to countries that are not entirely stable, where we cannot really be sure that exports will be used properly or will not be illegally passed on?

**Mr Prisk:** That's an entirely legitimate concern, so I wouldn't be surprised if NGOs looked at a list and asked themselves whether the risk in country A or country B is acceptable. That has to be a judgment call based on the information one has. What I'd go back to is the fact that there are clear consolidated criteria in this area around where exports can and cannot be undertaken and what we will not support. The criteria obviously relate to the issues that we're all worried about—things such as the promotion of international terrorism, internal repression or, indeed, cases where it's clear that there's a danger that the UK's national security could itself be jeopardised.

There is a wish in the new Government to grow manufacturing. As part of that, we recognise that we have strong UK manufacturers in the defence and security fields. We want to support those, where the end-use and the end-user are legitimate. We will follow, as have previous Governments, the appropriate criteria. We want to make sure that, while we're enthusiastic to ensure that British businesses can do well abroad, we do not short-circuit in any way the appropriate processes and laws.

**Q70 Malcolm Bruce:** Finally, Sir John, may I just home in on what's happened in the last couple of weeks in Tunisia? Are we really comfortable that Algeria and Libya are proper markets for promoting UK exports in the present climate?

**Mr Prisk:** We must always judge each country on the basis of the information—open information and other information—that the Government have, and I am sure the right hon. Gentleman understands that. That risk assessment has to change as events change. Had we had this conversation three weeks ago, events in Tunis would not perhaps have raised that issue. Other countries on the list may suddenly become even more

pertinent. The appropriate approach is to make sure that we look at the risk in each country on a case-by-case basis and use that judgment accordingly.

**Q71 Malcolm Bruce:** So this is a working list?

**Mr Prisk:** This is a list that we are working to, yes.

**Q72 Thomas Docherty:** Can I tease out your thinking a bit more, Minister? If I heard you correctly, you said that there were growing markets for exports. Could you expand a bit on whether you see those as existing markets with further opportunities? Is this a case of new technologies that UK companies had not previously sold? Is it a combination of the two?

**Mr Prisk:** Inevitably, it is a combination of the two, in the sense that it's a question of the opportunities that are there and of UK businesses being able to export to those places. They then need to make a judgment about that. Our view would be that we need to make sure that they are doing their job properly, and we are then able to support them where we're confident that they are doing that and that the end-use and the end-user are legitimate. All those considerations have to come into play.

**Q73 Thomas Docherty:** If we separate the existing contracts that are being extended from new types of contract, would it be right to say that the Government, for obvious reasons, would be more comfortable with an extension of existing contracts, because you broadly know what is involved with that and there are perhaps additional challenges or additional levels of scrutiny that would be needed for new markets or new types of contract?

**Mr Prisk:** Inevitably, when you're trying to make an assessment of the risk, if it's an established business with an established transaction with a known end-user for an established use, clearly the risk is different from the risk if it's a new user, a new technology or a new market. Again, this is why I think that a case-by-case approach, looking carefully at the different elements of risk that exist within any transaction so that we can understand that they are genuinely compliant with our treaty obligations, is the appropriate and sensible approach to take.

**Q74 Nadhim Zahawi:** Minister, how important does BIS consider the promotion of UK arms exports? How important is that to BIS?

**Mr Prisk:** Our view is that this is an important part of the overall wish to see an increase in the export of manufacturers' goods and services. Clearly, manufacturing makes up already, as a whole, over half the UK's exports, so it is an important part of our economic strategy.

**Q75 Nadhim Zahawi:** What is the role of BIS in co-ordination? We know from one of the quotes from the Secretary of State for Defence that "we will seek to increase Britain's share of the world defence market." Is co-ordination led by the Ministry of Defence? How does co-ordination work? In an earlier evidence session, one of the manufacturers said that obtaining export licences is a bureaucratic nightmare. Is that

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something that your Department focuses on versus, say, the Ministry of Defence?

**Mr Prisk:** There are two issues here, and this is why the Trade Minister leads on promotion and the Business Minister leads on export control—so that we get that distinction, which is an important one. In terms of the promotion, that obviously is central to UK Trade and Investment and the Trade Minister, although obviously the Ministry of Defence and other parts of Government will be involved. In terms of the export-control process, that is the direct responsibility of the Export Control Organisation. I'll ask its director, Mr Smith, who's sitting on my right, to respond. We are aware that the number of licence applications has increased quite substantially. As a new Minister, I'm certainly keen to make sure we have an efficient process, but we also have to recognise the balance between an increase in demand, which there has been in licence applications, and the pressure on resources, so we need to look at how we can be more efficient. There's room for improvement in that area, and we're very mindful of that. I don't know whether Mr Smith wants to add to that.

**Tom Smith:** Absolutely there is room for improvement. What I would also say, though, is this. Since I took over the ECO, I've looked at our main competitor systems—for example, in the USA, France and Germany. Our customers tell us that we compare very well—for example, because we're the only export licensing authority in the world to have full end-to-end electronic export licensing. I think our processing times compare very well and our use of open licences, which don't require prior approval for exports, compares very well; I think we're a world leader. But yes, there's quite a bit of work still to be done in terms of improving what we do and boosting efficiency.

**Mr Prisk:** It's worth bearing it in mind as well that nearly two thirds—64%—of applications in the last year were dealt with in our target area of 20 days. We're aiming for 70%, so there's work to do, but we need to achieve a careful balance here. I'm talking about being thorough, so that we don't fall into the trap of not doing our work appropriately given our need to ensure that we don't breach our international legal obligations, but equally making sure that business can do its job properly.

**Chair:** Thank you, Minister. We have a lot to try to get through and we have you for only an hour, so we shall move on as quickly as we can if that's all right. Margot James has some questions on the ECO.

**Q76 Margot James:** My questions follow my colleague's questions on the ECO. You have alluded to the rising number of applications and the increased demand. The Export Group for Aerospace and Defence told us at our last hearing that the ECO is resourced to process around 10,000 licence applications, but that 17,000 applications are expected. You are shaking your head, Mr Smith. Is that not the case?

**Tom Smith:** I don't know where the figure of 9,000 to 10,000 comes from. Volumes of export licences have gone up year by year and, through a variety of efficiency measures, we have coped with that very

well. We struggled a bit in 2010, which is why we fell slightly short of our processing target. The figures on median processing times for licences showed that we had a couple of wobbles over the course of last year where the median processing time went up from about 13 days to 19 days, and that was where a lot of the concerns from industry came from. Overall, if you look at the past year, the worst you can say is that, on average, it took a couple more days in 2010 to process an export licence that it did in 2009.

**Q77 Margot James:** That is certainly not the impression that this Committee received from the Export Group for Aerospace and Defence, so there does seem to be a big disconnect between what you are telling us—no doubt, absolutely as you see it—and what we are hearing from other organisations. In addition to that, on a visit to Birmingham, the BIS Committee visited a firm that was manufacturing and exporting things that might be for dual use. It told us that it was an absolute nightmare even to find out if you needed an export licence, and that God help you if you did. There is a big disconnect here, which the Minister might care to look into at some point.

If I could just go on to the issue of charging, we understand that you are considering charging companies for these licences, and I wonder what your view of the pros and cons of that is.

**Mr Prisk:** Let me just come back to the issue. I read the evidence that you had, and it is clearly something that I want to keep a firm eye on. I need to be careful to ensure that the ECO can do its job and that we don't go in any direction that is dealing with illegitimate or inappropriate end users or end uses while, at the same time, making sure that the organisation is efficient. I am mindful of that balance and I would certainly want to talk to the various trade bodies involved.

With regards to charging, as the numbers of licensing applications have grown substantially and, inevitably, as Government have pressures on their resources, the question is whether the taxpayer should pick up the full balance of that process—as citizens, we require Government to impose effective export controls on military equipment and so on—or whether businesses should contribute to that process, if only to make sure that they then get an even higher quality of service. This is one of the areas where if a service is free, the treatment or engagement of it will be different than if it has a charge related to it, even if it is a *de minimis* charge. It is not the intention of the Government to do anything that would be any more than seeking to look at the possibility of charges for the costs of the service. This is not intended to be some sort of back-door charge over and above that, and we would want to consult industry. We must look at the balance of these issues to see whether, in fact, there is a different finance model which would make more sense.

**Q78 Margot James:** Will you also update us on the review that you are undertaking on the open general licensing system? We have heard that some quite large companies have decided not to use the system at all because it is so complicated.

**Tom Smith:** I have also read the evidence that was given to you by the representatives from the Export

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Group for Aerospace and Defence. What they were referring to was the introduction of the new military goods open general export licence. Overall, the evidence that I have seen—obviously I have looked very closely at this—suggests that this new open general licence has, on balance, been very successful. We've had 333 new companies signing up to use it, and it was only introduced in September. For an open general licence, that is quite impressive.

I've also heard a few voices, including some of the people who gave evidence to you, saying that it is very complicated. So I'm not getting carried away but, obviously, what I am looking to do is to tackle the whole complexity and ease of use point. That is precisely one of the things that the review of open licensing, in relation to which we met business representatives last Thursday, is intended to do. We want to check that OGELs are written in plain English, that they are easy to understand, that the conditions are standard and that there isn't overlap. We also want to ensure that the coverage is right and that we cover all the types of export licence in relation to which, in practice, we always end up saying yes, rather than covering those that pose risks to the security or foreign policy agenda of the UK.

**Chair:** We come to the US-UK defence trade co-operation treaty. I call Mike Gapes.

**Q79 Mike Gapes:** Minister, you are aware that this treaty has a very long history and that great efforts were made to get it finally ratified in the United States but, in practice, isn't it a damp squib? We had evidence that it would only be beneficial to a very small number of companies, and it was doubtful whether it represented a sea change in UK defence exports to the US. Would you agree?

**Mr Prisk:** Inevitably, any treaty—as you rightly say, Mr Gapes, this one has been on the cards for some time and goes back through this Government and the previous one—relies on the willingness of the various parties involved to fulfil that treaty in full. There has been a long debate about just how two way the street is across the Atlantic in terms of military exports. I am aware that Mr Burt of the Foreign Office will be reporting—or giving evidence—to you shortly. I suspect that he will want to set out the Foreign Office's view on this. I wouldn't take such a negative view as you have perhaps expressed there, Mr Gapes. There is an opportunity; we have that treaty in place; now we've got to make it work. Like most treaties, it relies on being persistent and making sure that the treaty works in full.

**Q80 Mike Gapes:** What benefits will it tangibly bring to UK exporters?

**Mr Prisk:** If we have set out a proper process, as we have, by which that trade can be genuinely pursued—in the past, it has tended to be rather word of mouth or informal—that gives us a stronger opportunity to press the case for good UK manufacturers.

**Q81 Mike Gapes:** We were told by the Export Group for Aerospace and Defence that our own Government's ECO places obstacles in the way of exports of UK equipment to the United States, but

that comparable obstacles from the US to the UK do not exist.

**Mr Prisk:** I would like to see some examples of that from the industry and to have the opportunity to discuss that with them.

**Q82 Mike Gapes:** We did have some examples quoted. They talked about laptops in particular and technology of that kind.

**Tom Smith:** If I remember, what the industry reps were talking about was the question of cryptography exports generally. Cryptography is a complex area and is something on which we work with businesses on an ongoing basis to get the detail right. It is something where we have recently introduced a new open general export licence to remove the requirement to apply for licences from a wide range of cryptographic goods. The question about whether our system or the US system is better is a matter of opinion. I have met some companies who say one and some who say the other. That is a fair challenge that we are continuing to address.

**Q83 Mike Gapes:** Perhaps you will write to us on that.

Finally, I understand that although the US has now ratified this arrangement, it has set up some kind of consultation internally as to how it will work in practice. What are we doing to prepare our manufacturers—our industry—to take advantage of the treaty, so that we can make sure that the US doesn't by other means bring in restrictions that we thought had been lifted by getting this agreement?

**Tom Smith:** Basically, we are now in the implementation phase of the treaty, which will involve my team and the MOD working together to work with the industry to go through the detailed arrangements of the treaty—for example, how the approved list of companies will work—precisely to try to maximise the benefits.

**Q84 Mike Gapes:** When will that come into effect? Do you know?

**Tom Smith:** I think that the process is going forward during the next six months, isn't it?

**Chris Chew:** Yes, the process is ongoing now. I do not know the target date for having the treaty fully implemented, but that work is ongoing.

**Tom Smith:** I know that in shorter time we are planning to bring in a new open general licence precisely for exports to the US under the treaty. So it will not happen all at once, but the whole process of engagement with business will take place over the next few months.

**Q85 Mike Gapes:** So, by the middle of the year we can expect some things to be better?

**Tom Smith:** Certainly the arrangements will be in place. Quite when the benefits start flowing will partly depend on industry's readiness to take it up.

**Q86 Richard Burden:** Minister, what proportion of companies do you reckon are compliant with arms export regulations?

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**Mr Prisk:** There is a lot of evidence in this area and inevitably that is a very difficult number to judge. You will be aware that in 2009 we had a survey that was looking at a limited sample—coming into this as a new Minister, I looked at the evidence—and the reality is that, like a lot of these surveys, it relied on people being compliant to fill in the form and therefore inevitably it was partial. So, I think there is a problem with that.

What we have tried to do—certainly, it is my approach here—has been to encourage the ECO and the Government as a whole to focus on increasing awareness. That is because an exact robust measurement of knowing how many appropriate businesses—the number of which we may not be able to calculate—are able and willing to comply is a very difficult number to secure. It is like asking what is the total of x and y when you do not actually know what either x or y add up to. So we have tried to focus on the awareness side of things and to strengthen that. In the last year, there has been quite a substantial amount of progress in that area, in terms of reaching out to business.

So the aim is not necessarily to try to be confident that you have got a robust statistic but rather that you are continually working with industry to ensure that as many businesses as possible are indeed compliant. So it is difficult; it is slightly like searching for a needle in a haystack, if I may say so.

**Q87 Richard Burden:** Perhaps we could come back in a minute to what is being done to raise awareness. I am glad that you said that about statistics, because it troubled me a little bit that the survey showed that an estimate of 80% of companies were compliant but it also showed that only 40% of companies had any knowledge of the SPIRE system, which is the way you go about getting a licence. I did not see how you can have only 40% that know how to do it but 80% are compliant. Given the fact that, whatever the total number, there is a big variation between those two figures, what are the Department or the ECO doing to try to get their statistics to be a bit more robust, because that contradiction rather hits you in the face, doesn't it?

**Mr Prisk:** Let me just tell you what we are trying to do in terms of raising awareness and I will ask Mr Smith or Mr Chew to comment on some of the statistical aspects of this. I felt that it was important that we should be looking at awareness. So, over the last year, the ECO has been responsible for some 40 seminars, going out and engaging with industry, particularly trying to focus on the sectors that we know are more likely to find those seminars relevant. The ECO has also been focusing—quite rightly, I think—on work with chambers, trade bodies and so on, expanding that work. The ECO has had 16 separate events to ensure that it is informing and advising prospective businesses that could be involved with this work, and ensuring that it is available to them.

That kind of work is something that we as Ministers need to engage with as well, to get this message across. It is the best way of getting the profile up, so that businesses realise what they need to do,

understand how to do it and have the right information available to them.

I do not know whether you want to touch on the statistics.

**Chris Chew:** In terms of the statistics, the survey was targeted at companies that manufacture or sell certain types of goods, and we found that only 40% were exporting. So, if a company is not exporting, there is no reason why it would have heard of SPIRE. You can argue the figures any way you like, but we looked at companies that manufacture because we wanted to find out if there were companies out there that were completely outside any knowledge of export control. We looked at a very broad range of businesses, and we found that when you look at the numbers of people who export versus the numbers that have heard of SPIRE, it is probably not that unusual to see the numbers that we did.

**Tom Smith:** To address the particular contradiction that the business group, I think, highlighted—namely, this number compliant with export controls and this number have heard of SPIRE—I think that 53% said that they had heard of SPIRE. What we do not know is how many of the other 47% export controlled goods. We selected companies based on customer tariff codes, and you cannot tell from those codes whether a good is controlled. If you take a digital camera, for example, if it meets a certain specification it is export controlled and if it falls below that specification it is not. That is the problem that we have in getting the statistics together. So, what we go on is all the intelligence that we get from all kinds of sources, about where people think that there is a compliance problem, but inevitably the data tend to be more qualitative than quantitative.

**Q88 Richard Burden:** Finally, on the criteria that licensing officials use, do they use the EU common position or the consolidated criteria of 2000?

**Tom Smith:** We work according to the consolidated criteria—those are the ones that are laid down in UK law—but in practical terms there is little or no difference. The main difference highlighted by the NGOs was the question of international humanitarian law under one of the criteria. I checked that specifically with the Foreign Office experts who look at these kinds of cases, and they assured me that they do, in practice, address considerations of international humanitarian law. It is not specifically spelled out in our criteria that that is what happens, but in practice that is what they do.

**Q89 Richard Burden:** Why not? As it's in the common position, why don't you just adopt that position?

**Tom Smith:** We will. There is going to be a revision of the consolidated criteria fairly soon and, when we do that, precise alignment of the criteria with the common position is, I think, one thing that will be looked at very closely.

**Q90 Chair:** Are you giving us a particular date for that? This is quite an important issue.

**Tom Smith:** It is. I do not know precisely; you might wish to ask our Foreign Office colleagues.

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**Q91 Chair:** We'd like a written note from you, Minister, perhaps with your FCO colleague, on the timetable for producing that alignment between the common position and the consolidated criteria.

**Mr Prisk:** Certainly, Sir John. I'll speak to Mr Burt personally to make sure that we get that sorted out.

**Chair:** Thank you. We're going to turn now to the question of reinforcement, first on the civil side—civil penalties.

**Q92 Chris White:** Minister, as I am sure you know, since April the Government have had in place a revised compound penalty system, expanding its use for minor breaches of export controls. What is your assessment of that revised scheme?

**Mr Prisk:** Well, to be fair it is early days, and clearly it is something that is principally under the aegis of Her Majesty's Revenue and Customs in terms of operation. But, we have seen a number of cases brought with a range of fines, one, as I understand it, in the region of £500,000. So, so far so good. My view is that it takes a little while—perhaps a year or so—especially as the frequency of different types of cases is not necessarily consistent. You tend to need a period in order to get an understanding of how it works in different instances, and it can take a little while, I suspect, before we have a rounded knowledge as to whether this is working as well as we would like it to.

**Q93 Chris White:** So, do you think that businesses are aware of the new criteria?

**Mr Prisk:** The short answer is that one would have to ask the businesses to check on that, but it certainly is an important part of our communication. I would imagine, given that it was the wish of Her Majesty's Revenue and Customs to go in that direction, that it would also be doing so.

**Tom Smith:** It does publicise it.

**Q94 Chris White:** Finally, what would your view be regarding the naming and shaming of people who break the new rules?

**Mr Prisk:** Which type of people, before I answer that?

**Q95 Chris White:** The people who have broken the new criteria.

**Mr Prisk:** I think what's important is that when someone is found to have broken those criteria and they are fined, it's in the public domain, and that may be made crystal clear. I think that's the best way of doing it. Whether we go beyond that—I think it would be of questionable value, to be honest with you.

**Q96 Chair:** Sorry, Minister, could you clarify that? Are you saying that you are making the fact that penalties have been imposed public but not referring to the name of the company, or are you saying that you think it's appropriate to name the company that has received the civil penalty?

**Mr Prisk:** I am saying that I think the penalty, the compound fine, is sufficient.

**Q97 Chair:** Without naming the company. That is your view, is it?

**Mr Prisk:** Yes.

**Q98 Chair:** May I ask one further question on this? We had criticisms from the EGAD people. They said to us, "We have absolutely no idea what criteria it"—that is, your Department—"uses for imposing the penalty or how the penalties are arrived at." I think it's very important that the Government are transparent as to the criteria they are using and how the calculations are done. Can you give us an assurance, Minister, that that will happen?

**Mr Prisk:** Certainly. I think we hear a variety of opinions on that, I have to say to you, but if that is their concern, it's certainly my assurance to make sure that the people who should be aware are, and I will certainly be establishing whether in fact that is followed across Government.

**Chair:** Thank you. May we now turn to the issue of enforcement with criminal penalties?

**Q99 Katy Clark:** The Export Group for Aerospace and Defence also told us that they thought the best way to raise compliance was for there to be publicity about and, basically, vigorous criminal prosecution of those who have not complied. Is that something you agree with?

**Mr Prisk:** Again, we have to be clear as to which particular crimes we are talking about. Clearly, the most significant ones need to be dealt with in the most rigorous way possible.

**Q100 Katy Clark:** Basically I think what they were saying was that whatever else Government do, the most effective way of getting companies to comply is for them to see companies being prosecuted in the courts. The fear associated with that raises awareness of the system. Do you agree with that?

**Mr Prisk:** I do. I think you are quite right, especially in terms of the larger businesses, where their reputation is a very important part of their value as a business. They will be very mindful of the fact that prosecution can be very damaging in that context, let alone financial or other considerations.

**Q101 Katy Clark:** So what further steps are you taking to press criminal charges against those who breach export regulations?

**Mr Prisk:** Our view at this stage is that we want to deal with each on a case-by-case basis, where we have robust evidence. Again, I would say that I am always anxious not to try to come up with a rule, because the moment you do that in this area, it seems to me that immediately, either there is an exception that avoids the thing you're trying to deal with or the rule does not work effectively. What we would try to do is make sure that we look at these matters very carefully, on a case-by-case basis.

**Q102 Katy Clark:** But what we do know from all our experience is that the more resources you put into these issues and the more staff time that goes into investigation, the more cases you will be able to take forward, because we know people are not complying with the regulations now. Are extra resources and extra funding being put to HMRC for this work?

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**Mr Prisk:** Not only is HMRC involved, but the City of London police are already involved, particularly in terms of the whole question of bribery and the related issue. Also, in the last 12 months, we have seen a record number of prosecutions, and I think it is fair to say that, inevitably, that has been very resource-intensive.

**Q103 Katy Clark:** So has there been extra funding?

**Mr Prisk:** Inevitably, having had additional prosecutions, we have been able to make sure they have had the resources needed to do that, yes.

**Q104 Chair:** To what do you attribute the fact that you have had a record number of prosecutions?

**Mr Prisk:** I pay tribute to the officials who are involved in this process. Whether it's simply their work or whether there has been a growth in the market overall and therefore, perhaps, a commensurate increase in illegitimate activity on the edge of that market is difficult to judge, but I think it's fair to say that officials have been able to bring record numbers of prosecutions, and they should be commended for that.

**Chair:** We shall turn now to pre-licence registration of UK brokers and so-called "brass-plate companies".

**Q105 Anas Sarwar:** I have a brief question: why are the Government not copying other EU countries in introducing a pre-licence register for arms brokers and brass-plate companies?

**Mr Prisk:** We do not have a completely closed mind on this issue. Our view is that while, obviously, the common position in the EU allows or permits member states to establish such a register, the question is whether it would make any difference to the kind of rogues we are trying to deal with here. I think it is important to question whether, if they are not applying for appropriate trade licences, they will, in reality, apply to a register of brokers. I have my doubts. There can be a case for looking and keeping this under our attention—as it were—but I have to say that I am quite sceptical as to whether this would work in practice. We are dealing with people who are not reasonable or usually law-abiding; therefore, if they are not complying with the licence arrangements, I very much doubt they will comply with a register of this kind.

**Chair:** May we now turn to extraterritorial controls? Penny Mordaunt will question you on this one.

**Q106 Penny Mordaunt:** Do the Government accept Amnesty's argument that there is a case for putting things such as military vehicles, attack helicopters and combat aircraft into category B, thus increasing the controls on those items?

**Mr Prisk:** Our worry is that, in essence, extraterritorial trade controls should, on the whole, be the exception rather than the rule. If one had a wholesale approach to this, the danger is that we would be asking ourselves to believe that beyond our jurisdiction we could realistically maintain such controls, and I am not convinced. There could be an argument, and we are in discussions with Amnesty about the practicalities of each of the elements you

have talked about. Indeed, last summer—August, I think—we put in place such an extension for anti-vehicle landmines. We have followed what Amnesty has said, and I want to look at it more carefully.

**Q107 Penny Mordaunt:** Is it possible to outline a rough timetable of those discussions with Amnesty?

**Tom Smith:** Discussions are sort of on an ongoing basis. Obviously, we saw the evidence that Amnesty gave in December to the effect that it wanted to move forward with these specific items. I have been meaning to contact Amnesty and the other NGOs pretty soon in any case to invite further proposals in this area. We would then want to get round the table with business as well. Because I do not know precisely what the arguments and the complexities might be at this stage, I would be slightly wary about committing to an outcome, let alone a timetable. We are not sitting on this; there is no merit in delay.

**Q108 Penny Mordaunt:** I wonder, Chair, whether once a timetable is set and there are some meetings, it would be possible for us to hear about them or receive an outline of the timetable in writing?

**Mr Prisk:** Sir John, I would be happy to try to set that up for the Committee.

**Q109 Chair:** This is a very significant issue for this Committee, as it has been for previous Committees almost since the inception of the Committee on Arms Export Controls. We wish to be kept closely informed by the current Government on the development of policy on this subject. There is a further question I want to put to you, Minister: the Committee has not taken a view yet because it's only just been formed, but its predecessor Committees always found it inexplicable that across a wide range of extraterritorial legislation, which covers organised crime, drugs, child abuse and so on, Governments of the day have had no difficulty in accepting the proposition that UK residents, if they commit such crimes overseas, which would be criminal offences in the UK, should face criminal prosecution for those crimes. The Committee finds it inexplicable why the Government of the day would not accept that a UK arms dealer, who manages to go overseas and take part in an arms trade, which would be a criminal offence in the UK, should not face criminal prosecution. We cannot understand, as a matter of principle, why some arms should be the subject of extraterritoriality and some not. Taking the most extreme and ludicrous example—but I put it to you anyway—as the legislation stands at the moment, if a UK resident sells a ground-to-ground missile overseas, which is in excess of 300 km in range, he or she faces a criminal prosecution. If they sell the same missile that is 299 km in range, they escape criminal prosecution altogether. Can that be a sensible basis for legislation?

**Mr Prisk:** I understand that point of principle, and as you say, that is an extreme example. Nevertheless, it is one that makes the case and I appreciate that.

In principle, Governments have taken the view that in cases of terrorism or murder, clearly extraterritorial controls and the ability to enforce the law should be considered. They have tended to take the view, and I



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think it is an appropriate one, that a wholesale ban in this field would be incredibly difficult to enforce and might undermine the other work that we are doing to deal with the particular rogues in this field. As I say, however, my mind is not wholly closed in this area. I think we want to make sure that we are engaged properly in having a dialogue, but I note the strongly held views that you have expressed, Sir John, not least on behalf of the Committee as a whole.

**Chair:** I hope, Minister, that you will reflect as to whether the enforcement of a total application of extraterritoriality in this area is any more difficult than the present legislation, under which extraterritoriality applies to the totality of drugs and the totality of child abuse, entirely rightly.

May we move on to end use controls? Malcolm Bruce has some questions on this.

**Q110 Malcolm Bruce:** The Government had been negotiating to amend the EU regulations on military end use, specifically for whole items, and for items which were going to countries where there might be question marks. Is that process ongoing?

Perhaps before you answer that, I could link it to the specifics of torture end use, where there was a slightly different situation. There was an undertaking that the Government would negotiate for an amendment to the EU regulations, but they would consider acting unilaterally if that were not agreed. Can you indicate what the status of the negotiations is, and whether this Government take a different view between the two?

**Mr Prisk:** The Commission is progressing with regards to the broader picture, and we are encouraging it to do so, but we cannot force its hand in that context. However, we have been very positively engaged with encouraging it to do so on the broader question.

On the question about execution—

**Q111 Malcolm Bruce:** I will come to that. I am asking just about instruments of torture at the moment.

**Mr Prisk:** Okay. Torture is an area on which we, as a country, have a strong position. We said to the Commission that, if it wishes to, it can make progress on the current situation, and we support the position that it has taken regarding an EU-wide torture end use control.

**Q112 Malcolm Bruce:** Would the Government consider acting unilaterally if there were not an EU agreement? The indication had been—

**Mr Prisk:** With respect, I probably ought to let Mr Burt, who leads on foreign policy, lead on that, rather than me.

**Q113 Malcolm Bruce:** That would be helpful.

**Mr Prisk:** Absolutely, I understand that.

**Q114 Malcolm Bruce:** One issue that is obviously in your Department's responsibility is the recent revelation that sodium thiopental and other drugs were being exported to the United States, among other places, for use in lethal executions. It came to light in 2010 that batches of the drug were being exported by Dream Pharma and, at that point, a restriction was

imposed. We now learn, however, that supplies had been sent to Arizona, and we have heard today of further supplies.

Can you indicate first of all when this information came to light from the Department's point of view; how long it took to take action; when that action took effect; and whether the revelations that are now coming out about supplies being used today pre-date or post-date those restrictions?

**Mr Prisk:** With regard to sodium thiopental, the Secretary of State received a request at the end of October of last year about its potential ban in the light of apparent evidence regarding its use for execution. We looked at that carefully and put in place an order that came into force on 30 November, which we debated in the House, I think, on the 29th, so that for end use in the United States sodium thiopental was indeed under full control. We have gone slightly further—this comes back to the point I was raising with regard to the EU—and we have also pressed the EU officials to seek an adoption of an export control across the EU in that instance. When we looked at the United States, this was a substance that actually was not being used for any purpose other than execution, so it was a relatively straightforward decision.

The less straightforward decision relates to the other two substances that I know were part of the item that I heard about this morning on the radio, which I suspect hon. Members and right hon. Members also heard. The substances have of course been the subject of some previous allegations. This relates to potassium chloride and—I am demonstrating my O-level chemistry here so I will need to read this carefully—pancuronium bromide. These two, alongside sodium thiopental, are the substances that are alleged to have been exported by Dream Pharma. We have received a request from Reprieve with regard to this matter. That is the organisation that has been talking on the radio and to other people. Our view is that at this stage there is no suggestion that anyone has broken the law, because those two substances are under consideration but are certainly not under any control. I would also say that potassium chloride and pancuronium bromide are slightly different from sodium thiopental, for the simple reason that if you look at most NHS hospitals they are used perfectly legitimately on a routine basis. So they have potential uses other than the one that we are all concerned about.

Having received the request from Reprieve, we have sought to undertake a prompt and concise consultation with the industry to look at what the unintended consequences might be were we to pursue a potential control in the United States. That will conclude very shortly, and then the Secretary of State will have the evidence to make a decision as to what we do next.

**Q115 Malcolm Bruce:** There is slight concern and surprise in this. The surprise, I suppose, is that the United States—which after China is the greatest practitioner of state execution—has preferred this method and, despite having the largest pharmaceutical and drug industry in the world, does not have the capacity to produce these drugs for itself, and that they are apparently difficult and rare enough to have

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to be sourced from outside. In addition, the Government said that an export licence would be refused if the Department had any suspicions that the drug would directly or indirectly be used to facilitate the death penalty. Again, we are getting the information from sources outside Government, which imply that the UK supplier was completely aware of what was being used and said that he was happy to help. That is something that he may have to live with himself. What is the status of knowledge? If I may say so, Minister, you are leaving me less than reassured that it will not happen again, or indeed that we are in control of the situation—or that as of today anybody is prevented from exporting a batch for these purposes.

**Mr Prisk:** Where an allegation is made, we have to investigate it thoroughly and robustly, because sometimes there may be an instance where the allegation is incorrect, or there may be other evidence that the person in question is not aware of. I am aware also of some of the allegations about the supplier, Dream Pharma. We have an inspection system through the Medicines and Healthcare products Regulatory Agency to make sure that businesses are appropriate. Those inspections are robust and I regard them as very important. They are looking at the business as well as looking at the materials—in this case the drugs concerned. We will shortly have the conclusion of our consultation with the industry. I think we just have to balance, here—and I do understand it's a very sensitive issue, and a very significant and important one; we just need to make sure that in wanting to stop an illegitimate use, as many people would see it, we do not proceed to destroy a perfectly legitimate trade that takes place elsewhere. And that's why, I think, before we rush into a control order we need to make sure that we have looked at the implications of us banning the export of those substances to the United States. So that's why we're just taking some care; but with respect, we received an allegation and request to ban sodium thiopental at the end of October and on 30 November the ban was in place, so we can and do act promptly.

**Q116 Malcolm Bruce:** One assumes therefore what's been revealed today was supplied prior to that date.

**Mr Prisk:** Yes.

**Q117 Malcolm Bruce:** And that you are confident that no further supplies could be made, or would be made, other than criminally.

**Mr Prisk:** Yes, what I'm saying is—you are quite right, and perhaps I hadn't gone back into that point—the supplies in question were made before the control orders were in place. Certainly, we have had no evidence that anything other than that has been the case in this instance; but we will obviously look at the substances to make sure that we're satisfied that the current arrangements are appropriate.

**Q118 Chair:** Minister, the allegation that was made on the "Today" programme this morning was that the Secretary of State and your Department were too slow in acting on the information that was given, and that a substantial consignment of sodium thiopental was

taken out of the Acton premises and sold off to the US in the period between when you were notified of the trade and applying the control order. Can you respond to the point that you were too slow? And can you give us, perhaps in writing afterwards, because you may want to look at the documentation, the precise date when the order left the country?

**Mr Prisk:** Well, I heard the allegation made on the radio, like you, Sir John. I think that the fact that the request for the control order occurred at the end of October, and the action took place by the end of November, is a reasonable period of time. Had it been three or four months, I think the allegation might carry greater weight, but we will certainly undertake, as you have requested, to come back to you with the dates, and so on, so that you can see precisely what was undertaken within the Department, and particularly by the ECO.

**Chair:** Thank you very much. Just one final topic, if we can cover the important issue of bribery and corruption reasonably rapidly.

**Q119 Ian Murray:** We've heard a little bit already about the EU common purpose, and Transparency International has been looking at perhaps introducing a ninth criterion to that, in order to cross-cut the rest of the criteria that are in place, where clear corruption practices exist in a country. What would your view be on this proposal, and do you think there's any realistic opportunity of that being pursued by the EU and coming into force?

**Mr Prisk:** I don't think it's something that we would be minded to support, and I doubt whether it would be successful. I think on the whole we've got to distinguish here between dealing with the risks of an unacceptable use or an illegal use, and how a contact is secured, and they're actually two distinct things, so I think we shouldn't confuse in law those two different elements. My instinct is that this is something that is unlikely to progress, and it's not something that we would support.

**Q120 Ian Murray:** So just to pursue that point, in terms of the corruption criteria, where would that be sought specifically with the common purpose regulation?

**Mr Prisk:** That depends on whether you're talking about, as I have said, the way in which a deal is secured. The questions in my mind are, "What is the use we're dealing with? Who is the organisation we're dealing with? What are the country and region? And what are the potential risks?" I regard those as being distinct from the specific issue of corruption. I think once we start confusing those two as being one and the same, there's a danger of actually losing our focus on making sure that we're involved in responsible and legitimate exports.

**Q121 Ian Murray:** There's been some significant talk in the papers and in previous reports of this Committee about criterion 8 methodology and how that refers directly to bribery and corruption. Criterion 8, as I understand it, refers mainly to developing countries, so if the corruption issue being looked is

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not in a developing country, how would that fit in and how would it be dealt with?

**Mr Prisk:** I am just reminding myself of the various criteria. Criterion 8 is, as it says, very much focused on the question of “the technical and economic capacity of the recipient country”. My view is that, as they stand, these various criteria—we went through them to be confident about them when starting as Ministers—are quite robust. Therefore, they serve the purpose very well.

**Chair:** Minister, thank you very much to you and your colleagues, Mr Smith and Mr Chew. We will await the additional material that you have offered. If we have any additional written questions we want to follow up regarding your evidence, we shall send them to you. Thank you very much indeed.

**Mr Prisk:** Thank you, Sir John.

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### Examination of Witnesses

*Witnesses:* **Alistair Burt MP**, Minister of State, Foreign and Commonwealth Office, **David Hall**, Deputy Head, Counter Proliferation Department (Strategic Export Controls), and **David Vincent**, Head of Arms Trade Unit, Counter Proliferation Department, gave evidence.

**Q122 Chair:** Minister, welcome to your first appearance before the Committee on Arms Export Controls. Welcome also to Mr David Hall and Mr David Vincent. Just to reassure you, Minister, I asked our previous ministerial witness the same question that I am going to put to you. As I said to the previous Minister, you should not take this question in any way personally. The point I wish to put to you is that the last report from the previous Government, which was the United Kingdom strategic export controls annual report 2008, came with the signatures of the four Secretaries of State—David Miliband, Lord Mandelson, Douglas Alexander and Bob Ainsworth—and was 100 pages in length. The first report from the present coalition Government is signed off, not by the Secretaries of State, but by junior Ministers—apart from yourself, there is Mark Prisk, Alan Duncan and Nick Harvey—and is about half the length. My question to you is whether that is an indication that the coalition Government have downgraded the importance attached to arms export controls and arms control generally?

**Alistair Burt:** No, I don’t think it is. First, the conciseness of the report is a reflection of the fact that the present Government have clearly been involved for rather less time and were offering an opinion on work done by the previous Government. Secondly, I don’t think conciseness in itself is a matter for concern, providing all the information is there. I also don’t think the change in personnel in relation to the Ministers is of significance. Clearly, everything that junior Ministers do falls under the overall aegis of their Secretaries of State, but perhaps it is helpful to have those Ministers who are actively engaged with the work on a day-to-day basis signing off the report, rather than just the Secretaries of State. Perhaps that will provide a nice pattern for others, but absolutely no sense of downgrading at all is conveyed by how it has been handled.

**Chair:** Thank you. I would make the point that, from the inception of this Committee, I think I am correct in saying that it has always been signed off by the four Cabinet Ministers concerned. You and your colleagues might want to reflect on whether that practice should be restored or not. It may be an issue that the Committee will want to reflect upon when it makes its report.

**Alistair Burt:** Indeed.

**Chair:** First, we want to address the new Government’s policy in this important area. Nadhim Zahawi will start.

**Q123 Nadhim Zahawi:** Thank you, Sir John, and welcome, Minister. How much importance does the Foreign and Commonwealth Office give to the promotion of UK arms exports? In dealing with that question, will you focus on what the role of the Foreign Office is in promoting and facilitating arms exports, and in what ways this Government’s policy on arms export will differ from that of their predecessors?

**Alistair Burt:** Thank you, Mr Zahawi. I have a brief opening statement that covers much of the ground, and I should like to read it if I may, Chairman. It is meant to be brief.

**Chair:** Minister, may I say for the future that we attach great importance to using the time for Members to put questions to you? I don’t think there’s any good reason normally why, if Ministers want to make a statement, they should not commit it in writing to the Committee before its proceedings start. I hope it is a short statement.

**Alistair Burt:** It is, and I think that it effectively covers the question raised.

**Chair:** Please proceed, Minister.

**Alistair Burt:** First, if it does not take up too much time, I should like to congratulate you, Sir John, on your role as Chair, and to thank you all for giving me the opportunity to deal directly with your questions. I greatly value the role that the Committees perform in scrutinising the

Government’s strategic export controls policy and practice. My officials and I look forward to working constructively with the Committees in this important area, and we would be very happy to host a visit by the Committees to the Foreign and Commonwealth Office on strategic export controls, should members find that helpful.

The Government are committed to ensuring that the UK’s strategic export controls are robust, effective and transparent. Effective export controls are essential for the maintenance of the United Kingdom’s security, and for the promotion of our increased prosperity in these challenging economic times. Effective strategic

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export controls ensure that the UK's defence industry can compete internationally in supplying the legitimate defence needs of countries around the world, while at the same time ensuring that the supply of UK defence equipment does not undermine sustainable development in the developing world and that UK arms do not reach the hands of those who would use them for internal oppression, external aggression or human rights violations.

Effective export controls are also central to the core agenda of the Foreign and Commonwealth Office of protecting the UK's security, pursuing commercial diplomacy and promoting UK values abroad. This Government's approach to strategic export controls will remain firmly based on a case-by-case assessment of all licence applications for the export of controlled goods and equipment, and the Foreign and Commonwealth Office will continue to play an important role in the provision of information against which informed assessments are made.

Finally, the Government are also committed to ensuring high global standards. I am aware of some concerns that the incoming Government might not have an arms trade treaty as a similar priority to that of the previous Government. I hope that both the remarks of the Foreign Secretary on values and on the ATT and the practical evidence of activities suggest that those fears are unfounded. The United Kingdom will continue to play a leading role in helping to ensure that ATT negotiations progress to a successful conclusion at the diplomatic conference in 2012. As in July last year, the United Kingdom will play an active role in the UN negotiations in February and beyond, and officials in the Foreign and Commonwealth Office will continue to work energetically for a robust and effective arms trade treaty in close co-operation with colleagues across Government, the NGO and faith communities, the UK defence industry and our international partners.

I hope, by that, that the Committee will see that our approach to arms control matters will be very similar to that of the previous Government. It is a central priority to what we consider to be important in terms of values and British interests around the world.

**Q124 Nadhim Zahawi:** Thank you for that, Minister. Does the Foreign Office have any concerns about boosting the list of priority markets? Obviously, selling to Europe or America is much easier and safer. The list that we have been provided with includes countries such as Algeria, Pakistan and Libya. Thinking through the recent events in Tunisia, does the Foreign Office have any concerns about boosting the list? In answer, Minister, can you tell us how you ensure that there is no conflict of interest between the dual roles of foreign diplomats who are expected to work at conflict prevention and, at the same time, to promote arms exports to those countries?

**Alistair Burt:** They are both fair questions. First, we firmly believe that the robustness of the criteria with which we deal will continue to cover new areas where there might be opportunities of exports. One of the things that we might come back to time and again—I am sure that you have considered this with my predecessors—is the importance of a case-by-case

consideration against the various criteria rather than of external circumstances as a special case, which relates to particular conditions within emerging new markets. If the criteria are robust enough, those issues will be covered. The short answer to the first question is that there are no worries about expanding the opportunity for exports, because there is a firm belief that the robustness of the criteria will protect the values that we uphold in dealing with the system and ensure that we do not run into trouble or put other people in trouble. That is clear.

To your second question about any possible dilemma or contradiction in the role of those who operate the policy, particularly those abroad, I would again say no. Ultimately, it is the criteria for arms export that trump everything else. Sales are important. We believe that a legitimate arms industry, as with all the NGOs with which we deal, has its place in securing effective defence for those countries that need it, and it is a perfectly straightforward business for us to be involved in. None the less, the commercial does not trump the criteria. By the very nature of their work, colleagues are used to dealing with applications that will force them to consider, as they do their work, the balance of an application. That, of course, comes back to those who are charged with the responsibility of dealing with the criteria on a case-by-case basis when an application has been made. You could legitimately ask me whether I have the same things in mind when I'm taking a view on an application. Indeed, I am aware of both drivers, but clearly the criteria, and the importance of the criteria, to safeguard the whole concept of arms exports is overwhelmingly the most important factor.

**Nadhim Zahawi:** Thank you very much.

**Q125 Chair:** Minister, will you address the conundrum that is behind these questions? In the real world, is it not the case that if diplomats around the world follow the Prime Minister's instruction, as they will, the first priority is to go out and sell for Britain. That includes selling arms exports and supporting those contracts. Is it not the case in the real world that you don't conclude a successful arms deal with some of the countries that are on your target list if, at the same time, you stand up very firmly to them on their human rights violations?

**Alistair Burt:** Again, Chair, we must be clear about this. The criteria clearly cover that issue in terms of those with whom we will deal. In the real world, both those who are out seeking entirely appropriate business for the United Kingdom and those who have to sign off applications are well aware of the increased transparency and inquiries that surround the matters with which we are engaged, not least you yourselves and others who take a keen interest in this matter. I don't think any diplomat or Minister wants to be placed in a position in which they could be accused of taking a decision for the wrong reasons, if something subsequently went horribly wrong and a decision was examined minutely, as decisions should be and must be. So I fully understand the dilemma that you and the Committee are seeking to get to, but I think real-world pressures exist not only before a decision is reached, but after a decision is reached. We're well

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aware of the importance of the scrutiny and that any decision needs to stand up months or even years afterwards, so I hope that sense of responsibility would also be a significant driving factor in decisions that colleagues were being asked to make.

**Chair:** We come now to the criterion regulating arms exports—criterion 8. Malcolm Bruce.

**Q126 Malcolm Bruce:** Thank you, Sir John. Criterion 8 is designed to ensure that we do not export to countries with weak economies, where the cost of buying the exports would be unbalancing to their economic or political situation. I have two questions. One relates to the evidence that we were given last time, which was that there was a recognition that there needs to be some agreement across Europe as to the use of this criterion. As I understand it, on 24 November in Brussels, the Dutch Government promoted a seminar to discuss that and determine whether there should be a change of policy. Can you give us an indication of what happened at that seminar and whether there are any implications of policy change? We have a copy of the slides from DFID and Oxfam that were presented there, and my next question might derive slightly from those, but what was discussed at the seminar and what effect might it have?

**Alistair Burt:** Absolutely. It was an important seminar, and I appreciate your drawing attention to it. The seminar was well attended, by a number of EU member states as well as by ourselves. The agenda comprised the presentation from Oxfam, followed by questions and answers and then a closed session involving member states, with presentations given both by ourselves and by the Netherlands. Our presentation was given by a representative of DFID, which is the lead Department. The presentation explained how we applied criterion 8 in our domestic export controls, and the methodology used.

We believe that the seminar was successful in its objective of sharing best member state practice. It was recognised that the criterion is one of the most difficult and complex of all the criteria to apply, and it was agreed that we would benefit from further discussion on the issue, particularly to ensure uniformity of applications. We will be returning to the issue. Can I also say this? We see it very much as a matter for member states. The issue is difficult. We don't currently see the need to use the expertise of the EU External Action Service in assessing these applications. So the short answer is, the seminar was very important; the issue is still being considered; it is a very difficult matter to apply; and we are looking at how best we can co-ordinate the use of it.

**Q127 Malcolm Bruce:** When you say “difficult”, you mean diplomatically and politically difficult, rather than objectively, in that France apparently has little difficulty and seems to use it with considerable enthusiasm, yet Sweden won't use it at all, because it thinks it's impertinent to determine what the arms export or import policy of a Government should be. That suggests there is a pretty wide range of opinion. Oxfam—this has been of concern to me—presented the case study of Pakistan, making the point that the

estimated combined budget for health, social protection and the environment of Pakistan for 2010–11 is €77 million, and the EU arms exports to Pakistan in 2008 were €685 million. That seems to be pretty clear evidence that criterion 8 is very relevant but doesn't appear to be applied.

**Alistair Burt:** First, in response to the suggestion that some countries use it more than others and therefore what are we doing, our experience is that, in applications to the United Kingdom, a number of cases where ultimately criterion 8 might be applied are stopped from getting that far because, in the discussions taken forward, it becomes clear that a licence is not going to be issued. Accordingly, we rarely have to apply criterion 8 as the final decision maker.

**Q128 Malcolm Bruce:** Have you made any comparison between the UK and France?

**Alistair Burt:** Yes.

**Q129 Malcolm Bruce:** It seems that we are very comparable countries—France uses it a lot and we use it a little.

**Alistair Burt:** I think it says more about how the process is approached and at what stage decisions are reached than anything else.

**Q130 Malcolm Bruce:** Does that mean that you apply other criteria before you get to criterion 8?

**Alistair Burt:** Yes. That is absolutely right. In our dealings with those who are seeking the licence, the stages we go through knock out some applications that, if they had gone all the way, might have attracted a criterion 8 decision. They are dealt with before that stage is reached, which is why we don't have so many criterion 8 decisions on the books, as it were.

**Q131 Malcolm Bruce:** May I finally pursue the Pakistan point, which concerns me? I can understand from a foreign policy point of view—from our engagement with Pakistan for security and other reasons—why we might have a judgment about our relationship and, indeed, our arms relationship with Pakistan. Pakistan is pretty well on the threshold of being a low-income country, and yet it is a priority in terms of export promotion. Is that what Pakistan really needs, when it is one of the poorest countries on the planet and is suffering all those disasters? Are weapons from Europe really what Pakistan needs?

**Alistair Burt:** You raise in your question two of the more difficult issues surrounding this. The first is the subjective nature of the consideration. Secondly, there is the replacing of a local judgement with an external judgment outside. The charge can be made that developing countries need to be able to take their own decisions in some of these areas. Whatever Pakistan's other difficulties may be, it is also an area where security and defence are matters of the utmost consideration to its governance.

We concede that this is a very, very difficult subjective criteria to apply. If it were to be applied ruthlessly from one particular standpoint, it might make a significant difference to arms exports—perhaps an unfair one. That was the reason for the seminar and

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for the concern. Your concern about the potential risk of these exports, bearing in mind the development needs of the country, are very real and we share them. That is why the criteria is there, but there are also other factors to consider. In highlighting Pakistan, we are discussing a country with so many difficult issues, including security and protection. That is just an example of how difficult it can actually be.

**Chair:** Minister, in your opening statement, you referred to the arms trade treaty. You won't be surprised to know that we have some questions for you on that important issue. I call Mike Gapes.

**Q132 Mike Gapes:** Minister, you have said that concerns that the coalition Government are pursuing a weaker policy than that of their predecessor are unfounded. When the previous Committee asked Ministers in the previous Parliament about making a choice between a weak consensus-based arms trade treaty or a robust treaty that had fewer countries involved, we were told that they would prefer a robust treaty to a weak, consensus-based one. Yet, the statement that has been attributed to the present Government is that you are going to strive for consensus to ensure that the correct balance is struck between the strongest possible treaty and the widest participation of states. May I put it to you that that is a shift of position?

**Alistair Burt:** It's always a dilemma, if you've got lots of people around the table and you're trying to get a common objective that we all know very well. If by consensus we mean that we want to ensure that it is a robust treaty because the key players are a part of it, that might in a way give you a sense, Mr Gapes, of squaring the difference. To have a treaty that doesn't have the major players involved and part of it will negate its value and all the work that's been done. Equally, to have something that isn't worth the paper it's written on won't do the job. At present, my understanding is that the degree of interaction with the major players involved—the industry, the NGOs and respective Governments—is very strong, and the determination among all to produce an effective and viable treaty is something that drives everyone. Accordingly, I think at present, our position that we should strive to get both a robust and a consensual treaty is a good one. I don't think we've yet reached the point of saying, "We now have to decide between these two objectives," but certainly, if the treaty lacks the support of key and important players, then I'm not sure that our work won't have been in vain. That's where we are at present.

**Q133 Mike Gapes:** But you're aware that China, India and Russia all abstained on the vote to begin formal negotiations on the treaty, aiming to get the treaty signed in 2012? I put it to you that you will have to pay a price if you want China, India and Russia to sign up to that treaty.

**Alistair Burt:** Well, at this stage, we're putting a great deal of faith in the negotiation process that is under way. I was asked at the beginning about our attitude toward it and our determination, and whether or not there had been any changes in the way in which we were dealing with it. The first phase of the process—

the negotiation phase—we think has been successfully concluded. That was the work that John Duncan was principally engaged in. We now go on, having reached that first stage, to take it forward with the outline timetable leading through to 2012.

I think it should be noted that the countries that you have mentioned are all engaged in preparation for the July meeting. I think that indicates that patient negotiation work can bring other people back into play. So, although not everybody was on board at the start, the whole point of this process, if it's effective, is to help convince people that there is something that we all very much want to see. I think we have a degree of faith that the process on which we've embarked and in which the United Kingdom is such a key player will bring other people round, but it will be a continuous process. Like so many of these things, we might not know any potential trade-offs until quite far down the road.

**Q134 Mike Gapes:** You said the United Kingdom is a key player.

**Alistair Burt:** Yes.

**Q135 Mike Gapes:** I think it's fair to say—the NGOs have said it over the past couple of years—that the UK is a key player within this process. Since the election of President Obama, we now see that the UK is no longer the lead on this process. The United States has taken a much more important role. Doesn't that mean that our influence is actually less? Given that the US has a different attitude to the possible outcome and what concessions will be made, isn't the reality that we are now following an American lead on the treaty rather than providing the lead ourselves, as we were? For understandable reasons, we were providing that lead until the change in the US Administration.

**Alistair Burt:** I think it's a bit tough to be accused of being successful at the kick-off to get people engaged when a significant player, encouraged by the success that we have shown, subsequently comes on board. The size and importance of the United States in these matters can't be denied, but it's probably a measure of the success of the United Kingdom that we've been able to take the lead that we have. The United States is clearly engaged, after the success of what we've been doing, but I don't think the Committee should necessarily fear that the influence of the United Kingdom in these matters has been affected.

I was in New York for the end of the non-proliferation treaty discussions—not the ATT, but just as a reasonable parallel. Seeing colleagues at work in New York and the way other countries were working with them on such a key aspect—it has parallels with this—convinced me that the way in which we were engaged, we were successfully involved. I take your point, but I don't think that necessarily indicates a complete absence of United Kingdom influence.

**Q136 Mike Gapes:** But it is true, isn't it, that the American approach is much more orientated towards a consensus than the position that we had before?

**Alistair Burt:** I go back to what I said before. It is clearly a matter of policy for the United Kingdom that

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we want to see a robust arms trade treaty. We set that out very clearly and the Foreign Secretary, in his recent speech relating to both values and commerce, used the ATT as an example of what we could do to promote both values and commerce. As I indicated before, the point of consensus is to ensure that we have all the major players involved, to ensure that the treaty is effective and does its job.

At this stage, trying to make the split between a robust approach and consensus is probably not necessary, and it has got to be in the interests of the US to want a strong and robust treaty as well. So I do not think that that factor should be taken out of the equation either.

**Q137 Mike Gapes:** What role are we playing within the negotiations? Are we, if you like, an outrider for a more robust treaty, or are we a close associate to assist the Americans in providing the leadership?

**Alistair Burt:** I think that the right way to characterise it is to say that we are still led and driven by the values that put us in the driving seat in relation to the initial negotiations; those values are what we are guided by. We do not see ourselves either as anyone's outrider, or as taking a role on a white charger going off in the opposite direction.

If this treaty is to be effective, and bearing in mind the degree of interest in and support for what the Government have been seeking to do over a number of years and are seeking to do now—from the industry, from other Governments and from NGOs—it ought to be something on which we are all moving generally in the same direction. I think we see ourselves as further promoting the values that brought us to this stage, rather than going off in a separate direction.

**Q138 Mike Gapes:** May I ask you about our own team? Has there been any reduction in the resources available for our team that is negotiating on the arms trade treaty, given the financial pressures and other pressures that the FCO faces at the moment?

**Alistair Burt:** No, I don't think so. We have changed the structure slightly, as you are aware, because of the change in the position of the negotiations. That is why John Duncan's role has been changed. We keep the permanent representative in Geneva, but the discussions are going to move more to New York than Geneva, and they have been brought back in-house to the heads of the respective departments in the FCO. I am not aware—

**Q139 Mike Gapes:** Perhaps you could send us a note about this. That would be helpful.

**Alistair Burt:** I can do that. Genuinely, I am not aware that that change in structure reflects a change in resources. This is a significant priority for the Government and for the FCO.<sup>1</sup>

**Q140 Mike Gapes:** Finally, will Ambassador Duncan remain in post as the UK ambassador for multilateral arms control and disarmament until the signing of the treaty?

**Alistair Burt:** No. I think that his role comes to an end this summer.

**Q141 Mike Gapes:** So, for the key period after these preparatory meetings in 2011, he will be leaving and somebody else will then have to deal with the actual conference in 2012.

**Alistair Burt:** Yes.

**Q142 Mike Gapes:** Clearly, he has huge experience.

**Alistair Burt:** He has, but there is also huge experience within the Department and among his colleagues who have been working on this treaty with him. I do not think that we can say that any one individual should necessarily always be associated with one thing and continue with it beyond a particular point. It is the right point. He has made a huge contribution to non-proliferation, particularly the conclusion of the treaty last summer. He has done his time in this particular area. Again, I think that John Duncan's retirement from this area is not to the detriment of the work, and there are structures in place to continue to ensure that the expertise we have in the Department is appropriately deployed.

**Q143 Mike Gapes:** He will have an equally high-powered successor?

**Alistair Burt:** Yes. I believe that the structure we have will enable us to do the job.

**Mike Gapes:** Okay. Thank you.

**Q144 Chair:** Sorry—can you just clarify that answer to Mr Gapes? Are you assuring us, Minister, that Mr Duncan will be replaced in post, in the same position, by somebody of equal seniority and capability?

**Alistair Burt:** The short answer is yes. As I indicated before, Sir John, the structure is changing. We are keeping the permanent representative in Geneva. The leadership is being transferred to the heads of two departments in the Foreign and Commonwealth Office. But the whole team is a cross-Whitehall team and includes members from the FCO, the MOD, the Business Department and DFID, all working closely with experts in the NGOs and the defence industry. That has not changed. That expertise is there in those who will robustly put the case forward.

**Q145 Chair:** And we will have the same level of senior representation in Geneva—correct?

**Alistair Burt:** No, that representation will be in London, as I indicated, because most of the work is moving from Geneva and, effectively, to New York and capitals. We have changed the structure accordingly. The focus of the attention of the treaty, now that we have reached the stage we have, moves away from Geneva. That's why there's been the change in structure.

**Q146 Chair:** Can we have a note, please, as to what we will keep in place covering arms control issues in Geneva, where a great deal of important activity takes place?

**Alistair Burt:** Of course.

**Chair:** Thank you.

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<sup>1</sup> See Ev 41

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**Q147 Malcolm Bruce:** May I ask a couple of specific questions on small arms? Obviously, it is very welcome that America has come on board for the treaty, but it is also well known that it is opposed to including ammunition in the small arms agreement. Do the UK Government go along with that, or are they still arguing the case? There is evidence that where ammunition is in short supply, that saves lives, to put it at its simplest. There is genuine concern that ammunition should not be excluded. There are also practical considerations about the registration and marking of weapons and a view that the basic, simple agreement should be that if a weapon is not marked, it's illegal, but if it is marked, it can be recorded and registered. That won't solve the problem, but it makes things easier to control.

**Alistair Burt:** On the specifics of the treaty, you might highlight a series of issues that have not yet been decided and all of which are complex, and ammunition is one. Our discussions with the United States have highlighted a number of areas where we have a great deal of common thinking, and there are a range of views among UN member states as to what should be the scope of the treaty. We support a wide scope, which would include ammunition. As to much of the talk on the detail of the treaty—that's now what people are getting into—some of the areas are so complex that, at this stage, distinguishing between our views won't clarify the situation for anyone. But on ammunition, as I say, we have a clear view that we would like the scope to include it.

**Malcolm Bruce:** Okay. Thank you.

**Q148 Chair:** Is the Government's policy to try to secure the inclusion of dual-use items or not?

**Alistair Burt:** It's not our view at the moment, no.

**Q149 Chair:** Dual-use items should be excluded—that is the Government's policy position, is it?

**Alistair Burt:** That's our present position.

**Chair:** Turning now to individual countries, Richard Burden.

**Q150 Richard Burden:** I would like to cover two countries, the first being Israel and the second being Saudi Arabia. You'll be aware that the use to which arms exports to Israel may have been put has been a matter of some concern to this Committee for some time and, indeed, appeared to be a matter of concern to the last Government, as well. You will know that, in 2000, assurances were given by Israel that UK-originated equipment would not be used by the Israeli defence forces in the occupied territories. In 2002, it transpired that that assurance was not being followed by Israel. In the last report by the previous Committee on Arms Export Controls, there was fairly clear concern expressed that "arms exports to Israel were almost certainly used in Operation Cast Lead...in direct contravention to the UK Government's policy that UK arms exports to Israel should not be used in the Occupied Territories", and we asked that broader lessons be learned from that. Could you give us an update on where UK policy is in relation to UK arms exports to Israel being used in the occupied territories?

**Alistair Burt:** The use of arms in a specific area or a specific territory is not part of the criteria. What the criteria seek to make clear is that it's the end use of the arms which is the determining factor.

**Q151 Richard Burden:** So is that a change?

**Alistair Burt:** No, it's not a change.<sup>2</sup>

**Q152 Richard Burden:** So why did we seek an assurance from Israel in 2000 that UK-originated equipment would not be used in the occupied territories—and receive such an assurance?

**Alistair Burt:** The criterion as drawn, because it allows us to look at past behaviour and to take into account what has happened, is sufficiently robust to ensure that, in a situation where arms may have been used in the occupied territories, it would be highly likely that the criterion that affects the application would ensure that there probably would not be an export licence granted. What we seek to make clear is that it isn't about the territory, at the end of the day; it's the end use. The criterion is sufficiently robust to cover any external factor like the territory in which arms might be used; and that would always be covered by the criterion. Our policy has not changed from the previous Government's in relation to the use of arms in the occupied territories, or the criteria that would be applied in making a decision about whether or not an arms export to Israel would be likely to end up being used there.

**Q153 Richard Burden:** Given the fact that Israel is in occupation of the West Bank and arguably is still in occupation of Gaza—despite the fact that settlers are no longer there—in contravention of successive UN resolutions, to which we are a signatory, could I ask what activities you, the Government, feel would be acceptable for the use of UK-exported arms to Israel in those territories?

**Alistair Burt:** Well, it's impossible to say, because I don't think we can produce a list and say that if the export licence was for this particular set of goods, they would be automatically accepted as something for which a licence would be granted; but as we know, humanitarian equipment, for example, is something which might be asked for and might be used.

**Q154 Richard Burden:** Humanitarian equipment isn't the subject of arms export controls, is it?

**Alistair Burt:** No, but there are some items that can be used which turn out to be used for humanitarian purposes, but I don't think I want to get drawn down there. The point is, an application would be made for the use of certain equipment. We believe that the licensing criteria are sufficient, and sufficiently robust, that application for goods destined to be used outside the criteria of the licensing would be rejected. I don't think it's a question of producing a list and saying, "If it was x, y and z products it would be acceptable; if it's a, b and c it isn't." All the criteria that are effective in relation to our consideration of arms export licences apply as robustly to Israel and the occupied territories as they would do anywhere else in the world. It's not

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<sup>2</sup> See Ev 41–Ev 42



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the territory, it's not the place, that makes the difference; it's the end user.

**Richard Burden:** The end user?

**Alistair Burt:** It's the end use. Any deployment of arms within the occupied territories would be a significant factor to be taken into account in any licence application.

**Q155 Richard Burden:** Of course, the previous Government did revoke a number of licences, particularly after Operation Cast Lead.

**Alistair Burt:** Indeed.

**Q156 Richard Burden:** We have been assured that there would be rigorous monitoring of what UK arms exports for which licences had previously been given were being used for, and could still be used for. What monitoring is taking place?

**Alistair Burt:** Exactly the same monitoring as has been in place up to now.

**Q157 Richard Burden:** Well, we were a bit unclear about what that was.

**Alistair Burt:** We get information from NGOs and those who would see the use of weapons on the ground. I don't believe that the monitoring process has changed in any way since that of the previous Government.

**Q158 Richard Burden:** Are there any results from the monitoring in the period the coalition has been in office?

**Alistair Burt:** I am not aware of any licences that have been changed to date, but remember—

**Q159 Richard Burden:** No, no, no: this is about the use of equipment for which licences have already been given. That is where the concern has arisen.

**Alistair Burt:** Where applications are new, plainly, we can take a view on whether they fit the criteria. If information is available to us which leads us to believe that licence criteria have been breached, then that allows for a revocation of the licence. We do not go through continuous monitoring of how equipment may be used, but if it comes to notice through NGOs and others who watch on the ground that there is a potential breach of licence, that would be investigated. At present, I am not aware that any such information has come to us over the past few months. That information is not, as it were, routinely collected, but we are always available to collect it.

**Q160 Richard Burden:** Okay. Tell me if I've got this right about the Government's position: despite the fact that Israel is in occupation in contravention of UN resolutions to which we are a signatory, the fact that UK-originated arms are used in those territories is not of itself a problem for the British Government. It would only be what those arms or components are used for that may be a problem. However, the British Government do not proactively check what those arms or components will be used for, but rely on other people giving reports to them, and, in those cases, they may or may not take a view. Is that the Government's position?

**Alistair Burt:** If there are any such arms there, first, they will have been used under licences granted by a previous Government—

**Q161 Richard Burden:** Well, it's pretty clear that there has been. The previous Government acknowledged that that was the case in relation to the armoured personnel carriers in 2002. It's pretty clear that UK-originated arms were used in Operation Cast Lead, isn't it?

**Alistair Burt:** Yes, but that results in the revocation of licences.

**Q162 Richard Burden:** Of new ones.

**Alistair Burt:** No, of extant licences. Where there are still goods to be supplied under a licence application that had been granted, those would be stopped in the case of evidence coming to light of how they had been used. It would be extant licences, as well as new licences, that would be affected by information that came to the Government about the use of goods.

**Q163 Richard Burden:** But I'm still trying to establish if you are doing any proactive monitoring at all. Are you just waiting for somebody to say, "Look, we think there's a problem here"?

**Alistair Burt:** In the current process, as you will know as well as most, there is intense scrutiny of what happens on the ground in the occupied territories, and rightly so. That information feeds back to posts. If information comes in that indicates that a licence criterion has been breached, it would result in an inquiry that would allow for the revocation of a licence. I do not believe it is a process that, at present, we need to be more proactive on than is already the case. There is an extensive and, as I indicated, quite proper network of scrutiny of what happens in the occupied territories to give us the information we need. It is important for the Committee to know that we would take exactly the same view of breach of criteria as that taken in the past, because, again, the criteria allow for that. Where information is found that shows that there has been a breach of the criteria, existing licences can be revoked and that feeds into information on new licences.

**Q164 Richard Burden:** Okay. I want to move on to Saudi Arabia, but perhaps I could ask, because you wouldn't have this information at your fingertips, if you could check where allegations have been made and given to the UK Government about UK-originated arms for which licences have been given and which have been investigated, and what the results of those investigations are.

**Alistair Burt:** Yes.

**Q165 Chair:** Richard, just before you move on to Saudi Arabia, may I ask the Minister one further thing? One can debate the merits of two different policies, but I find it impossible to understand your position and your argument that you feel there has been no change of policy.

The previous Government were absolutely clear that they wished to have a categorical assurance from the Israeli Government, and they got that in writing, dated

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29 November 2000. It was reproduced in the House, and it said, “No UK originated equipment nor any UK originated systems/sub-systems/components are used as part of the Israel Defence Force’s activities in the Territories”. Yet, the new Government—the present Government—in their formal response to our last report said, “The UK Government does not have a policy that UK arms exports to Israel should not be used in the OPTs.” Surely, Minister, it is absolutely crystal clear that there has been a significant change of policy between the two Governments.

**Alistair Burt:** No. All export applications for Israel are assessed on a case-by-case basis against the consolidated EU and national arms export licensing criteria. The end use of the arms that are the subject of the licence application is a relevant fact in that assessment, but it is not the only factor. The Government’s answer was intended to emphasise that Government policy on Israel is determined by a case-by-case assessment against the criteria, not by the final destination of end use alone. Critical factors in that assessment include the nature of the equipment and its stated end use.

For Israel, any likely deployment of arms within the OPTs by Israel is, of course, a significant factor in our case-by-case assessment of export licence applications, but the determining factor in whether a licence application is granted or refused remains whether the application breaches our export licensing criteria, and that was always the case.

**Q166 Richard Burden:** Moving on to Saudi Arabia, you will probably be aware that quite a lot of concern was expressed in a number of quarters about the attack by the Saudi armed forces on northern Yemen in autumn 2009, and about the possibility that UK-supplied equipment could have been used in that attack. There have been a number of allegations that the military action was itself illegal. Against that background, could you give some indication of what the UK Government take into account and what risk assessments they make when determining whether to provide licences for arms exports to Saudi Arabia?

**Alistair Burt:** The fundamental importance and robustness of the criteria remain the guide. The policy on arms exports to Saudi Arabia remains to assess all licence applications on a case-by-case basis, and it is inherent in the process of assessing all our export licence applications that past behaviour is factored into judgments about whether to issue a licence. The Government will not issue an export licence when to do so would be inconsistent with the criteria.

We do believe that Saudi Arabia had a legitimate right to respond proportionately to incursions into its territory resulting from the conflict between the Houthi rebels and the Government of Yemen. The Government followed the situation closely at the time and, after consulting a number of information sources, concluded that the Saudi response and the use of British-supplied military equipment was not inconsistent with the export licensing criteria. So, the short answer to your question is that we use the same criteria as we do for everyone else, which take into account past behaviour in considering any new licences.

**Q167 Richard Burden:** Right. I’m not entirely sure what you’re saying. If I may gently suggest it, there has been a slightly circular logic in your answers on both Israel and Saudi Arabia, which appear to say that at each stage you make an assessment based on past behaviour but then you don’t make an assessment of that past behaviour. Is that what you’re saying in relation to Saudi Arabia? Are you saying, for instance, that when the licence for Typhoon combat aircraft was being considered, the attack in relation to Yemen was considered to be not contrary to the UK’s criteria, and therefore it was fine to go ahead with the licence? Or did you look at the attack and say, “It probably was contrary to the UK’s criteria but we don’t think that it would do the same again”? Or did you say, “We think that it was contrary to the UK’s criteria and we are not sure whether it will do it again, but we will consider it if it does it again”?

**Alistair Burt:** My understanding is that we took a view on the application, based on all the information at the time, that the threshold for refusal—say, under criteria 2, 4 and 6 of the consolidated criteria—had not been met.

**Q168 Richard Burden:** Clearly, that was the case because the licence went ahead. Did you take the view—it might be a reasonable view to take; I make no comment on that—that the Saudi Arabians’ actions in the autumn of 2009 were not in contravention of the criteria, or did you think that they might have been, but you still felt that it was acceptable to go ahead with the new licence?

**Alistair Burt:** It was the former. It was that the activity was not in contravention, or inconsistent with the licensing criteria.

**Q169 Richard Burden:** Okay. Had it been in contravention, that probably would have affected the licence?

**Alistair Burt:** Yes. Absolutely right.

**Q170 Richard Burden:** You would take the same view about Israel?

**Alistair Burt:** Yes.

**Q171 Richard Burden:** So, if Saudi Arabia had done something that was in contravention, it would affect a future licence application, but in Israel, it might.

**Alistair Burt:** No, it would. Exactly the same rules are applied. The criteria are robust enough to give a guide on new applications but they also allow for past behaviour to be taken into account. Clearly, where there have been breaches in the criteria, that is a material factor in taking into account a new application or a renewal of a licence, so it is entirely consistent and exactly the same.

**Richard Burden:** So, we very much look forward to receiving from you the details of the investigations that have been undertaken.

**Chair:** In the few minutes remaining, we should like to cover Sri Lanka, Georgia and China. Katy Clark, you are going to deal with Sri Lanka and Georgia.

**Q172 Katy Clark:** You will be aware that the previous Committee was very critical of the fact that

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the arms exported during the ceasefire period in Sri Lanka were subsequently used in the civil war. What is the current Government's policy on exporting arms to Sri Lanka?

**Alistair Burt:** If I may say, it is exactly the same as I have set out. It is a case-by-case consideration based on the criteria in which previous behaviour has to be taken into account. The Committee will be aware that immediately following the conflict in Sri Lanka, all the extant applications to Sri Lanka were reviewed in the light of the policy and eight extant licences were therefore revoked. It remains exactly the same as the approach that I have set out—a case-by-case consideration based on the criteria.

**Q173 Katy Clark:** So, are we exporting arms?

**Alistair Burt:** We are only approving licences that fall within the criteria. In 2009, the UK issued six licences, refused 17 and revoked eight. In the first three quarters of 2010, we have issued 13 single individual export licences, and all the goods are intended for humanitarian, safety, commercial or civil end use.

**Q174 Katy Clark:** So, you are saying that we are not exporting any arms that could potentially be used in conflict?

**Alistair Burt:** Correct.

**Q175 Katy Clark:** Shall I move briefly on to Georgia? I know that a number of Members have to leave, so I will be brief. In a previous report, the Government referred to lessons learned from Georgia. Will you outline what that meant and what lessons were learned?

**Alistair Burt:** Yes, straightforwardly. It is inherent in the process of assessing all export licence applications that past behaviour is factored into judgments about whether or not to issue a licence. Licensing decisions for Georgia take into account our analysis of Georgia's actions during the 2008 conflict. More than two years on, we note that security on the ground has improved and that the affected areas are more stable. We don't think it likely that there will be a return to large-scale conflict in the near future. Accordingly—again, we go back to the criterion that it will be assessed on a case-by-case basis—past behaviour will be taken into account, and again, as the Committee will know, six extant licences for Georgia were revoked in the past.

**Q176 Katy Clark:** So what were the lessons learned?

**Alistair Burt:** The lessons learned, again, are whether the processes to discern whether or not there were breaches to the criteria work. Otherwise, the licences would not be revoked. But in addition to being robust in relation to the past use of equipment that was granted under the licensing, you also look at a change in conditions on the ground and so on. I think that, in terms of the lessons learned, the determination is to continually make sure that you have enough information available, so that the application of the criteria will be accurate in all particular cases, but that the processes are robust and must continue to be kept robust.

**Q177 Katy Clark:** So you are saying that the lesson learned was that the policy was correct all along—is that what you're saying? What has changed?

**Alistair Burt:** As far as I'm aware, I don't think anything's changed in the approach or the process. The results of an investigation to show that licences should be revoked don't, of course, necessarily imply that the conditions were apparent at the time the licence was granted, which would have meant that an application was granted wrongly. Circumstances arise after an application has been granted where the criteria have been perfectly properly fulfilled, but the use of equipment granted under a licence can mean that, when you look back, you see clearly that the criteria have been breached. But that doesn't indicate that a mistake was made in the first place. I think that our review of that showed that that was the case. It is not to take the view that revocation of extant licences necessarily meant that an error was made in the first place. In all these cases, it seems to me that, on the care that's taken in the consideration of the initial licence application, the examination of what happens on the ground, and then the consideration of whether or not the behaviour displayed should affect either the continuation of a licence or the granting of a new application, that procedure has to be very robust and very clear.

**Chair:** Thank you. Last but by no means least, we have John Glen on China.

**Q178 John Glen:** Thank you, Sir John. Minister, we are concerned to understand the Government's position on maintaining the arms embargo to China. Obviously, the EU and, formerly, the EC have had that embargo in place for the past 21 years, but last month Baroness Ashton circulated a paper that described the ongoing embargo as "a major impediment" to the improvement of relations between the EU and China. Will you please describe the Government's position on this, and set out what discussions, if any, have taken place with the British Government regarding the lifting of this embargo?

**Alistair Burt:** First, the position of the British Government is that they fully support the embargo, which is intended to continue. I think that, where the emphasis might have been different in the EU statement in relation to the impediment was that, if it is an impediment to progress, it is for the Chinese to resolve that, because the embargo is related to human and civil rights considerations, which remain of concern to us, and the importance of which we will continue to uphold. We have absolutely no sense at the moment that we are ready to change this. We have no processes in place to lift this embargo, and my understanding is that we have not been approached to do that. Of course, in the ideal world, the embargo would go because China had changed. If that were the case, everyone in this room would welcome it, but until that happy time occurs, the embargo could and should remain in place.

**Q179 John Glen:** Nevertheless, there's a big difference between the position of the British Government and that of, say, France and Spain, which

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take a different view. How would you account for the difference of view?

**Alistair Burt:** I am, happily, not answerable for France or Spain. We maintain our own position on this. Frankly, it is one to be defended very robustly. That's our position.

**Chair:** Minister, thank you very much for your evidence. Thank you Mr Hall and Mr Vincent for

coming as well. Minister, we will be glad to have any of the written follow-up that we've requested. We may have one or two additional questions to put to you following your evidence. Thank you very much for coming in front of the Committee today.

**Alistair Burt:** Thank you very much indeed, Sir John.

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# Written evidence

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## Written evidence submitted by The Campaign Against Arms Trade

1. The Campaign Against Arms Trade (CAAT) in the UK works to end the international arms trade, which has a devastating impact on human rights and security, and damages economic development. CAAT believes that large scale military procurement and arms exports only reinforce a militaristic approach to international problems. Established in 1974, CAAT receives around 80% of its funding from its individual supporters.

2. The re-establishment of the Committees for Arms Export Controls (CAEC) in the new Parliament is welcome. CAAT would suggest that CAEC should also consider whether it is appropriate for the UK government to be encouraging and promoting military exports since this undermines the very notion of arms export controls.

3. This submission looks at the Coalition government's programme with regards to arms exports and the justifications given for Government support for them as well as the ways this support is given and the alternatives. It also briefly addresses other current arms trade issues—lack of accountability, the proposed arms trade treaty, corruption, cluster munitions and private military and security companies.

### THE COALITION GOVERNMENT AND THE ARMS TRADE

4. The Coalition government's programme, published in May 2010, says: "We will support defence jobs through exports that are used for legitimate purposes, not internal repression, and will work for a full international ban on cluster munitions".

5. The programme does not define "legitimate purposes". Since 1997 there have been criteria, now the Consolidated EU and National Arms Export Licensing Criteria, that say that exports will not be permitted if they might be used for internal repression. That, unfortunately, has not stopped UK military exports going to countries such as China, Israel, Sri Lanka and Thailand where it is impossible to be sure that they will not contribute to internal repression. Military equipment exported from the UK was used by Israel in Lebanon and Gaza; the sale of fighter jets to Saudi Arabia took precedence over the possibility of effective UK government protests over human rights concerns and a criminal investigation for bribery; and an expensive and useless military radar system was successfully sold to Tanzania.

6. The Coalition government has adopted an even more enthusiastic approach to the export of military equipment than its predecessor. Secretary of State for Defence Liam Fox MP, speaking on 25 October 2010, said: "The long-term prosperity of the UK defence industry therefore depends on two things—offering better value for money to the British taxpayer; and being competitive and market sensitive so that the successful export of what is produced is more likely". He went on to say: "We have pledged our full support to a re-invigorated export strategy as the best way to protect and promote the best of British industry. I will chair the new Defence Exports Group, fully supported by Gerald Howarth and Peter Luff. We need to create a more stable base for industry, less dependent on the UK economy alone".

7. The message from this appears to be that, despite the negative consequences of military exports, and the fact that they can undercut other Government policies, such as the promotion of human rights or economic development, or efforts to stamp out corruption, the Coalition government will be promoting arms exports even more aggressively than has been the case to date.

### THE WRONG BASIS FOR INTERNATIONAL RELATIONSHIPS

8. The Coalition government has been justifying its promotion of arms exports by saying they would, according to Gerald Howarth MP, International Security Minister, (Hansard, 1.11.10 *Col 596w*) form part of "a broader diplomacy initiative by enhancing relationships with key strategic partners".

9. However, the past record does not auger well for this. The UK has found itself overlooking human rights abuses by, for instance, Saddam Hussein in Iraq as it has attempted to sell arms. The desire to sell arms to Saudi Arabia is another instance where the buyer has leverage over the seller, rather than the reverse.

10. This focus on the military relationships actively increases international instability. Conventional weapons proliferation leads to greater insecurity as does way it can alienate opposition groups within the buyer countries. A less militaristic approach, with the emphasis on cultural and civil economic relationships, would be much better for UK and global security.

### ARMS TRADE NOT NECESSARY FOR JOBS

11. The statement in the Coalition programme implies that the main rationale for promoting military exports is to support jobs. However, a Government concerned about boosting employment should not look at military export jobs to do this. Arms export jobs are heavily subsidised by the taxpayer. As Alan Beattie, International Economy Editor of the *Financial Times*, wrote on 10 August 2010: "You can have as many arms export jobs as you are prepared to waste public money subsidising".

12. It is also a misconception that vast numbers of jobs are currently supported by arms exports. In fact, these account for 0.2% of the UK workforce and around 2% of manufacturing employment. The buying countries also increasingly want to have part of the production progress. The sale of Eurofighters to Saudi Arabia illustrates this. Two thirds of the 72 Eurofighters sold to Saudi Arabia are to be assembled there. Similarly, the £700 million deal signed during Prime Minister David Cameron's visit to India in July 2010 will see 57 Hawk aircraft manufactured under licence there by Hindustan Aeronautics Limited. The logical extension of this is that HAL will produce Hawks for the global market. The number of UK jobs said to be supported by this deal is just 200.

#### NEED FOR RETHINK ON TECHNOLOGIES

13. The Coalition programme also says: "We will ensure that UK Trade and Investment and ECGD become champions for British companies that develop and export innovative green technologies around the world, instead of supporting investment in dirty fossil fuel energy production". This sounds excellent, but makes no mention of any break from the current and recent realities.

14. At the moment the arms industry is the one that receives the disproportionate subsidy, yet arms are totally unsustainable goods so to continue to support for them would be at odds with the commitment to supporting green technologies.

15. Though precise figures are hard to find, this subsidy of the arms industry arises in a number of ways including, most importantly, Government research and development funding. The Coalition government has also committed itself to considering export potential when making decisions about procurement for the UK armed forces. (Hansard, 1.11.10 *Col 596w*) This is not new. In 2003 the RAF bought BAE Hawk trainer aircraft with a view to persuading the Indian government to buy the Hawks for its air force. The Treasury did not believe the Hawks offered value for money.

16. Military industry also benefits hugely from promotion of its wares by ministers (William Hague's first external meeting as Foreign and Commonwealth Secretary was to discuss BAE's concerns about overseas commercial opportunities) and members of the UK armed forces, and from the assistance given by UK Trade and Investment's Defence and Security Organisation (UKTI DSO) and the Export Credits Guarantee Department (ECGD).

#### UKTI DEFENCE & SECURITY ORGANISATION

17. Since April 2008, responsibility for promoting military exports has rested with UK Trade & Investment (UKTI). Military exports account for just 1.5% of all exports, with 40% of the value for these being imported. However, it is the arms industry through UKTI DSO and not "green technologies" that UKTI's current priority. UKTI DSO has 160 staff working to promote arms sales whereas there are only 130 UKTI staff specifically allocated to all the other industrial sectors put together. The remaining 2,300 UKTI staff are available to support all industries, including military companies.

18. UKTI DSO gives assistance to companies without seemingly considering any ethical questions, or the security or economic benefits, or costs, of the sales. Claims by the industry of the benefits to the UK economy are frequently reported unquestioningly by politicians and the media, but Freedom of Information requests made on several occasions by CAAT have failed to unearth any Government-commissioned analysis.

19. One oft-quoted report, commissioned by the industry, is *The economic case for investing in the UK defence industry* by Oxford Economics (2009). However, studying this report more closely, it shows the arms industry has a very average record relative to the sectors Oxford Economics chose to compare it against. The arms industry came 15th out of 27 in terms of value added contribution to Gross Domestic Product, and is actually below average, 13th out of 22 on export intensity despite all the support it receives from Government which other industries do not.

20. Even if ethical questions are put to one side, there can be no justification of such disproportionate support for one industry. However, the arms industry is hugely, and rightly, controversial.

21. This controversy is likely to come to the fore again in September 2011. UKTI DSO is co-organiser of the biennial London arms fair, now called Defence and Security Equipment international. The invitation list at the last DSEi fair, one of the world's largest, included Angola, Colombia, Iraq and Pakistan.

#### EXPORT CREDIT GUARANTEES

22. The Export Credits Guarantee Department (ECGD) uses public money to ensure that companies are paid, even if the buyer defaults. It charges the exporter a premium, but, in 2005, even the Treasury accepted there was an element of subsidy.

23. In 2007–08 57% of all support given by the Export Credits Guarantee Department was for military deals; in 2008–09 (after BAE Systems withdrew from cover for its arms deals with Saudi Arabia) 73% of support went to Airbus. Between them, military and aerospace exports have dominated the ECGD's business over the last decade.

24. With the proportion of cover for military goods currently just 1%, it is now an ideal time for the Government to exclude such projects from cover in future.

#### SUPPORT FOR GLOBAL COMPANIES

25. UK-taxpayer funded support for arms exports could be given even when the equipment is not being manufactured in the UK. Alan Garwood was Head of the previous government arms export promotion unit, the Defence Export Services Organisation (DESO), between 2002 and 2007. In a letter dated 9 September 2005 he told CAAT: "The broad test for assessing DESO support to a UK-based defence exporter is not company ownership, but the added value that the export would bring to the UK defence industrial base". In April 2008 the acting Head of UKTI DSO told Alan Garwood, now working for BAE as Marketing / Business Development Director and asking about support for BAE's US exports, that his own DESO stance still applied, but was told that "... these things evolve and it was worth discussing when a specific opportunity arose".

26. While UKTI DSO has not quantified the UK content of the exports it supports, the ECGD has. In June 2007 it announced that it would support projects by multi-national commercial enterprises with a foreign content of up to 80%.

#### SUPPORT COULD BE REDIRECTED

27. If the current support and subsidies enjoyed by the arms industry were to be directed towards developing and exporting "innovative green technologies around the world" the UK could establish its presence in a vibrant, growing sector with vast potential rather than languishing in a static destructive one.

28. *Many arms industry workers are highly skilled, a point made by Dr Sandy Wilson, President and Managing Director, General Dynamics UK, when he gave evidence to the Defence Committee on 8 September 2010:* "A point that I have made to this Committee previously is 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. We are talking about high-level systems engineering skills, which are often described as hen's teeth. It is an area in which the country generally needs to invest more. You can think of the upsurge in nuclear and alternative energy as being two areas that would mop up those people almost immediately".

29. As this acknowledges, workers will go where there is investment. In 2008 UK government-funded research and development (R&D) for arms was over £2,500 million. That for renewables, necessary to meet the acknowledged threat to national security of climate change, was around £66 million. If the money changed sector it is likely the arms industry workers, many of whom have skills much needed for renewables development, would follow.

30. To this end, CAAT was encouraged by the establishment, by Secretary of State for Business, Innovation and Skills Vince Cable MP in October 2010, of the Skills and Jobs Retention Group, to explore how skilled arms industry workers can be retained in the advanced manufacturing sector, by working with industry to redeploy affected employees to other sectors such as civil aerospace, automotive, energy and marine.

#### LACK OF ACCOUNTABILITY

31. Between 1999 and the coming of the Coalition government, the junior minister directly responsible for military export promotion, formerly by the Defence Export Services Organisation in the Ministry of Defence and more recently UKTI DSO, has sat in the House of Lords. Some of these ministers were directly appointed from industry to do the job.

32. This tendency to appoint unelected persons to trade posts appeared to have ended in May when Mark Prisk MP assumed responsibility for UKTI and Ed Davey MP for the Export Credits Guarantee Department. However, the appointment of Stephen Green as Trade & Investment Minister designate has dashed CAAT's hopes that MPs might be able to question the trade minister in their own House on a continuing basis.

33. As CAAT has recently pointed out in written evidence to the Public Administration Select Committee's inquiry into "What ministers do", this seems to be based on the incorrect assumption that trade, including that in military equipment, is uncontroversial. This is far from the case, but without exposure to constituents who might question the morality of arms export promotion, or to local political parties or human rights or development groups which might raise the issue in debate, there is little to offset the direct lobbying of the minister by companies and trade associations.

34. Just how strong this arms industry influence can be was shown when it was revealed during the discussions around the Strategic Defence and Security Review that it would cost more to cancel one of aircraft carriers ordered by the last Government than proceed to build the two.

#### ARMS TRADE TREATY

35. The Coalition government's programme says: "We will support efforts to establish an International Arms Trade Treaty to limit the sales of arms to dangerous regimes". What constitutes a "dangerous regime" is not defined.

36. CAAT continues to have major reservations about an arms trade treaty. As presently envisaged, the arms companies support it as they do not believe that it would “bring new obligations for UK industry” and do not feel that their sales would be constrained. Since the Coalition government is, as described above, heavily promoting arms sales its commitment to an arms trade treaty that makes a real difference must also be questioned. The danger is that an arms trade treaty would further legitimise the arms trade without reducing sales, even to governments, such as those of Israel or Saudi Arabia, that many would consider dangerous regimes.

#### CORRUPTION

37. The Serious Fraud Office’ (SFO) investigation into BAE Systems’ arms deals in central Europe, South Africa and Tanzania ended in February 2010. BAE agreed a plea bargain with the SFO and the United States’ Department of Justice. It was commonly considered that the plea agreement reached with the SFO, limited as it was to “accounting irregularities” in a contract with Tanzania, did not reflect the seriousness and extent of BAE’s alleged offending, which includes corruption and bribery, or to provide the court with adequate sentencing powers. The case goes before a magistrates court on 23rd November 2010.

38. The news in October 2010 was more welcome. The Accountancy and Actuarial Discipline Board (AADB) is to investigate KPMG’s audits “in relation to the commissions paid by BAE through any route to subsidiaries, agents and any connected companies” between 1997 and 2007. These companies include British Virgin Islands registered Red Diamond, Poseidon and Novelmight.

39. The AADB may help those in central Europe, Saudi Arabia, South Africa and Tanzania whose rulers spent money on military equipment which might otherwise have gone towards improving health or education find out what happened.

#### CLUSTER MUNITIONS

40. CAAT is pleased that the UK has ratified the Convention on Cluster Munitions (CMC) which entered into force on 1 August 2010. Although it seems that it may already have been illegal to advertise cluster munitions or their components, see the guidance notes for the 2008 amended Trade Controls, this does not appear to have stopped all advertising of such weapons.

41. The January 2010 edition of *Jane’s International Defence Review* contains an advertisement from Indian Ordnance Factories for “cargo ammunition”. One pictured, is the 130mm cargo projectile which contains 24 bomblets. CAAT hopes that now the CMC has come into force it will be rigorously policed to make sure that such advertisements do not appear.

42. It is also hoped that the Government will work to encourage governments, such as India, China, Russia and the United States, which have not joined the CMC to do so.

#### PRIVATE MILITARY AND SECURITY COMPANIES

43. The UK private military sector has increased enormously following the invasions of Iraq and Afghanistan with personnel employed by “corporate mercenaries”, or Private Military and Security Companies (PMSCs) as they prefer to be known, take on many tasks previously undertaken by members of national armed forces. This growth has been accompanied by hundreds of allegations of human rights abuses committed by mercenaries. How to address this prompted nearly a decade of consultation by the Labour government.

44. CAAT was disappointed that, in September 2010, the Coalition government decided to take forward the Labour government’s April 2009 proposals. Under these the Government will abdicate responsibility for regulating the industry to a trade association; make sure that it itself only contracts PMSCs with high standards; and liaise with other governments on the international level regarding this issue.

45. This is totally inadequate, not least because it fails to address the fact that overseas governments, mining companies, media organisations, aid agencies and others also have contracts with PMSCs—withholding UK government purchasing power is not a solution in these cases.

46. The Government intends that these proposals be reviewed two years after they have been acted on. CAAT hopes that, in the meantime, CAEC will monitor what happens regarding PMSCs.

November 2010

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### Supplementary written evidence submitted by The Campaign Against Arms Trade

1. Following the oral evidence session held by your Committees on 13 December 2010, the Campaign Against Arms Trade (CAAT) would like to make a short supplementary submission. CAAT was pleased that your Committees asked questions about export promotion, but concerned that some of the answers may not have conveyed a fully accurate impression.

#### NEW MARKETS DO CAUSE CONCERN

2. Malcolm Bruce mentioned Defence Ministers' espousal of arms exports and asked the witnesses representing industry where the orders were going to come from, pointing out that others countries were also in the business and that military budgets are under pressure. He suggested that some people might be concerned if any of the increased sales were to emerging markets where "controls might be more difficult".

3. In response David Wilson said that the United States was a "big and increasing market" and, latter, cited new members of the European Union. None of the industry panel disagreed with Malcolm Bruce's summary that the markets envisaged "shouldn't really cause significant concern".

4. However the markets being prioritised are far from being limited to the USA and the newer EU members. The Government's arms sales unit, the UK Trade and Investment Defence and Security Organisation (UKTI DSO), has a list of priority markets for 2010–11. These are Algeria, Australia, Brazil, Brunei, India, Iraq, Japan, Kuwait, Libya, Malaysia, Mexico, Oman, Pakistan, Saudi Arabia, South Korea, Turkey, the United Arab Emirates and the USA. (Hansard, 28.6.10, Col. 418–9W).

5. While the list, indeed, features the USA, it is notable for its lack of EU member states, but does, worryingly, include countries that give rise to grave concern on human rights, conflict or development grounds including Algeria, Iraq, Pakistan and Saudi Arabia. UKTI DSO is also working hard to promote military exports to Angola and Vietnam.

#### UK LEADERS SUPPORT FOR ARMS EXPORTS

6. Later in the session your Chair asked the industry representatives what they would like to see Ministers doing to support arms exports. In his response, Brinley Salzmann said: "We would welcome Ministers actively supporting British companies and particular programmes pursuing potential export projects to help counter-balance the high level of political support that our competitors in France and the United States receive. They receive a high level of support, and we are keen to see similar support from our Ministers". The efforts of Presidents Sarkozy and Obama in promoting sales to Brazil and India were then mentioned as examples the UK could learn from.

7. This may have left members of your Committees with the impression that the UK was not already doing likewise. In fact, Ministers of differing political hues have over decades thrown their weight behind bids to sell arms overseas. Recently, in July 2010 and as CAAT pointed out in its submission of November 2010, David Cameron and several senior ministerial colleagues, accompanied by industry leaders including BAE Systems' Dick Olver, visited India. Contracts for the supply of Hawk jets were signed. These jets will be built in India, raising concerns about regional arms races and proliferation, but the deal will support just 200 jobs in the UK

8. Junior Ministers have also been active. To use Brazil as an example, in September 2010, the Minister for International Security Strategy, Gerald Howarth, went there to sign a Defence Cooperation Treaty. He was accompanied by 10 senior representatives from top UK arms companies along with Richard Paniguan, Head off UKTI DSO.

9. CAAT deeply regrets these sales promotion efforts, be they by French, US or UK politicians. They may benefit the arms companies, but at the expense of peace and justice. Military production also wastes science and engineering skills which could be used to develop green technologies.

#### OBJECTION TO ARMS EXPORTS

10. As Malcolm Bruce remarked "... our non-governmental organisations have made it clear that they have no ideological objection to developing our defence export industry ..". That may be true of those organisations which were giving oral evidence, but is not the case more generally. CAAT is not alone in having a moral objection to arms exports—it is a view shared with many other organisations and individuals.

## Written evidence submitted by The Export Group for Aerospace & Defence (EGAD)

### CURRENT UK EXPORT LICENSING SITUATION

EGAD recognises the importance of an efficient export control system. This submission focuses on the mechanics of the system, and how it operates, and particularly the timescales involved in processing export license applications which has deteriorated in recent years. Delays in processing licenses, by the Export Control Organisation (ECO), has resulted in contractual penalty clauses being enforced against UK companies. EGAD has received an increase in the number of companies that have experienced such delays over the last year. This situation does appear to be getting worse and is affecting the reputation of companies within the UK. This is a serious issue.

The number of applications that the ECO is processing far exceeds the levels expected. In 2010 we understand that 17,000 license applications are expected by the ECO, compared to c.15,000 applications which were processed in 2009. Resources have been allocated by the ECO on the basis of processing between 9–10,000 Standard Individual Export Licence (SIEL) applications per annum.

The ECO should be credited for managing such a large increase, but this situation is clearly unsustainable. Furthermore, it is at odds with the Government's ambition to increase UK exports.

The ECO and advisory departments are so focused on processing SIELs that other aspects of the UK's export control system, such as "Ratings" and processing of Open Individual Export Licence (OIEL) applications is suffering.

### EVIDENCE AND IMPACT OF DELAYS IN ISSUING LICENCES

Some Members have now informed us that their customers (including the United Nations) have become so disenchanted with the delays in delivering equipment that they are seeking to purchase what they need from outside the UK.

In addition, we are aware of at least one inward investment decision which is at risk as a direct result of the export control system. A UK-based company has been considering returning manufacturing work to the UK from Latin America. This would bring significant benefits in terms of jobs, export sales and strategic capabilities. Having being persuaded of the business case, the company is currently reconsidering this investment because of the frustrations that they are already experiencing in other areas of their business in working through the UK's export control system.

From an Industry perspective there are two steps which are necessary to improve the efficiency and maintain the effectiveness of the current system:

- (1) Increase the resources of the ECO and its advisory departments so that they can cope with the increased demand. Increased UK exports are an ambition of the Government and deliver both jobs and greater income to the Exchequer in the form of increased tax receipts.
- (2) ECO and its partner organisations should identify improvements in the current system for processing licensing applications.

The Government's policy of proactively seeking to encourage UK Industry to export more will result in further pressure on our export licensing system, not only from defence and security companies, but also from dual-use firms.

With some 98% of SIEL applications being successful each year, there is a strong case for removing a large number of current SIEL applications from the system and into the Open General Export Licences (OGELs) process without undermining of the effectiveness of our national export control system.

EGAD believes that the existing suite of OGELs needs to be reviewed, to ensure that these licensing products are as effective as possible.

### UK/US DEFENSE TRADE COOPERATION TREATY

After nearly three years of deliberation, the US/UK Defence Trade Cooperation Treaty (as well as its US/Australia equivalent) was ratified by the US Senate Foreign Relations Committee (SFRC) on 21 September, and confirmed by the US Senate on 29 September 2010.

It aims to streamline and improve defence export processes and allows for the export of defence articles, without a license or other written authorisation, from the US to an "approved community" of recipients in the UK and US and the subsequent transfer of these articles within that community without further US authorisation.

There is some uncertainty within industries on both sides of the Atlantic on the full implications of ratification and what steps companies need to take to benefit from the treaty. The US Department of State announced that it intended to undertake a formal public consultation immediately after the Treaty was ratified, on its implementation.

As is usual with such complicated matters, the finer details of the Implementation Arrangements, which were published separately from the Treaty on both sides of the Atlantic in February 2008 need to be understood in detail. Some examples of the analysis which is required by individual companies is set out below:

- The equipment under consideration must not be on the very extensive “Excluded Technologies” List, which was published in early-2008;
- The intended end-user for the items covered by the Treaty must be either the UK and/or US Governments only; the Treaty will not cover items for onward export to other third countries;
- The UK companies who want to use the Treaty, including any and all sub-tier suppliers and freight forwarders who receive Treaty items, must be part of the “Approved Community”, and, therefore, have X-List Security-vetted status from the UK MoD;
- Individuals within UK X-Listed companies who need to have access to the controlled US technology must be UK citizens with SC Security Clearance from the UK MoD.

At the behest of the UK MoD, A|D|S and EGAD are planning on organising a series of half-day workshops in early-2011 to brief UK firms so that they can be better informed on what the impact of the Treaty may be on them and their commercial activities. This will allow them to make an informed decision on whether they want to apply to be part of the Treaty’s “Approved Community”.

*November 2010*

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**Written evidence submitted by Alistair Burt Parliamentary Under-Secretary of State, Foreign and Commonwealth Office**

Thank you for inviting me to give evidence to the Committees on Arms Export Controls on Monday 24 January 2011. I am writing to follow up a number of issues in respect of which the Committees have requested further information. For the convenience of the Committees, I thought it best to provide a single reply from HM Government. This letter therefore also serves as a response to your letters of 1 February 2011 to Rt Hon Vince Cable MP and Rt Hon Liam Fox MP.

**ARMS TRADE TREATY**

I welcome the Committees interest in the Arms Trade Treaty, an issue where cross party support has helped us to make real progress. The Government is fully committed to securing a robust and effective Arms Trade Treaty (ATT) and hence is keen to ensure sufficient resources are in place for the negotiation of the Treaty. I can confirm that multilateral arms control and disarmament continue to be a high priority for FCO.

Following an internal reorganisation to our multilateral diplomatic posts in Switzerland, the Responsibilities currently held by the Ambassador for Multilateral Arms Control and Disarmament have been redistributed to ensure that FCO resources are best placed to service both Geneva and non-Geneva based work. When the current ambassador’s term ends in July 2011, we will continue to retain a dedicated ambassador for the arms control and disarmament work that takes place in Geneva via the post of UK Permanent Representative to the Conference on Disarmament. However we have decided that leadership of the UK delegation to the ATT negotiations, which take place elsewhere, should revert to the head of Counter Proliferation Department at the Foreign and Commonwealth Office in London who will report to me as the Minister with lead responsibility. Hence I can confirm that leadership of ATT work will continue at the same level of seniority.

We will also continue to operate as a cross-government team under an FCO lead, including experts from BIS, MOD, DFID and others. This cross government team is proactively engaged in our efforts to achieve a robust and effective ATT, and continues to consult with, and draw in expertise from, NGOs and industry. This consultation, which is at both a strategic and technical level, greatly adds value to UK efforts on ATT by enabling us to benefit from the expertise of others outside government, and to work in a co-ordinated way as we approach the critical UN Negotiating Conference on an ATT in 2012. I will be participating in a panel discussion at an NGO Parliamentary Reception on the ATT on 16 February.

**ISRAEL**

There are three issues regarding UK exports to Israel arising from the recent Evidence Session and earlier correspondence relating to recommendation 23 (para. 141) of the CAEC’s Annual Report published in March 2010: clarification of current UK policy concerning arms exports to Israel; the outcome of any investigations by the Government into reports that UK origin military-listed goods have been used by Israel in contravention of the Consolidated Criteria; and what monitoring the UK Government carries out in respect of the end-use of UK origin military-listed goods and equipment.

I can confirm that UK policy on the export of controlled goods and equipment to Israel has not changed since the Coalition Government took office. All export licence applications to Israel are considered on a case-by-case basis against the Consolidated EU and National Export Licensing Criteria.

The Consolidated EU and National Arms Export Licensing Criteria were announced to Parliament on 26 October 2000 by Peter Hain MP the then Minister of State for Foreign and Commonwealth Affairs. On 29

November 2000, the previous Government obtained an assurance from Israel that UK origin equipment was not being used in the Occupied Palestinian Territories (OPTs). Following reports that Israel was in breach of this assurance in relation to an incident in the OPTs in March 2002, the then Foreign Secretary, the Rt Hon Jack Straw, made a statement on 15 April 2002, stating that the UK “will no longer take the Israeli assurances given on 29 November 2000 into account” and that the UK will “continue to assess export licence applications for the proposed export of controlled goods to Israel on a case-by-case basis against the consolidated EU and national arms export licensing criteria”.

In the period since 15 April 2002 all export licence applications to Israel have been considered on a case-by-case basis against the Consolidated EU and National Export Licensing Criteria.

UK end-use monitoring of UK-origin military-listed goods takes place in three important contexts. Firstly, the information gathering process which takes place in making the case-by-case assessment of each licence application. This takes account of the past record of the stated end-user, particularly with regard to the military-listed goods which are the subject of the application. Secondly, detailed monitoring, review and reporting around incidents of concern, the results of which are factored into judgements about whether or not to revoke extant licences and issue new ones. Thirdly, general monitoring takes place on a continuous basis, with information received in-country being fed back to the export licensing community and other relevant government departments in London. FCO Posts abroad play an active and vital role in monitoring and information provision in all three contexts, but information from other government sources and non-governmental sources (for example from the media and Gas) is also reviewed and used to ensure the robustness of the UK’s export controls.

#### SAUDI ARABIA

It is clear from the reports we have received that Royal Saudi Air Force Tornado aircraft, supplied by the UK, were used during the recent border conflict in 2009. We followed the situation at the time closely and, after consulting a number of information sources, conclude that the Saudi response and use of British supplied military equipment was not inconsistent with the UK’s export licensing Criteria.

#### US/UK DEFENCE CO-OPERATION TRADE TREATY

We welcome US Congressional approval of the Defence Trade Cooperation Treaty and are grateful for the US Administration’s support in achieving this. The Treaty should simplify the export licensing arrangements between the US and the UK for the end-use of either Government, and improve interoperability and the delivery of capability to our Armed Forces. Specifically, the treaty offers benefits by removing the need, under certain conditions, for US export licences under their International Traffic in Arms Regulations (ITAR) for the export or transfer of certain categories of US-sourced technology including both equipment and information. These conditions are that the items must be destined for UK or US government end-use and transferred only within an “Approved Community” of UK and US government establishments and pre-approved Industry facilities and overseas in support of operations. For exports from the UK to the US under the Treaty, there will be a specific open general export licence created.

Congressional agreement has enabled preparations for implementation to begin. We need to consider the application of the Treaty to programmes and projects, with industry, and to understand the US regulations underpinning the Treaty to assess how it can most fully bring benefits.

Key activities, to be conducted with the US, will be developing and trialling the detailed processes, assessing the applicability of the Treaty arrangements to current and planned projects and considering applications to join the Approved Community. There is a considerable amount of work which may take up to 12 months before the Treaty can come into force, The Government will continue to engage with industry on implementation activities through the Defence Industries Council.

I am aware that UK Industry representatives raised concerns with the CAEC about the length of time it has taken to adopt the Treaty and the possible benefits to industry of the Treaty during their evidence session on 15 December 2010. Officials at the MoD (who lead on the issue) are currently engaged in discussions with the US State Department about the implementation of the Treaty; we will keep the Committees updated with the progress of the necessary implementation work as it progresses.

#### TIMETABLE FOR ALIGNMENT OF THE EU COMMON POSITION WITH THE CONSOLIDATED EU AND NATIONAL ARMS EXPORT LICENSING CRITERIA

I can confirm that the EU Council Common Position 2008/944/CFSP “defining common rules governing control of exports of military technology and equipment” is fully applied in the UK strategic export licensing process. Whilst the wording of the UK’s Consolidated EU and National Arms Export Licensing Criteria does differ in some minor respects from the EU Common Position, particularly in relation to Criterion 2 and International Humanitarian Law, in practice the licensing decisions we make are fully in accord with the provisions of the Common Position. We are currently examining these differences with a view to updating the wording of the Consolidated EU and National Arms Export Licensing Criteria before the end of 2011.

#### EU TORTURE END-USE CONTROL

The UK proposal for the introduction of a Torture End-Use Control has been with the EU Commission Legal Services for some considerable time. The Head of FCO's Counter Proliferation Department wrote to Richard Wright (Director Security Policy at the ED Commission) on 5 April 2010 asking that the consideration of the proposal be expedited. In its response, the Commission highlighted a number of difficulties around a new control; specifically, compatibility with WTO regulations, and the new twin track approach to the legislative process post-Lisbon.

On 17 June 2010 the European Parliament adopted a resolution on implementation of Council Regulation (EC) No 1236/2005 concerning trade in goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. The issue is now back with the EU Commission for them to consider further.

The UK's clear preference remains for an EU-wide control and indications are that there is significant support for our proposal. Although there are clearly a number of complex issues here, we are hopeful that pressure from the EU Parliament will help encourage the Commission to come forward with concrete proposals. We will continue to monitor progress on this issue and to make whatever interventions are appropriate, at an EU level, to expedite the matter.

Should it prove impossible to secure an EU-wide control (and we are certainly not at that point yet), we could consider introducing a control at a national level. We would however need to be sure that any proposed national control would be effective. A national control would only cover exports and would not be a trade control; the nature of the goods involved, such as rope and other commercially available equipment, would mean that a trade control of this type would be virtually impossible to enforce.

#### BRASS PLATE COMPANIES AND A REGISTER OF BROKERS

In relation to recommendations 7 (para. 47) and 8 (para. 51), of the CAEC's Annual Report, published in March 2010. I understand that my Hon Friend Mark Prisk MP, Minister of State at BIS set out the Government's position on the general question of a register of arms brokers, at the recent evidence session.

You asked specifically what options the Government was considering to address the particular challenges posed by brass plate companies. The Government's position is that any company with a registered office address in the UK is a UK legal person and therefore subject to UK law. However, it can in practice be difficult to take enforcement action against a company which has no meaningful physical presence in the UK. The Government is exploring the possibility of using the Secretary of State's powers under the Companies Act 2006 to ask the Court to dissolve a company which is operating against the public interest.

There would of course need to be an adequate level of evidence against a particular company before such a case could be brought.

#### EU MILITARY END-USE CONTROL

In relation to recommendation 9 (para.59) of the CAEC's Annual Report, published in March 2010, there have been no further discussions on this issue and we have nothing to report to the Committees at this time.

#### NO RE-EXPORT PROVISIONS

In relation to recommendation II (para.74) of the CAEC's Annual Report, published in March 2010, I can confirm that the revised requirement for End-User Undertakings was announced to industry at the end of March 2010 and use of the revised Undertakings became compulsory from 1 July 2010.

#### ISRAEL/GEORGIA/SRI LANKA

In relation to recommendation 24 (para. 142) of the CAEC's Annual Report, published in March 2010, I believe I have addressed the concerns raised by the CAEC, both in the responses I gave at the recent evidence session and also, on Israel, above.

#### CRITERION 8

In relation to recommendation 27 (para. 160) of the CAEC's Annual Report, published in March 2010, I believe I covered the concerns raised by the CAEC in the responses I gave at the recent evidence session. Additionally, my officials have provided the CAEC with a copy of the UK presentation made by *DFID* at the Criteria 8 Seminar hosted by the Dutch Government on 24 November 2010 on the basis that its content and distribution is limited to the CAEC only.

#### QUARTERLY REPORTS

I understand there are four outstanding questions concerning specific licences (SIEL2008/003265, SIEL2010/005107, SIEL210/001223 and SIEL2009/011222) which we have; as yet, been unable to respond to because of difficulties matching the original details in the CAEC's requests with information on our systems. We are

currently working to resolve these differences and to provide the information requested. In order not to delay this response, I would propose to include the answers to these questions as part of the Government's response to the CAEC's questions on Quarter 3 2010.

#### CAEC VISIT TO THE FOREIGN & COMMONWEALTH OFFICE

I would also like to take this opportunity to extend again the invite to you and your Committee colleagues to visit the FCO. Such a visit would enable the Committees' members to meet FCO export licensing officials, to get a first-hand sense of how the export licensing process works in practice, and also get an update from the UK team working on UN negotiations towards an ATT.

10 February 2011

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### Written evidence submitted by Transparency International

#### 1. EXECUTIVE SUMMARY

The international arms trade is among the most corruption-prone sectors. Arms deals tend to be surrounded by high levels of commercial and national security. This makes the trade particularly susceptible to the risk of corruption as a vehicle for illegal and undesirable arms transfers. Illicit arms transfers have negative consequences for international humanitarian law, human rights, and sustainable development as well as for efforts to combat violent organised crime and terrorism.

We thus recommend that the *Committees on Arms Export Controls*:

- continue to recommend to HMG that the Export Control Organisation (BIS) test whether a licence application is free from corruption and bribery before issuing an export licence;
- insist that HMG implement the Committees' recommendations based on Chapter 6 of the **First Joint Report of the Session 2009–10**;
- consider addressing corruption risks in export licensing beyond Criterion 8 of the EU and National Consolidated Criteria as corruption in the legal global arms trade is not confined to those countries qualifying for consideration under Criterion 8;
- recommend that HMG work towards a robust **UN Arms Trade Treaty (ATT)** with a strong anti-corruption mechanism, preferably as a stand-alone criterion; and
- recommend that HMG work with other EU member states to amend the **European Council Common Position defining common rules governing the controls of exports of military technology and equipment** and agree a new ninth criterion whereby prospective transfers would be refused where there existed a clear risk that they might involve corrupt practices.

#### 2. BRIEF INTRODUCTION TO THE SUBMITTER

Since 2004, the **Transparency International Defence and Security Programme**, based in London, has become the authoritative actor on empowering civil society, defence contractors, and governments to promote greater transparency and reduce corruption in defence and security. Our role is fourfold: (1) To raise integrity in arms transfers; (2) To support counter-corruption reforms in nations; (3) To empower defence anti-corruption actors and actions by disseminating expertise; and (4) To be a strong voice in the formulation of international policy on the centrality of dealing with defence and security corruption as a key aspect of strengthening development and human security. We have found that our approach and our tools work effectively in both peacetime and in conflict environments, notably Afghanistan, where we are currently actively engaged.

#### FACTUAL INFORMATION

3. **Corruption has long been acknowledged to have a devastating 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.<sup>i</sup> The *US Department of Commerce* claimed that the defence sector accounted for 50% of all bribery allegations in 1994–99, despite accounting for less than 1% of the world trade.<sup>ii</sup> It has been estimated that bribes accounted for as much as 15% of the total spending on weapons acquisitions in the 1990s.<sup>iii</sup> In 2005, the *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 per year**, which equates to the global official development assistance provided to Iraq, Afghanistan, Congo (DRC), Pakistan, and Bangladesh combined or the total sum pledged by the G8 to fight world hunger in L'Aquila in 2009. This estimate is based on data from the *World Bank* and *SIPRI* and assumes that the defence sector is no more prone to corruption than other sectors—an assumption that conflicts with popular perceptions.<sup>iv</sup>

#### FIRST JOINT REPORT OF THE SESSION 2009–10, "SCRUTINY OF ARMS EXPORT CONTROLS"

4. The First Joint Report of Session 2009–10, "Scrutiny of Arms Export Controls", includes an entire chapter on "**Challenging bribery and corruption**".<sup>v</sup> The *UK Committees on Arms Export Controls* "made a series of

recommendations relating to: the application of the Criterion 8 methodology **to test whether the contract behind a licence application is free from bribery and corruption**; test creation of a requirement for those seeking export licences to produce a declaration **that the export contract has not been obtained through bribery or corruption; the revocation of licences where an exporter had been convicted of corruption**; and the amendment of the National Export Licensing **Criteria to make conviction for corruption by an exporter grounds for refusing an export licence** (emphasis added).<sup>vi</sup>

5. In the First Joint Report of the Session 2009–10, the *Committees on Arms Export Controls* still “adhere to the recommendations on bribery and corruption made in our 2008 Report and we recommend **that the Government consider them further with a view to implementing the recommendations or explaining why there is no need to do so** (emphasis added).<sup>vii</sup>

#### UNITED KINGDOM EXPORTS CONTROL ANNUAL REPORT 2009

6. The United Kingdom Exports Control Annual Report 2009 unfortunately fails to mention either bribery or corruption.

7. It is also notable that while the *Committees on Arms Export Controls* have recommended that **Criterion 8** methodology be applied “to test whether a licence application is free from bribery and corruption” (First Joint Report of Session 2009–10, p. 39), according to the United Kingdom Exports Control Annual Reports **0 (zero) Standard Individual Export Licence (SIEL) and Standard Individual Trade Control Licence (SITCL) applications have been refused or revoked because of Criterion 8** (“Compatibility of the arms exports with the technical and economic capacity of the recipient country”) in 2009, 2008, or 2007.<sup>viii</sup> It is also very important to note that **corruption in the legal global arms trade is not confined to those countries which qualify for consideration under Criterion 8**.

#### CONSOLIDATED EU AND NATIONAL ARMS EXPORT LICENSING CRITERIA

8. The User Guide to European Council Common Position defining common rules governing the controls of exports of military technology and equipment considers best practice to include assessing corruption risks for **Criterion 2** (3.2.12), **Criterion 5** (3.5.4) and **Criterion 7** (3.7.3). Unlike the 0 (zero) licences revoked based on Criterion 8, the UK has revoked or refused 61 SIEL and SITCL applications based on **Criterion 2** and 43 SIEL and SITCL applications based on **Criterion 7** in 2009 alone.<sup>ix</sup>

9. **This further underlines that corruption is a cross-cutting risk, affecting all eight criteria of the European Council Common Position** defining common rules governing the controls of exports of military technology and equipment. Corruption facilitates the diversion of arms (**Criterion 7**) to regions for which UN sanctions are in place (**Criterion 1**) and where they threaten international (humanitarian as well as human rights) law (**Criteria 6 and 2**), hence posing a serious risk to “regional peace, security, and stability” (**Criterion 4**) and facilitating “the existence of tensions or armed conflicts” (**Criterion 3**). In the past, this has often also meant that states have not “achieve[d] their legitimate needs of security and defence with the least diversion for armaments of human and economic resources” (**Criterion 8**).

10. **EU Member States, including the United Kingdom**, 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** (such as the UN Convention Against Corruption; the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; and the Council of Europe Criminal Law Convention Against Corruption). **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.**

#### UK BRIBERY ACT AND UK FOREIGN BRIBERY STRATEGY

11. After campaigning for many years for the reform of UK anti-bribery law, Transparency International UK has welcomed the **2010 Bribery Act**, which was passed into the statute book on 8 April 2010. When in force, it will make the UK fully compliant with the **OECD Anti-Bribery Convention** as well as the **UN Convention Against Corruption**, and will provide prosecutors with an effective legal framework to prosecute bribery. From a corporate perspective, **the Bribery Act is one of the best anti-bribery laws in the world**. The Act was the product of lengthy and conscientious public consultation and parliamentary scrutiny. It represents the best consensus that can be attained among all stakeholders. It acknowledges that the UK must play its part in helping to combat one of the world’s most pernicious evils.

12. HM Government’s UK Foreign Bribery Strategy (January 2010) also reminds us that **“the fight against bribery can not be an optional extra or a luxury to be dispensed with in testing economic ties”** (section 1.2).<sup>x</sup>

#### ANTI-CORRUPTION IN THE UN ARMS TRADE TREATY (ATT)

13. While the First Joint Report of the Session 2009–10 also discusses the UN Arms Trade Treaty (ATT),<sup>xi</sup> it unfortunately **fails to link the ATT to the strong recommendations on addressing corruption and bribery when issuing arms export licenses**.<sup>xii</sup>

14. UN members agreed in 2006 to create a legally binding multilateral arrangement to regulate the legal international trade of conventional weapons, the ATT. The ATT will summarise and combine the current arms trading obligations of states under international law to **ensure that the same strong standards are obeyed by all arms importers and exporters**. The process of negotiating commenced at the first and second back-to-back ATT Preparatory Committee (PrepCom) in New York in July 2010 and is scheduled to conclude at the UN Conference on the ATT in 2012. The next PrepCom is scheduled for 28 February to 4 March 2011. **Without anti-corruption provisions in the ATT, bringing arms trading under closer control will create new incentives and opportunities for those who, either as suppliers or customers, would want to avoid or circumvent those proper controls. It will, in short, offer new opportunities for corruption.**

15. At the first two back-to-back PrepComs in July 2010, the argument that a robust ATT **needs an anti-corruption mechanism** was emphasised by the **European Union, Colombia, Costa Rica, India, France, Mexico, Morocco, South Africa, and Sweden**.

16. At the end of the second PrepCom in July 2010, “corruption” was included in the Chairman’s Draft Paper, and the Facilitator’s Summary on Parameters mentions as a “specific parameter” the “Consideration of other issues such as the proliferation record and other patterns of behavior of the actors involved, **the risk of corruption associated with the transfer**, and the potential of transit of the arms through or to zones of conflict” (emphasis added).

17. In their **2007** replies pursuant to paragraph 1 of General Assembly resolution 61/89 to the **UN Open-Ended Working Group**, the following states included **corruption as a factor to be considered** when issuing an export licence: **Bangladesh, Bosnia and Herzegovina, Burkina-Faso, Chile, Côte d’Ivoire, France, Iceland, Japan, Liberia, Mali, the Netherlands, Niger, Norway, Spain, Sweden, Togo, the UK, and Zambia**.

18. Existing legally binding regional arms treaties with an anti-corruption mechanism include the **ECOWAS** (Economic Community of West African States) **Convention on Small Arms and Light Weapons** (incorporating corruption prevention measures “at any stage—from the supplier, through any middlemen or brokers, to the recipient”) as well as the **Nairobi Protocol**. The politically binding **UN Disarmament Commission Guidelines on Arms Transfers** and **OSCE Document on Small Arms and Light Weapons** also feature anti-corruption provisions, as does the **UN Guide to SALW legislation**.

19. Rees Ward, the Chief Executive of the the **UK’s AeroSpace, Defence and Security trade organisation (A|D|S)**, has stressed that “**the UK’s aerospace, defence and security industries support the Bribery Act and its aims**” (emphasis added), adding that their “sectors have developed ethics policies that are an example to any other area of business in Britain”.<sup>xiii</sup> Tim Williams, Policy Adviser of the Society of British Aerospace Companies (SBAC) Aerospace Defence and Homeland Security Society, by now merged into A|D|S, pointed out that “[t]he **Arms Trade Treaty is an important initiative and one that is wholeheartedly supported by industry in the UK**” (emphasis added) as “[t]he prospect of a global standard for defence exports was quickly and warmly welcomed by British defence firms”.<sup>xiv</sup>

20. **A strong anti-corruption provision in the ATT would not create additional burdens for UK industry**. The **UK Bribery Act** as well as the **US Foreign Corrupt Practices Act** (as well as additional laws in many other countries) require UK industry to take steps to eradicate corruption in their own business transactions. **A strong anti-corruption mechanism in the ATT** will encourage other exporting countries to put in place similar measurements and legislations, ultimately **creating a level playing field for UK firms** who may currently be somewhat disadvantaged by other countries. This is in line with UK industry who “will also be making it clear to the Government that they must do everything possible to ensure a level playing field in global markets by ensuring that other governments clamp down on unfair competition and extortion in their markets.”<sup>xv</sup> **A strong anti-corruption mechanism will, over time, also encourage importing countries to implement stronger anti-corruption measures.**

21. **Considering the risk of corruption during the licensing process in the UK will only require some additional scrutiny of some licenses**. The corresponding risk management models could readily be included into SPIRE, the export licensing IT system, so as to flag up those license applications requiring closer scrutiny.

22. While **exporting states** have a clear duty to eradicate corruption in arms trading, **importing states** want to be sure that they can secure the weapons they want at a **fair (uninflated) price**, to secure the **adequate equipment** they actually need, and particularly in developing countries, **to not waste funding** that could be invested in other crucial areas, including sustainable development. **Victims**, many of which are the most needy developing countries, also **have a very strong interest that corruption is tackled**, both in their own countries and also (often even more so) in neighbouring countries from which arms are smuggled.

#### PRE-LICENCE REGISTRATION OF BROKERS

23. We fully agree with the Committee on Arms Export Controls’ recommendation in the First Joint Report of the Session 2009–10, which the Committees had already made previously, “**that the Government establish a pre-licensing register of brokers in order to reduce the possibility of undesirable entities trading in arms overseas**”. This would indeed be a major step to “reduce the possibility of undesirable entities trading in arms overseas”.<sup>xvi</sup> It would also be in line with the **EU Common Position on the control of arms brokering**



adopted on 23 June 2003 as well as brokering registration requirements in **Bulgaria**, the **Czech Republic**, **Estonia**, **Lithuania**, **Portugal**, **Romania**, and **Spain**. A pre-licensing register would furthermore **make it more difficult for brass plate companies** to register in the UK and to trade arms without the appropriate licences from the Export Control Organisation.

#### RECOMMENDATIONS FOR ACTION

24. Because of the devastating impact that corruption continues to have on the licit global arms trade it is vital that the *Committees on Arms Export Controls* continue to recommend to HMG that the Export Control Organisation (BIS) test whether a licence application is free from corruption and bribery before issuing an export licence and that the *Committees on Arms Export Controls* insist that HMG implement their recommendations based on Chapter 6 of the First Joint Report of the Session 2009–10.

25. Due to the cross-cutting nature of corruption risks in the arms trade, we furthermore recommend that the *Committees on Arms Export Controls* considers addressing corruption risks also beyond Criterion 8 of the EU and National Consolidated Criteria, as corruption in the legal global arms trade is not confined to those countries which qualify for consideration under Criterion 8. This would also be in line with the User Guide to European Council Common Position defining common rules governing the controls of exports of military technology and equipment as well as Transparency International's recommendation for EU 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.

26. We congratulate the *Committees on Arms Export Controls* on acknowledging the devastating impact of corruption on the legal arms trade, and we recommend that the Committees also extend their recommendations made in Chapter 6 of the First Joint Report of the Session 2009–10 to the UN Arms Trade Treaty (ATT).

27. Based on the evidence provided above, we believe that there cannot be a robust ATT without a strong anti-corruption mechanism. It is therefore vital that corruption continues to be high on the agenda in preparation for the next PrepCom in February/March 2011.

28. We are furthermore convinced that a robust ATT would ideally include "corruption" as a stand-alone criterion/parameter. The inclusion of corruption within only one parameter risks ignoring the important cross-cutting role that corruption plays both in influencing procurement decisions (of particular importance to any sustainable development criterion) and in diversion (itself likely to be a criterion which cuts across many other criteria). Given the pervasive and insidious affect of corruption on a wide range of individual criteria, it makes good sense for it to be incorporated as a separate criterion in its own right.

29. We fully agree with the Committee on Arms Export Controls' recommendation in the First Joint Report of the Session 2009–10, which the Committees had already made previously, "that the Government establish a pre-licensing register of brokers in order to reduce the possibility of undesirable entities trading in arms overseas".

22 November 2010

#### REFERENCES

<sup>i</sup> Control Risks / Simmons&Simmons, International business attitudes to corruption—survey 2006, p. 5

<sup>ii</sup> US Department of Commerce Trade Promotion Co-ordinating Committee Report (March 2000).

<sup>iii</sup> Tanzi, V, Corruption around the world: causes, consequences, scope, and cures. IMF Staff papers 45, pp. 559–594.

<sup>iv</sup> The World Bank estimated that more than US\$1 trillion dollars (US\$ 1,000 billion) is paid globally in bribes each year (2004). The World Bank also put World GDP 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 assumes that the defence sector is no more prone to corruption than other sectors—an assumption that conflicts with popular perceptions.

<sup>v</sup> First Joint Report of the Session 2009–10, Chapter 6, pp. 38–41.

<sup>vi</sup> First Joint Report of the Session 2009–10, p. 39.

<sup>vii</sup> First Joint Report of the Session 2009–10, p. 40.

<sup>viii</sup> Annual Report 2009, p. 23; Annual Report 2008, p. 23; and Annual Report 2009, p. 27.

<sup>ix</sup> United Kingdom Exports Control Annual Report 2009, p. 43.

<sup>x</sup> HM Government's UK Foreign Bribery Strategy, January 2010, section 1.2.

<sup>xi</sup> First Joint Report of the Session 2009–10, Chapter 7, pp. 42–45.

<sup>xii</sup> First Joint Report of the Session 2009–10, Chapter 6, pp. 38–41.

<sup>xiii</sup> A|D|S News Release PR 2010 075, 8 November 2010.

<sup>xiv</sup> The Scope of the Arms Trade Treaty, speech delivered at the 888th Wilton Park Conference, 7–10 December 2007.

<sup>xv</sup> A|D|S News Release PR 2010 075, 8 November 2010.

<sup>xvi</sup> First Joint Report of the Session 2009–10, p. 20.

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### **Written evidence submitted by the UK Working Group on Arms (UKWG)<sup>1</sup>**

#### **SUMMARY OF RECOMMENDATIONS**

With regard to the Arms Trade Treaty (ATT) the UKWG would urge the UK Government to:

- Press for a comprehensive scope for the ATT including all forms of international transfer of all conventional weapons, parts, components, ammunition, ordnance, explosives and associated support services.
- Ensure that the ATT parameters reflect states existing international legal obligations and that they are commensurate with the UK's commitments under the EU Common Position on Arms Exports.
- Engage with sceptical states in order to minimise opposition and facilitate consensus at the highest level possible.
- Continue to demonstrate strong and effective leadership throughout the period leading up to agreement on the ATT.
- Vocally support and facilitate the inclusion of civil society at all stages of the ATT negotiation process.

In addition, the UK Government should:

- Revise current UK arms transfer legislation to reflect the wording of the criteria of the EU Common Position. We would also urge the UK Government to participate actively in the Dutch-led initiative to review the operation of Criterion 8 and to promote similar processes for the other criteria.
- Propose to its EU partners to extend the EU denials-notification database to include information of note regarding licences authorised as well as refused.
- Extend extraterritorial brokering controls more broadly across the UK military list, and establish a formal register of arms brokers.
- Tighten the rules governing and oversight over registration and incorporation procedures for companies involved in the defence or security sector.
- Adopt the now-widespread best practice of applying “no re-export without permission” controls as a matter of routine.
- Pursue adoption of a military end-use control in discussions with other EU Member States.
- Better regulate the activities of overseas companies subsidiary to or under the effective control of UK companies, particularly in respect of embargoed destinations.
- Introduce specific licenses for licensed production arrangement overseas where this is for the manufacture of controlled items, stipulating the maximum quantities to be produced, the duration of production, and permitted export markets for the finished items.
- Improve enforcement activities at UK defence exhibitions to stop the marketing and promotion of prohibited weapons.
- Commit to ending indirect financial support for the producers of cluster munitions and establish a joint financial services, NGO and Government working group to address this issue at the earliest opportunity.
- Establish a torture end-use “catch all clause”, through an amendment to EC Regulation 1236/2005. If introduction of such a catch-all is likely to take more than six months, or is rejected by EU partners, it should be introduced unilaterally in the UK.
- Investigate without delay whether military aircraft, weapons, in-country military support to the Saudi Arabian armed forces or UK personnel have been involved, knowingly or otherwise, in serious violations of international human rights or humanitarian law; and report these findings to Parliament. Pending the results of this investigation, suspend any current or future supplies of military equipment likely to be used to commit or facilitate serious violations of international human rights or humanitarian law.

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<sup>1</sup> The UK Working Group on Arms comprises Amnesty UK, Omega Research Foundation, Oxfam GB and Saferworld.

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**ARMS TRADE TREATY**
*Progress to date*

1. Inadequate and ineffective controls over the international trade in conventional arms have contributed to tremendous human suffering across the world. Irresponsible transfers have fuelled armed conflict, facilitated serious human rights violations, and undermined efforts to eradicate poverty. Latest estimates (from the Global Burden of Armed Violence report of 2008) suggest that 2,000 people each day die from armed violence; many thousands more are injured or forced to flee their homes; schools, hospitals and markets are destroyed.

2. In December 2009, after three years of consultation, and meetings of a Group of Governmental Experts and of an Open-Ended Working Group, the UN General Assembly passed Resolution 64/48 mandating the move to formal negotiation of an Arms Trade Treaty (ATT) by 2012, to create a legally-binding instrument based on the highest possible common international standards for the transfer of conventional arms. The first two PrepComs took place consecutively on 12–23 July 2010 at the UN in New York. The next PrepCom takes place on 28 February–4 March 2011; the fourth and final substantive PrepCom is on 11–15 July 2011. The Chair, Ambassador Moritàn of Argentina, is aiming to achieve consensus at each stage, moving slowly and trying to ensure that all sceptical states remain part of the process. UKWG members and the international Control Arms NGO Coalition are concerned that progress is too slow, given the complexity of the negotiations, the perceived threat some states feel an ATT represents to national security, and the very tight timescale to reach agreement.

3. The PrepComs produced a Chairman’s Draft Paper, and it is widely anticipated that a draft Treaty text is in preparation, and that it will be introduced at some point during the next PrepCom. While many elements of a robust ATT including strong human rights/international humanitarian law and development parameters for refusing deals; a wide scope and strong implementation proposals were included in the basket of ideas contained in the first PrepCom documents, it is vital that these are now translated into robust text.

*Particular issues of concern*

4. For the Treaty to be effective in preventing irresponsible arms transfers that fuel conflict, poverty and serious human rights abuses, it needs:

- Comprehensive scope: cover all types of weapons transfer, and all types of conventional arms, ammunition, parts and components. It is of great concern that the US is currently opposed to the inclusion of ammunition.
- Robust criteria. The parameters of an ATT must include tough criteria around international human rights and humanitarian law and socio-economic development, which need to be translated into strong text (..a transfer shall not be authorized if..”). Some states are already arguing for language (“take into account”) which would render these criteria extremely weak.
- A transparent and effective Implementation mechanism.

5. Smaller states have capacity concerns as to the infrastructure an ATT will require of them, and it is incumbent on larger exporters therefore to negotiate a system that is effective while being workable at all levels of capacity.

*Progress needed during the 2011 PrepComs*

6. While the 2010 PrepComs set the stage for debate, there is a need for the pace of work to accelerate, with only two weeks of formal PrepCom time remain before the 2012 Conference begins. In particular it is essential that the two remaining PrepComs develop a robust and comprehensive draft treaty text, building on the base established during the first PrepCom. If this is not achieved then there will be insufficient time in 2012 to complete treaty negotiations in line with the UN General Assembly mandate.

7. As a consequence several years of UK leadership on the ATT, the UK position continues to have a significant impact on other states. During the July PrepComs, rightly or wrongly the UK was perceived to have stopped providing this leadership; it was seen to be relying on others, such as the EU, to take a lead. Several UK statements outside the UN, for example in the Strategic Security and Defence Review, which offers support to the ATT but does not provide evidence of an intention to continue to lead, reinforce this perception. The US, France and Australia are now beginning to dominate a process which has been central to British foreign policy. This will potentially make it harder for British goals to be achieved. It is also affecting other supporter states, which look to the UK for leadership, and consider the UK’s positioning on this issue as a barometer for global consensus. Therefore a UK which is no longer strongly arguing for a robust humanitarian and human rights basis to the Treaty may be inadvertently perceived as having shifted position on these issues.

8. The Government should maintain a leadership role, working with other supporter states to push for an effective Treaty, including developing and defending strong draft ATT text, encouraging active engagement from supportive states, and investing political capital in addressing the more sceptical states. It is critical that sufficient resources are provided to ensure that appropriate staff and adequate time are made available in all relevant ministries—including BIS, DFID, the FCO, HMRC and the MoD—to pursue a strong and robust Treaty.

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*The role of civil society in the negotiating process*

9. The ATT Resolution from 2009 requires the PrepCom to: "... be undertaken in an open and transparent manner." Regrettably, civil society representatives were denied access to much of the first two PrepComs, despite these being general and conceptual rather than detailed negotiating sessions. The UK should use its influence to push for the meetings to remain open, so that international civil society is able to enhance the level of resources and expertise available, especially to less-resourced states

10. In the national context, the UK Government has so far actively drawn upon civil society expertise through, for example, involvement in the ATT cross-Whitehall "virtual team", in technical meetings and through significant input into policy discussions. We urge the coalition Government to maintain this constructive partnership, and we hope that it will work to ensure the maximum participation for global civil throughout the ATT process.

11. The UKWG urges the UK Government to:

- Press for a comprehensive scope for the ATT including all forms of international transfer of all conventional weapons, parts, components, ammunition, ordnance, explosives and associated support services.
- Ensure that the ATT parameters reflect states existing international legal obligations and that they are commensurate with the UK's commitments under the EU Common Position on Arms Exports.
- Engage with sceptical states in order to minimise opposition and facilitate consensus at the highest level possible.
- Continue to demonstrate strong and effective leadership throughout the period leading up to agreement on the ATT.
- Vocally support and facilitate the inclusion of civil society at all stages of the ATT negotiation process.

#### UPDATING LICENSING CRITERIA

12. Since its adoption in December 2008, the UK is legally obliged to comply with the *EU Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment* (Common Position). Currently, Article 9 (8) of the UK Export Control Act 2002 establishes that the UK applies its own "consolidated criteria" when assessing arms transfer licence applications. These are in certain aspects weaker than the criteria set out in the Common Position, most notably with regard to the application of international humanitarian law. As a matter of urgency, the Export Control Act should be updated to reflect the new requirements of the Common Position.

13. In addition, the UKWG notes that since the EU Code of Conduct on Arms Export was first agreed in 1998 there has been only one serious effort to elaborate the Code criteria, a process completed approximately five years ago. While originally conceived as an attempt to identify best practice and to refine the criteria so as to improve their implementation, ultimately this process merely constituted an elaboration of existing practice across the EU, with no particular emphasis on establishing best practice. When first agreed, the criteria were the product of compromise by a number of states with limited experience of co-operation on multilateral arms transfer controls, leaving considerable room for interpretation. The transformation of the EU Code into a Common Position in 2008 saw some reorganisation of the criteria and a more principled approach to the treatment of international humanitarian law; however, for the most part, the criteria were unchanged. Given the wealth of experience the member states now have in terms of both applying the criteria and co-operating on arms transfer controls, a fundamental assessment of criteria implementation is long overdue. Indeed, the moves afoot to liberalise transfers among Member States, such as through the European directive on intra-community trade in defence equipment, increase the need for Member States to apply the same standards at the external border of the EU, which again points to Member States revisiting the question of criteria implementation.

14. Problems with implementation have, in effect, already been acknowledged by Member States. The Netherlands has just established a new initiative to reconsider how Criterion 8 (sustainable development) is being applied by different Member States.

15. The UKWG recommends that the Government revise current UK arms transfer legislation to reflect the wording of the criteria of the EU Common Position. We would also urge the UK Government to participate actively in the Dutch-led initiative to review the operation of Criterion 8 and encourage HMG to promote similar processes for the other criteria.

#### INFORMATION-SHARING ON LICENCES APPROVED, ESPECIALLY REGARDING DIVERSION RISKS

16. The recent NGO report entitled *Rhetoric or restraint? Trade in military equipment under the EU transfer control system—a report to the EU Presidency*, edited by An Vranckx of the University of Gent,<sup>2</sup> identifies

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<sup>2</sup> A Vranckx ed., "Rhetoric or restraint? Trade in military equipment under the EU transfer control system—a report to the EU Presidency", University of Gent, November 2010, [http://www.psw.ugent.be/crg/agenda/rhetoric%20or%20restraint\\_%20.pdf](http://www.psw.ugent.be/crg/agenda/rhetoric%20or%20restraint_%20.pdf).

how improvements in EU information-sharing could help to prevent diversion of EU-sourced equipment. While Member States share relatively detailed information on all cases where licences are denied, there are no systems in place for sharing information on, for example, problematic intermediaries, transporters or transfer routes, or of instances where diversion has come to light. *Rhetoric or restraint* includes a detailed study of the origins of small arms seized from, or handed-in by, non-state actors in Colombia (which included 13 EU Member States, though not the UK) and makes it plain that Member States are failing to keep each other informed about possible diversion risks.

17. At the moment knowledge of diversion risks can only be circulated to EU partners where it relates to a licence denials; no information may be circulated where information has come to light following the approval of a transfer.

18. The UKWG recommends that the UK Government propose to its EU partners to extend the EU denials-notification database to include information of note regarding licences authorised as well as refused.

#### ARMS BROKERING AND SUPPORT SERVICES

19. The UK has made strong headway on the control of arms brokers, most recently with the extension of extraterritorial controls to include the transfer of small arms and light weapons (SALW), including important new controls on their transportation. We believe, however, that the range of goods to which extraterritorial controls should apply should be widened and that the ECO should establish a formal register of UK arms brokers. Discussions between Industry, NGO's and the Government on extending brokering controls to other categories on the Military list should be re-instated at the earliest opportunity, following the governments rejection of join industry/NGO proposals made during 2009.

20. The UKWG remains very concerned about the growing evidence that UK "brass plate"<sup>3</sup> companies are being used to facilitate the unlicensed supply of weapons to countries of concern. The UKWG urges the new Government to take a wider review of the use of company registration in relation to arms brokering activities and to consider tightening the rules governing and oversight over registration and incorporation procedures for companies involved in the defence or security sector.

#### RESPONDING TO CHANGING PATTERNS OF DEFENCE PRODUCTION AND TRADE

21. The UKWG is concerned that the UK regulatory framework has not been keeping pace with trends towards a greater use of civilian technologies in military production and the ongoing Europeanisation and globalisation of the defence sector. On the grounds that it is an area over which the EU has primary competence, in February 2007, the UK Government announced that it was to promote, at the EU level, the idea of a military end-use or "catch-all" clause. This would mean that the Government would be able to require a licence, should it deem it appropriate, for transfers of equipment that is not on any control list but which is intended for a military end-use.

22. The genesis of this commitment can be traced back to the use of Land Rover vehicles in the Andijan massacre in Uzbekistan in 2005. The Land Rovers had been assembled in and exported from Turkey to Uzbekistan, but to a British design, using British technology, and with approximately 70% of the components coming from Land Rover in the UK. However none of these components were controlled items and thus all were exported legally with no need for an export licence. A military end-use control would have given the Government the power to require Land Rover to apply for an export licence in advance of any such transfer.<sup>4</sup>

23. However, actual activity in this direction has apparently been minimal. In 2009 the Government was arguing that attempting to move this forward at that time made no sense, on the grounds that any business that was incomplete when the 2004–09 European Commission came to the end of its life would need to be started again under the new Commission, and that this particular issue was complex, requiring plenty of time. The 2010–14 Commission has since been established, and now would seem the ideal time to follow up on this commitment.

24. The UKWG urges the UK Government to pursue adoption of a military end-use control in discussions with other EU Member States.

25. Previous UKWG submissions to the CAEC have raised the way that some other aspects of modern defence manufacture and/or arms transfer practice are not currently being dealt with effectively by the UK system. These include:

- The arms transfer activities of overseas companies under the effective control of UK companies;
- The licensing of items which, post-export from the UK, are to be incorporated into military equipment for onward transfer; and

<sup>3</sup> Brass-plate companies are those entities that tend not to have an operational presence within the UK but do have a UK-registered address.

<sup>4</sup> Memorandum from the UKWG to the Committees on Arms Export Controls, 2006–07 Session, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmquad/117/117we02.htm>; See also, T Baldwin, "Uzbek massacre soldiers used Land Rovers in defiance of arms control promise" *The Times Online*, 26 May 2005, <http://www.timesonline.co.uk/tol/news/world/article526600.ece>.

- Overseas facilities that produce controlled goods under a production licence from a UK entity.<sup>5</sup>

26. These issues remain of concern, and the UKWG recommends that the Government:

- Investigates how to better control the arms transfer activities of overseas companies subsidiary to or under the effective control of UK companies, at a minimum to embargoed destinations;
- Applies the same criteria when deciding whether to authorise the export of equipment to be incorporated into military equipment for onward transfer as it does for other exports; and
- Requires UK companies to apply for a specific licence to establish a licensed production arrangement overseas where this is for the manufacture of controlled items. Such a licence should stipulate the maximum quantities to be produced, the duration of production, and permitted export markets for the finished items. This is critical as a means to restrict the proliferation of production capacity, which by its very nature is even more problematic than the proliferation of finished items.

#### RE-EXPORT CONTROLS

27. The UK Government has for a number of years resisted calls to introduce “no re-export without permission” conditions into transfer licences. The UK has retained this position despite the widespread use of re-export controls by many states, including for example the other four Permanent Members of the UN Security Council (China, France, Russia and the US) and EU partners.

28. The UKWG welcomes the decision of the UK Government earlier this year to require end-use declarations to prohibit re-export to embargoed destinations without permission. This would seem to acknowledge the principle that controls should be applied to the re-export of strategic goods sourced from the UK. However, the proposed condition is of extremely limited scope and likely impact given that UK concerns about the appropriateness of arms transfers extends, rightly, far beyond embargoed destinations. Arms transfers are currently embargoed to only 17 states under UK law. Of these, nine are covered by UN embargoes.<sup>6</sup> In such cases, *transfers are already prohibited* regardless of whether the UK introduces this new requirement. This new policy will therefore be of extremely limited effect, and the risk will remain that strategic goods of UK origin are re-exported with negative consequences. In 2009 the UK denied licences for exports to 89 states not under embargo, including for example Algeria, Israel and Ukraine.

29. Many recipients of UK strategic exports themselves apply very different systems and standards of arms transfer controls to that of the UK. For example, the UKWG has previously given evidence to the CAEC of how South Africa has licensed transfers of armoured vehicles to destinations such as Guinea, India (for use in Kashmir), Nepal and Uganda in circumstances where the UK would have been highly likely to refuse the transfers. The benefits of providing a contractual basis for UK involvement in decisions to re-export should therefore be clear. Of course if a recipient state is set on re-exporting irrespective of UK opinion, there is little the UK could do to stop them. However, the Government claims that the pre-licensing assessment process sifts out the problematic buyers, and thus for the most part it seems reasonable to assume that the overwhelming majority of customers will be reliable and concerned with their good name to the point where they would be reluctant to re-export in contravention of any contractual obligations.

30. It is difficult to understand the UK Government’s reluctance to properly address the issue of re-export. Re-export controls will not harm UK industry, and will in fact improve its profile as among the most responsible in the world. In addition, introducing re-export controls would be easy and inexpensive with little added administrative cost barring the simplification of existing end-use documentation. Additional costs would accrue from any additional licensing workload, but indications from other EU Member States that already use these types of re-export control are that the increase in licence applications is not significant.

31. The UKWG urges the Government to revisit this issue and adopt the now widespread best practice of applying “no re-export without permission” controls as a matter of routine.

#### CLUSTER MUNITIONS

32. The UK is to be credited with its swift ratification of the Oslo Treaty to ban the production, transfer, stockpiling and use of cluster munitions, efforts that have secured unanimous cross-party support in both Houses of Parliament. It is encouraging that the current Government has also prioritised efforts to eradicate cluster munitions and has undertaken outreach to states that have not joined the Convention, with a particular focus on Commonwealth States. It is important to recognise the particular contributions made to outlaw these weapons in October 2008 by placing strict prohibitions on the transfer of cluster munitions or their components, including the provision of any ancillary services such as transport, advertising and marketing activities.

<sup>5</sup> See the Memoranda from the UKWG to the Committees on Arms Export Controls, 2006–07, 2008–09 and 2009–10 Sessions, <http://www.parliament.uk/business/committees/committees-a-z/other-committees/committee-on-arms-export-controls/publications/previous-sessions/>.

<sup>6</sup> The UN embargo on Sierra Leone was lifted in September 2010, but the corresponding EU embargo is still in place.

*Prohibiting marketing and promotion activities*

33. This is especially important in light of two recent findings.

34. We reported to the Committee in December 2009 that, at the Defence Systems and Equipment International Exhibition (DSEi) held in September 2009 in London, the UKWG found that Pakistan Ordnance Factories (POF) was advertising artillery ammunition including its 155mm Base Bleed DP-ICM (Dual Purpose Improved Conventional Munition)—a cluster munition—in its product brochures. At the time of the exhibition, the organisers were contacted about these promotional materials and an investigation launched as to whether the exhibitor was in breach of its obligations. At the time of writing, the outcome of this investigation is unknown.

35. In July 2010 UKWG researchers attended the Farnborough International Air show held at Farnborough Aerodrome and found a Russian company, Bazalt State Research and Production Enterprise (FSUE SRPE Bazalt), advertising a range of cluster munitions including some in model form and potentially a complete sub-munition. A large display poster (see image below) on the Bazalt stand at the air show in July 2010 clearly advertises a wide range of “cluster bombs”, including the RBK-500U OAB-2.5RT, which is filled with 126, 2.5kg “fragmentation bomblets”.

36. It is of serious concern that such overt marketing of prohibited weapons could have been allowed to take place at a UK defence exhibition and the UKWG suggests that enforcement of existing UK legislation in this area is not adequate.

*Finance and investment*

37. The UKWG welcomes the fact that UK law now bans the direct financing of cluster munitions production, but further work on indirect finance needs to take place. It is important that commitments announced on 7 December 2009 to work with the financial sector, NGOs and other interested parties to prevent the indirect financing of cluster munitions are implemented at the earliest opportunity, including through potential new legislation should such efforts not signal an end to indirect financial support to the producers of these weapons. These efforts are made even more imperative given new research findings that show that during 2009, two UK banks—Barclays and RBS—renewed loans and investment banking services worth approximately \$476 million to cluster munitions producing companies L-3 Communications, Lockheed Martin and Textron.<sup>7</sup>

**TORTURE END-USE CONTROL**

38. The UKWG has welcomed the February 2008 policy commitment to introduce a new EU wide end-use control for goods used in torture. In 2008, the UK Government stated that:

We will be asking the Commission to introduce a control where the exporter will be required to submit an export licence application where they have reason to believe, or have been informed, that the items could be used for capital punishment, torture or other cruel, inhuman or degrading treatment.<sup>8</sup>

39. We are however disappointed that progress on this end-use control (first announced in February 2008) has been so slow. On 29 June 2010, the Government attended a meeting to discuss the operation of, and amendments to, EC Regulation 1236/2005 (the “torture regulation”). It is our understanding that discussions about an EU-level end-use control on equipment suspected to be destined for use in executions, torture or other ill-treatment were initiated at this meeting.

40. This issue is made all the more urgent in light of the widely reported case of the potential export to the USA by a UK company, of sodium thiopental, an anaesthetic drug used as part of the lethal injection protocol. Although, following judicial review, the UK Government has now announced that this drug will require a licence for export, which will involve making an emergency Order under the 2002 Export Control Act, other drugs are now being considered by US states for use in executions. Oklahoma has recently been granted permission to use pentobarbital, thereby overcoming the difficulties in obtaining sodium thiopental. We note that if the Government had delivered on its 2008 commitment in this area, it would have been able to control exports of sodium thiopental and any other similar drug or items, as soon as it became known that they were being used in executions.

- To avoid the necessity for repeated discussions about items that could be used for executions and their addition to the UK export control list, we call on the UK Government to press the European Commission and EU Member States to urgently conclude the introduction of a torture end-use “catch all clause” through an amendment to EC Regulation 1236/2005.
- If introduction of such a catch-all is likely to take more than six months, or is rejected by EU partners, it should be introduced unilaterally at a UK level (thereby setting an example for other EU partners to follow), in concordance with the UK Government’s previous statement that it would consider introducing such a control independently.

<sup>7</sup> <http://www.stopexplosiveinvestments.org/uploads/pdf/Worldwide%20Investments%20in%20Cluster%20Munitions%20-%20April%202010%20update%20full%20report%20DEF.pdf>.

<sup>8</sup> <http://www.bis.gov.uk/files/file49301.pdf>.

- We also urge the UK to continue its efforts to strengthen EC Regulation 1236/2005 to broaden the range of equipment covered, specifically by updating the annexes on prohibited equipment (Annex 2) and controlled equipment (Annex 3), to reflect developments in the security equipment market.

#### TRANSPARENCY

41. The quality and quantity of information regarding export and trade control licences that is included in the Quarterly and Annual Reports on Strategic Exports has developed substantially in recent years. The creation of the searchable online database has been a major step forward and serves as an example that other states would do well to follow. We also applaud the process that led to the development of the database: as an idea it was first proposed by the UKWG; subsequently it was developed in consultation with the UKWG and industry. There are, however, further improvements that could be made to the UK's reporting system. These include:

- More information on the declared end-use and end-users of licensed items (except where there are specific, compelling reasons for withholding such information);
- More information regarding actual transfers made, especially under open licences; and
- The inclusion of historical information in the searchable database.

42. The UKWG welcomes the developments with regard to transparency in UK arms transfers that have taken place in recent years and would encourage the Government to continue striving toward further improvements in the quality, quantity and accessibility of information provided.

#### PROMOTING ARMS EXPORTS IN SUPPORT OF STRATEGIC AND ECONOMIC PRIORITIES

43. As far back as September 2009, Dr. Liam Fox, the then Shadow Defence Secretary, stated that one of the four major priorities of defence procurement under a Conservative Government would be to “preserve UK defence jobs by maximising exports”. He stated that the Conservative Party “will use defence exports as a foreign policy tool and ... will seek to increase Britain's share of the world defence market”.<sup>9</sup>

44. He also stated in March 2010 that a Conservative Government will “make it its policy to maximise the UK's share of global defence exports” for three reasons:

- Economies of scale from increased sale volumes maximises returns for the taxpayer;
- Increased sale revenues through exports increases revenue to the national purse through the multiplier effect;
- Exports can be used a foreign policy tools to help underpin strategic relationships with key allies and partners.<sup>10</sup>

45. This rhetoric has now been intensified within the new Government. For example, in a statement that fits with the Prime Minister's declaration of an era of “commercial foreign policy”, the Defence Equipment Minister Peter Luff has stated that the Government is “not embarrassed” to promote defence exports.<sup>11</sup>

46. The long awaited Strategic Defence and Security Review (SDSR) made some welcome commitments to prioritise conflict prevention “including... arms export control engagement so as to promote regional stabilisation and reduce the risk of conflict”<sup>12</sup> and improve coordination among the UK's diplomatic, development, economic, defence and intelligence efforts.<sup>13</sup> However the SDSR also commits to prioritising our economic interests overseas and embedding “a more commercial culture throughout our overseas posts”, including “working with the MOD and Home Office, specifically to promote defence and security exports for good commercial reasons and where this will build the capacity of our partners and allies”.<sup>14</sup>

47. It is not clear how the Government intends to reconcile these potentially competing sets of priorities. The UKWG is concerned that prioritising the establishment of a more commercial culture could come at the cost of conflict prevention, and by a reduced emphasis on responsible arms transfer controls. In addition, a move towards defence and security exports as tools to “build the capacity of our partners and allies” should be applied with extreme care given that it is not necessarily consistent with the UK's obligations as set out in the EU Common Position. These state explicitly that considerations relating to “defence and security interests

<sup>9</sup> Speech by Rt. Hon. Dr. Liam Fox, “Radical reform needed in the MoD”, [http://www.conservatives.com/News/Speeches/2009/09/Liam\\_Fox\\_Radical\\_reform\\_needed\\_at\\_the\\_MoD.aspx](http://www.conservatives.com/News/Speeches/2009/09/Liam_Fox_Radical_reform_needed_at_the_MoD.aspx)

<sup>10</sup> J Isaby, “Liam Fox attacks Labour's record on defence funding as he promises that a Conservative Government would want to see British defence and security companies flourishing”, *Conservative Home*, 19 March 2010, <http://conservativehome.blogs.com/theorydiary/2010/03/liam-fox-attacks-labours-record-on-defence-funding-as-he-promises-that-a-conservative-government-wou.html>

<sup>11</sup> M Abbas, *UK plans arms export drive to offset cuts*, Reuters, 23 June 2010, <http://uk.reuters.com/article/idUKTRE65M24I20100623>. See also the speech delivered by Secretary of State for Defence at the Farnborough International Air Show on Tuesday 20 July 2010, <http://www.mod.uk/DefenceInternet/AboutDefence/People/Speeches/SofS/20100720FarnboroughInternationalAirShow.htm>.

<sup>12</sup> “Securing Britain in an age of uncertainty: The Strategic Defence and Security Review”, pp. 44–45.

<sup>13</sup> *Ibid.*, p. 46.

<sup>14</sup> *Ibid.*, p. 66.



[including] those of friendly and allied countries ... cannot affect consideration of the criteria on respect for human rights and on regional peace, security and stability".<sup>15</sup>

48. The UKWG is also concerned that ongoing pressures on the budget of the Export Control Organisation (ECO), especially if taken in concert with this apparent new direction, may weaken the rigour and effectiveness of UK's arms transfer control system. We note that the ECO is looking to broaden the application of general licences (see, for example, the new Open General Export Licence (Military Goods), issued on 6 October 2010)<sup>16</sup> and has already been encouraging industry to shift toward applying for open and general rather than standard individual licences. This may well reduce costs, but it may also reduce oversight.

49. The UKWG recommends that the Government clearly set out its continued commitment to the criteria of the Common Position as the fundamental underpinning of the UK arms transfer control system, and clarify its commitment to providing all necessary resources to maintain the integrity and effectiveness of the UK export control system.

#### YEMEN

50. On 25 August 2010 Amnesty International issued a detailed report on the deteriorating human rights situation in Yemen, which also focused on the alleged use of Saudi Arabian combat aircraft in conducting indiscriminate aerial attacks in and around the Sa'sah governate in Northern Yemen. Of particular concern is the possible use of UK-supplied weapons by Saudi armed forces when conflict intensified in the autumn of 2009. Eyewitness testimony, including photographic evidence, clearly conveys a scene of near total devastation, with sustained and intensive bombardment by Saudi Arabian planes reported to have killed hundreds of people, caused widespread damage to homes and infrastructure, and displaced up to 280,000 people.<sup>17</sup>

51. Amnesty International was particularly concerned that two days after publication of its findings, a new Open General Export License (Military Goods: Collaborative Project Typhoon) entered into force, allowing *inter alia* for the maintenance of Typhoon combat aircraft in Saudi Arabia. It is of serious concern that such a permissive general licence with minimal scrutiny should be available for end-use in Saudi Arabia.

52. Current UK arms export control policy is designed to prohibit the supply of military equipment where there is a clear risk that such equipment will be used in human rights violations or violations of international law, the kind of attacks that appear to have taken place in Yemen during the autumn of 2009.

53. In response to concerns raised by Amnesty International, the Government has stated that it does not consider the actions of Saudi Arabia to be in violation of international law or to raise concerns under the UK consolidated arms export criteria. However, it has also stated that:

The Government remains concerned, however, about the impact of the conflict on Yemeni citizens...it remains very difficult to estimate the impact of military action in Northern Yemen because of a lack of access and the security situation in the area.<sup>18</sup>

54. Given the lack of limited information regarding the scale and nature of these attacks, it is not clear how the Government can be so confident that Saudi Arabia did not misuse UK-supplied aircraft, or other combat aircraft in its arsenal. In light of these events, the Government should:

- Investigate without delay whether military aircraft, weapons, in-country military support to the Saudi Arabian armed forces, or UK personnel have been involved, knowingly or otherwise, in serious violations of international human rights or humanitarian law; and to report these findings to Parliament.
- Pending the results of this investigation, suspend any current or future supplies of military equipment likely to be used to commit or facilitate serious violations of international human rights or humanitarian law.
- Ensure that any future UK military supplies and assistance are conditional upon the establishment of rigorous operational safeguards, including training and accountability systems, designed to prevent the commission of serious violations of international human rights or humanitarian law by the Saudi Arabian armed forces.

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<sup>15</sup> Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, Article 2.5.a,  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:335:0099:0103:EN:PDF>. (need to do this footnote in full)

<sup>16</sup> Open General Export Licence (Military Goods), 6 October 2010,  
<http://www.bis.gov.uk/assets/biscore/eco/ogels-current/10-1191-ogel-military-goods.pdf>.

<sup>17</sup> "Yemen: Cracking down under pressure", Amnesty International Report, August 2010 [http://www.amnesty.org.uk/uploads/documents/doc\\_20631.pdf](http://www.amnesty.org.uk/uploads/documents/doc_20631.pdf)

<sup>18</sup> Letter from Mark Prisk MP, Secretary of State, Department for Business, Innovation and Skills, to Amnesty International UK, 18 September 2010.

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