



House of Commons

Business and Enterprise, Defence, Foreign Affairs and International Development Committees

Scrutiny of Arms Export Controls (2009): UK Strategic Export Controls Annual Report 2007, Quarterly Reports for 2008, licensing policy and review of export control legislation

First Joint Report of Session 2008–09

Twelfth Report from the Business and Enterprise Committee of Session 2008–09
Twelfth Report from the Defence Committee of Session 2008–09
Sixth Report from the Foreign Affairs Committee of Session 2008–09
Sixth Report from the International Development Committee of Session 2008–09

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

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The Committees on Arms Export Controls

The Business and Enterprise, 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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* Member who participated in the inquiry leading to this Report
§ Chairman of a participating Committee

Mr John Bercow also participated in this inquiry as a former Member of the International Development Committee.

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Conclusions and recommendations

Review of drafts of secondary legislation

1. We conclude that we do not accept the comments of the then Economic and Business Minister that we had adequate opportunity to scrutinise the third tranche of secondary legislation. We therefore repeat our recommendation that, in future, the Government should ensure that interested parties have at least two months to comment on drafts of secondary legislation implementing the Government's conclusions on the outcome of its Review of Export Controls. (Paragraph 11)

Visit to Ukraine

2. We conclude that it is of serious concern that the UK Government was unaware of the existence of a list of UK brokers granted licences by the Ukraine. We recommend that, in major arms exporting countries, such as Ukraine, the FCO should ensure that its embassies and diplomatic posts engage more effectively with the national export control organisations to obtain information on UK arms brokers licensed by overseas states. We further recommend that the Government should instigate an investigation into the list of UK brokers provided to us by the Ukrainian government and provide confirmation as soon as possible that the UK brokers on the list obtained any necessary licences from the Export Control Organisation and breached no UK legislation in the course of their business in Ukraine. We intend to return to this issue in our next Report. (Paragraph 22)

Extra-territorial controls

3. We conclude that the Government must now take the initiative and set a deadline for NGOs and industry to bring forward draft proposals for consideration on the further extension of the trade controls on activities by UK persons anywhere in the world to cover other weapons. We recommend that Government reports back to the Committees on progress on this work by the end of October 2009. (Paragraph 36)

Anti-vehicle landmines

4. We recommend that the Government extend Category B to include anti-vehicle land mines as a matter of priority. (Paragraph 41)

Transport and ancillary services, transit and transshipment

5. We recommend that the Government should provide the Committees in its Response to this Report with more information, as previously requested, on the reason why it decided to exclude from the provisions of the draft Export Control Order 2009 UK sub-contractors to a UK concern that provides transport services, on what powers the Government had to seize goods in transit which did not fall within the specified categories, and how often the Government had seized goods under the then existing powers. (Paragraph 46)

6. We also recommend that the Government should provide information in its Response to this Report on what practical steps it is taking to simplify transit across various jurisdictions and to ensure that transport providers, and parties to shipments, are aware of the relevant regulations. We further recommend that the Government should specify also in its Response whether, and how often, the list of destinations of concern would change and whether that list of destinations referred to the final destination of the shipment, or all the intermediate destinations along the route. (Paragraph 47)

Register of arms brokers

7. We conclude that the justification remains for the need for an additional element of vetting, whether through a separate system, or by some modification of the electronic export licence processing system. We repeat our recommendation made previously that the Government establish a register of arms brokers, the need for which was further confirmed by the Committees' visit to Ukraine. (Paragraph 51)

End-use control for torture equipment

8. We recommend that the Government should provide the Committees in its Response with an update with its progress in pursuing end-use controls on torture equipment through the EU. (Paragraph 54)

Re-exports

9. We conclude that, despite the Government's view that it considers that non re-export clauses would be an unnecessary burden as they would be difficult to enforce, the requirement to have a non re-export clause in contracts for the supply of controlled goods would send a clear message to both parties to the contract that re-export to certain countries is unacceptable. We recommend that the Government gives further consideration to blocking this demonstrable loophole in its arms export controls regime. (Paragraph 64)
10. We conclude that we do not agree with the Government's decision not to enhance controls on the exports of UK controlled goods produced under licence overseas and we recommend that the Government should explain in its Response why it came to this decision and whether it will reconsider its policy. (Paragraph 65)

Military end-use controls and the "single action" clause

11. We recommend that the Government report back to the Committees by the end of 2009 with further detail on the discussions that have taken place with industry and a timetable for introduction of its proposals for an amended EU Military End-use Control. (Paragraph 71)

End-user undertakings

12. We recommend that the Government ensure that Integrated Project Teams in the Ministry of Defence who deal with UK exporters are fully aware of the regulations surrounding End-User Undertakings. (Paragraph 73)

Research

13. We repeat our recommendation that the Government take steps to demonstrate the effectiveness of the export control system through the commissioning of independent research. (Paragraph 77)

Civil penalties

14. We conclude that the Government's decision to introduce civil penalties for strategic export control is a welcome one and we recommend that the Government inform the Committees by the end of 2009 of the timetable for primary legislation necessary to bring in civil penalties. (Paragraph 85)

Organisational and operational issues

15. We recommend that the Government aim to publish its 2009 Annual Report on UK Strategic Export Controls by the end of May 2010. (Paragraph 87)
16. We conclude that the new Export Control Organisation Reports and Statistics website is an important step towards greater transparency of the work of the Export Control Organisation and we commend the Government for ensuring that the website was launched on schedule. We recommend that the Government publicises more widely the facility both nationally and internationally with the aim of influencing other countries to follow the UK's example. (Paragraph 90)

Challenging bribery and corruption

17. We conclude that the shifting of responsibility for anti-corruption from one Department to another raises questions over whether the Government has the necessary vigorous anti-corruption culture across all Departments to tackle the risk of bribery and corruption engaged in by UK-based companies and individuals. (Paragraph 97)

Adoption of the EU Code of Conduct on Arms Exports as a Common Position

18. We recommend that the Government report back to the Committees by the end of 2009 on how discussions with other EU Member States have progressed towards consensus on a revised EU Code of Conduct on Arms Exports to be adopted as a Common Position. (Paragraph 108)

Peer review of implementation of EU Council Regulation 1334/2000 on dual use

19. We recommend that the Government report back to the Committees by the end of 2009 the progress made by the EU Council Working Group on the implementation of the recommendations of the review on EU Council Regulation 1334/2000. In its Response the Government should set out the necessary steps that need to be taken by the EU to implement the recommendations of the review together with the Government's strategy for achieving implementation. (Paragraph 113)

EU Arms Embargo on China

20. We repeat our conclusion that the British Government and the EU should maintain their arms embargo on China, and that the Government should provide us in its Response with an update on its assessment of the human rights situation in China and of the adequacy of the current arms embargo in place. (Paragraph 116)

Progress towards an Arms Trade Treaty

21. We conclude that the Government is to be commended for its continuing commitment to an international Arms Trade Treaty (ATT). We recommend that the Government continue to seek an ATT that is as strong as possible. We conclude that a successful ATT should be clearly enforceable, have as wide a scope as is achievable, and underline the applicability of international human rights and humanitarian law. We concur with the recommendation of the Foreign Affairs Committee, that if in the future, the Government is forced to choose between giving priority to the strength of the treaty or achieving the widest possible ratification, it should give priority to securing the strongest possible treaty. (Paragraph 122)

Sri Lanka

22. We conclude that the policy of assessing licences to Sri Lanka on a case-by-case basis is, in our opinion, appropriate. However, we recommend that the Government should review all existing licences relating to Sri Lanka and provide in its Response an assessment of what implications the situation in Sri Lanka will have on how the Foreign and Commonwealth Office judges the possible future use of strategic exports by that country and the risk that the export licensing criteria might be breached. We further recommend that the Government provide in its Response an assessment of what UK supplied weapons, ammunition, parts and components were used by the Sri Lankan armed forces in the recent military actions against the Tamil Tigers. (Paragraph 126)

Israel

23. We conclude that it is regrettable that components supplied by the UK were almost certainly used in a variety of ways by Israeli forces during the recent conflict in Gaza and that the Government should continue to do everything possible to ensure that this does not happen in future. We conclude that the Government is correct to assess the granting of licences for export on a case-by-case basis and we endorse decisions

not to grant a number of licences in relation to Israel. This includes the refusal of licences to supply a variety of components for end-use by Israel since the war in Lebanon in 2006. We further conclude that the Government's review of extant licences relating to Israel is to be welcomed, as is its stated intention of assessing the need to revoke any which should be reconsidered in light of the Gaza conflict. We recommend that the Government keep us informed of the progress of the review, of whether or not the Government chooses to revoke any licences and whether the Government believes that its eventual position has implications for the UK's defence relationships with either the USA or Israel itself, or for the operational capabilities of the UK's armed forces. (Paragraph 132)

1 Introduction

1. Since 1999 the Business and Enterprise,¹ Defence, Foreign Affairs and International Development Committees have worked together to examine the Government's strategic export control system and policies. This arrangement, which is known as the "Committees on Arms Export Controls", enables the House of Commons to conduct ongoing scrutiny of a complex and controversial area of government policy.

2. Our Report this year follows the pattern of earlier years: a review of the policy, enforcement and the annual and quarterly reports on strategic export controls published since our last Report, combined with a detailed examination of a number of aspects of export control which follow up the issues we have raised in previous years.

The Government's Review of Export Controls

3. As examined in detail in our previous two Reports, in 2007 the Government undertook post-legislative scrutiny of the orders and regulations made under the Export Control Act 2002. It launched a public consultation document, 2007 Review of Export Control Legislation, and invited responses on the impact and effectiveness of the controls and on a number of options for change.²

4. The outcome of the 2007 Review of Export Controls consisted of three tranches of legislation. We were keen to make a contribution and have sent our comments on all three tranches to the Government. The first, which came into force in April 2008, was the Export Control (Security and Para-military Goods) Order 2008 which extended the controls to cover the export of, and trading in, hand-held, spiked batons, known as "sting sticks".³ The second Order was the Trade in Goods (Categories of Controlled Goods) Order 2008, which extended extra-territorial controls on trading in arms.⁴ It came into operation in October 2008. The third tranche was the Export Control Order 2008 which came into force in April 2009.⁵ In its Response to our last Report, the Government stated that further legislation might be necessary at a later date.⁶ We comment in Part Two on the timescale given to us by the Government for consideration of the draft legislation.

1 In November 2007 the Trade and Industry Committee was replaced by the Business, Enterprise and Regulatory Reform Committee (Votes and Proceedings, 25 July 2007, pp 208–209), the name of which was shortened to the Business and Enterprise Committee in March 2008 (Votes and Proceedings, 11 March 2008, p 370).

2 Department of Trade and Industry, *Export Control Act 2002: 2007 Review of Export Control Legislation: A Consultation Document*, June 2007 at <http://www.berr.gov.uk/files/file39949.pdf>

3 SI 2008/639, which amended the Export of Goods, Transfer of Technology and Provision of Technical Assistance, (Control) Order 2003 (SI 2003/2764) and the Trade in Goods (Control) Order 2003 (SI 2003/2765)

4 SI 2008/1805

5 SI 2008/3231

6 Ministry of Defence, Foreign and Commonwealth Office, Department for International Development and the Department for Business, Enterprise and Regulatory Reform, *Response of the Secretaries of State for Defence, Foreign and Commonwealth Affairs, International Development and Business, Enterprise and Regulatory Reform to the Reports from the Business and Enterprise, Defence, Foreign Affairs and International Development Committees Session 2007–08*, Cm 7485, p 3.

Review of annual and quarterly reports on strategic export controls

5. We have reviewed the quarterly reports on strategic export controls issued since our last Report. Once again, we had hoped to be able to “catch up” on our review of annual reports on strategic export controls. In the past the Government produced the annual report about seven months after the end of the calendar year around the time (in July) that we are usually finalising our Report. This has meant that we have not been able to carry out any detailed scrutiny of the annual report until the following year. As at the date we agreed our Report, 20 July 2009, the Government had not yet published its 2008 Annual Report on United Kingdom Strategic Export Controls. Therefore, it was once again too late for us to scrutinise it in this Parliamentary session and our Report this year is limited to a review of the 2007 Annual Report on Strategic Export Controls.⁷

6. As well as the process of taking oral and written evidence on policy and the operation of the legislation, we have continued to explore issues raised by particular licences; we have, for example, assessed whether there has been any inconsistency in the issuing and refusal of licences to a particular country and whether other licence approvals or refusals for which the rationale is not obvious have been determined in accordance with the EU Code of Conduct on Arms Exports and the UK’s National Export Licensing Criteria.⁸ This process is detailed and, necessarily, often confidential, though where the Government has provided a response without a security marking we have published it.⁹ We have drawn on the information received to make points on policy issues, and we shall keep certain cases under review.

7 Foreign and Commonwealth Office, Department for International Development, Ministry of Defence and the Department for Business, Enterprise and Regulatory Reform, *United Kingdom Strategic Export Controls: Annual Report 2007*, Cm 7451, July 2008

8 HC Deb, 26 October 2000, cols 199–203W; and Foreign and Commonwealth Office, Department for International Development, Ministry of Defence and the Department for Business, Enterprise and Regulatory Reform, *United Kingdom Strategic Export Controls: Annual Report 2006*, Cm 7141, July 2007, pp 70-72

9 For example, Ev 66

2 The work of the Committees

Relations between the Committees and the Government

7. We are pleased to report that the relations between the Committees and the Government have remained constructive and cooperative. In particular, we found our exchanges with the then Minister of State in the Foreign and Commonwealth Office, Rt Hon Bill Rammell MP, to be helpful and frank. The then Economic and Business Minister, Department for Business, Enterprise and Regulatory Reform,¹⁰ Ian Pearson MP, in response to the debate in Westminster Hall on our last Report, thanked the Committee for its input into the post-implementation review of the export controls introduced in 2004. “We are grateful for the input of the Committees, NGOs and industry stakeholders. All parties were struck by the collaboration that we managed to achieve together, and I look forward to that continuing.”¹¹ We look forward to continuing this constructive relationship with the successors of both Ministers, and to seeing more evidence that the Government has seriously considered our recommendations.

Export Control Organisation Reports and Statistics Website

8. We were pleased to receive an advance demonstration of the searchable database located on a new website launched on 8 June by the Department of Business, Innovation and Skills.¹² Staff from the Export Control Organisation demonstrated to us the statistics and reports that it is now possible for the public to access (registration is necessary), which can be tailored to particular areas of interest. We warmly welcome the launch of the new website as an important step towards greater transparency of arms exports licences granted and refused. We return to this matter in Part Five of this Report.

Review of drafts of secondary legislation

9. Our last Report concluded that the two weeks we were given to comment on the draft Trade in Goods (Categories of Controlled Goods) Order was “wholly inadequate.”¹³ We recommended that, in future, the Government give interested parties at least two months to comment on drafts of the third tranche of secondary legislation.¹⁴ At the time of our last Report, the third tranche of legislation had not yet been finalised. We were shown parts of the draft of the third Order, the Draft Export Control Order 2009, on 9 September and on 24 September 2008 the Department of Business, Enterprise and Regulatory Reform (BERR) wrote to the Committees inviting comments on the draft Export Control Order

10 On 5 June 2009 the Department for Business, Enterprise and Regulatory Reform (BERR) and the Department for Innovation, Universities and Skills were replaced by the Department for Business, Innovation and Skills (BIS). BIS continues to have responsibility for the Export Control Organisation.

11 HC Deb, 26 Mar 2009, col 165WH

12 See www.exportcontroldb.berr.gov.uk

13 Business and Enterprise, Defence, Foreign Affairs and International Development Committees, First Joint Report of Session 2007–08, *Scrutiny of Arms Export Controls (2008): UK Strategic Export Controls Annual Report 2006, Quarterly Reports for 2007, licensing policy and review of export control legislation*, HC 254, para 14

14 HC (2007–08) 254, para 14

2009 by 24 October. We sent our comments on the draft Export Control Order 2009 to the Business and Enterprise Minister on 22 October, and this is attached as Annex 1.

10. Alongside our comments on the draft Order, we also expressed our concern at the inadequate time given to us to properly scrutinise the legislation. The draft Order did not appear in a “final” form, it did not have an Explanatory Note or a text of the type of Explanatory Memorandum laid with orders when they are made, and there were blank parts of schedules which hampered our scrutiny. We requested that Orders be put in a state which the Department would regard as fit for signature and laying before being passed to the Committees for consideration. We wrote to the Chairman of the Liaison Committee on 22 October 2008 to express our concern that, yet again, the Committees had not been given adequate time to consider the draft secondary legislation.¹⁵ The Chairman of the Liaison Committee wrote to Ian Pearson on 20 November who responded on 16 December. In his response, the Minister said that he could not accept that the Committees were unable to properly examine the draft in the time available, and that the Government had sent the Committees drafts as soon as had been possible.¹⁶

11. We are extremely disappointed that the Government did not accept our previous recommendation, but instead merely committed to giving the Committees one month only to consider the third Order.¹⁷ In its *Review of Export Control Legislation (2007)—End of Year Response*, the Government suggested that a further tranche of legislation might still be required after April 2009,¹⁸ in which case the Committees would expect to have more time than previously given to scrutinise the draft Order. **We conclude that we do not accept the comments of the then Economic and Business Minister that we had adequate opportunity to scrutinise the third tranche of secondary legislation. We therefore repeat our recommendation that, in future, the Government should ensure that interested parties have at least two months to comment on drafts of secondary legislation implementing the Government’s conclusions on the outcome of its Review of Export Controls.**

12. The comments of the stakeholders involved in the Review are covered in Part Three.

Evidence and witnesses

Oral evidence

13. In the course of this inquiry, we held three evidence sessions with: (i) the then Economic and Business Minister, Ian Pearson MP, the Minister who then had responsibility for export controls, and officials from BERR; (ii) the UK Working Group on Arms (Saferworld, Amnesty UK and Oxfam GB), and the Export Group on Aerospace and

¹⁵ Not printed.

¹⁶ Not printed.

¹⁷ Ev 41–42

¹⁸ BERR, *Export Control Act 2002, Review of Export Control Legislation (2007)—Government’s End of Year Response*, December 2008, p 7

Defence (EGAD);¹⁹ and (iii) the Minister of State, Rt Hon Bill Rammell MP, and officials from the Counter Proliferation Department, Foreign and Commonwealth Office, (FCO).

Written evidence

14. We invited written evidence and we are grateful to those who made submissions.²⁰ As in previous years, we sought and received replies from the Government on a wide range of matters. We are grateful to the Government for its replies and for keeping us informed of developments relevant to our inquiry. We attach to this Report all the written evidence we received—other than material with a security classification. Continuing the practice we adopted in previous years we have also made available on the Internet the written evidence we had received by May 2009, to assist those with an interest in our inquiry. We are grateful to all those who gave oral and written evidence and to our adviser, Dr Sibylle Bauer, who helped us evaluate the evidence.

Classification of written evidence

15. During our evidence session with the then Minister of State at the FCO, Rt Hon Bill Rammell MP, on 22 April 2009, we raised the issue of correspondence which had been sent to the Committee with an apparently over-cautious restricted classification. On two occasions we have requested, and subsequently received, unclassified versions of letters previously sent to us on a restricted basis by BERR.²¹ As the information we receive is often of great interest to the public, we requested that Ministers ensure that as much of it as possible is submitted to us on an unclassified basis. The then Minister agreed, and told us that it was “in nobody’s interests for items to end up on a restricted basis where, frankly, with some minor amendments they could end up on a non-restricted basis. I have instructed officials to view communications with your Committee on that basis for the future.”²² We are grateful for this commitment from the FCO and ask that the Department for Business, Innovation and Skills do the same.

Visits

Visit to the FCO

16. We carried out two visits in 2008–09. In May 2009 we visited the FCO and met officials from the Counter Proliferation Department of the FCO and Rt Hon Bill Rammell MP. We found the discussion with officials and the Minister useful. We put on record our thanks to those who arranged the visit and answered our questions.

19 EGAD operates under the joint auspices of the Association of Police & Public Security Suppliers (APPSS), the British Naval Equipment Association (BNEA), the Defence Manufacturers Association (DMA), the Society of British Aerospace Companies (SBAC) and the Society of Maritime Industries (SMI).

20 “Strategic Export Controls”, Committees on Arms Export Controls press notice 01/0809, 11 December 2008

21 For example, Ev 64 and Ev 84 were originally sent to us as restricted, but with some minor amendments eventually were sent to us in an unrestricted form at our request.

22 Q 209

Visit to Ukraine

17. In May 2009, we made a visit to Kiev, sponsored by the FCO. This was a return visit following a visit to Westminster in 2007 of a delegation of Ukrainian MPs from the Committee for National Security and Defence of the Verkhovna Rada (Supreme Council), and local non-governmental organisations (NGOs) partners, to discuss and compare our two systems of strategic exports control and the parliamentary scrutiny of those two systems. In particular, we discussed the opportunities for Ukrainian parliamentary committees to examine further the licensing and policy decisions of the Ukrainian government. During our visit to Ukraine we met parliamentarians, ministers, officials and NGOs. We are extremely grateful to the FCO for organising such an interesting and useful programme in Ukraine. A note of the visit programme is attached at Annex 2.

18. As well as being one of the world's leading arms exporters of newly produced weapons, Ukraine inherited a large stockpile of weapons and ammunition from the former Soviet Union which is a concern to the Government, NGOs and other countries. With guidance from the EU and USA, Ukraine has put in place a system of regulating the licensing of arms exports. Occasionally, the Ukrainian Parliament had held hearings on specific cases of arms exports and had invited Ministers to answer questions. Although Commissions may be set up on an ad hoc basis to investigate suspected abuses of the licensing system, and the Committee for National Security and Defence in Ukraine has the scrutiny of arms exports in its remit, there was no in depth public scrutiny of the overall system carried out on a regular basis. The Committees were told in Ukraine that the membership of the ad hoc Commissions consisted of representatives of the relevant Parliamentary Committees, exporters, legislators and the security forces. Deliberations were held in private and only the findings of the Commission were published—not its full report.

19. We discussed with the Chairman of the Ukrainian National Security and Defence Sub-committee whether strategic exports control ought to have a higher profile within the activities of the Sub-committee. We agreed to continue the fruitful dialogue between our committees on this matter.

UK Brokers operating in Ukraine

20. During our meeting on Monday 18 May, the Ukrainian Deputy Minister for Foreign Affairs gave us a document which we subsequently had translated into English.²³ The document contained a list of UK-registered brokers to whom the Ukrainian State Service for Export Control had licensed the export of collectors items (light arms) from the Soviet stockpile of weapons. We were alarmed to see that the end users on the list included countries for which there are FCO policy restrictions on the export of strategic goods. The list itself did not provide the date that the Ukrainian licence was granted, nor did it specify the type of goods or their value. It is also not possible to ascertain whether the goods were shipped directly from the Ukraine to the end users, or whether the goods were shipped via the UK.

²³ Not printed.

21. We were invited to visit Ukraine because of perceived weaknesses in the parliamentary oversight of its strategic export control system. The UK, amongst other countries, has been greatly interested in the future of the massive stockpile of ex-Soviet weapons since the dissolution of the USSR. Particularly, concerns persist that Ukrainian arms might be ending up in undesirable locations. For example, there were reports as recently as 18 June 2009 that Ukrainian arms were intercepted in Nigeria on the way to Equatorial Guinea.²⁴ Therefore, we are extremely concerned that the UK Embassy in Kiev, the Export Control Organisation and HM Revenue and Customs were all unaware of the existence of this list of UK brokers who had been granted export licences by the Ukraine State Service for Export Control, particularly as it was provided to us freely by the Ukrainians. We have passed the list onto the FCO, Export Control Organisation and HM Revenue and Customs.²⁵ We are alarmed at the prospect that UK brokers might be importing ex-Soviet weapons into the UK for onward export, and/or directly exporting from Ukraine, to countries for which there are FCO policy restrictions. We return to the subject of controls on UK brokers later in this Report.

22. We conclude that it is of serious concern that the UK Government was unaware of the existence of a list of UK brokers granted licences by the Ukraine, We recommend that, in major arms exporting countries, such as Ukraine, the FCO should ensure that its embassies and diplomatic posts engage more effectively with the national export control organisations to obtain information on UK arms brokers licensed by overseas states. We further recommend that the Government should instigate an investigation into the list of UK brokers provided to us by the Ukrainian government and provide confirmation as soon as possible that the UK brokers on the list obtained any necessary licences from the Export Control Organisation and breached no UK legislation in the course of their business in Ukraine. We intend to return to this issue in our next Report.

24 "Nigeria holds Ukraine arms plane", *BBC News online*, 18 June 2009, news.bbc.co.uk

25 Ev 110

3 Review of export control legislation

Introduction

23. As detailed in our previous Reports, the origin of the Export Control Act 2002 was the Report of the Scott Inquiry published in February 1996, which criticised the export control regime at that time for its lack of accountability and transparency. The report recommended that “the present legislative structure, under which Government has unfettered power to impose whatever export controls it wishes and to use those controls for any purposes it thinks fit, should [...] be replaced as soon as practicable”.²⁶ Following a White Paper on Strategic Export Controls²⁷ in 1998 and the draft Export Control and Non-Proliferation Bill in March 2001,²⁸ the Export Control Act 2002 (as the draft Bill became) passed all its parliamentary stages and received Royal Assent in 2002. As the 2002 Act was primarily an enabling power the new export control regime was enacted under secondary legislation which came into operation on 1 April 2004.

24. As detailed in the Introduction to this Report, the outcome of the Government’s Review of export control legislation has been the production of three tranches of secondary legislation. In previous years we commented on early drafts of the Export Control (Security and Para-military Goods) Order 2008 and the Trade in Goods (Categories of Controlled Goods) Order 2008 which restructured Trade Controls into Categories A, B and with the aim of aligning them more effectively with the relative risks of the items they controlled. In advance of the third draft Order (which covered aspects of transport, transit and transshipment as well as trade controls on light weapons and missiles), our last Report made specific recommendations on brokering, trafficking, extra-territoriality, transport and ancillary services, and torture end-use control.²⁹ Since then, the Government has announced decisions on the implementation of legislative changes on these matters.

25. We noted that both the Export Group for Aerospace and Defence (EGAD) and the UK Working Group on Arms praised the Export Control Organisation (ECO) for the way in which it conducted the Review. The UK Working Group on Arms said “there has been a welcome willingness on the part of [ECO] to engage in a meaningful and sustained consultation with stakeholders.”³⁰ EGAD said:

We believe that the ECO is to be warmly commended for the open and transparent way in which it has undertaken the review— whilst we, in Industry, might not have agreed with all of the proposed changes and the way that they have been introduced,

²⁶ *Report of the Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions* (The Scott Report) HC (1995–96) 115, Vol IV, Chapter 2, para K2.1

²⁷ Department of Trade and Industry, *Strategic Export Controls White Paper*, Cm 3989, July 1998

²⁸ Department of Trade and Industry, *Consultation on Draft Legislation: The Export Control and Non-Proliferation Bill*, Cm 5091, March 2001

²⁹ HC (2007–08) 254, paras 24–33

³⁰ Ev 71

the ECO has clearly gone out of its way to try to frame and implement new regulations which are proportional to the perceived threat.³¹

Extra-territorial controls

26. In our 2007 and 2008 Reports we concluded that the Government should bring forward proposals to extend the extra-territorial provisions of the export control legislation to encompass trade in all items on the Military List. In addition, all residents in the UK and British citizens overseas should obtain trade control licences, or be covered by a general licence, before engaging in any trade in the goods on the Military List.³² The reason for this was the view that it was desirable to bring within the ambit of the law activities, which if they had been carried out in the UK without a licence, would be criminal activity.³³ The Committees recommended the use of general licences for categories of trade between specified countries, or in certain activities such as advertising, to cover British citizens working overseas for reputable organisations so as not to undermine their employment prospects.³⁴

27. Through the three tranches of secondary legislation resulting from the Review, Government has introduced the following new three tier system:

- Category A goods include torture equipment and cluster munitions, and other goods the supply of which is inherently undesirable. Any person within the United Kingdom, or a United Kingdom 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.³⁵
- Category B goods include small arms, light weapons, man portable air defence systems (MANPADS) and other goods in respect of which there is legitimate trade, but which on the basis of international consensus, have been identified as being of heightened concern. Any person in the United Kingdom, or a United Kingdom 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.³⁶
- Category C goods includes any item on the Military List but which are not category A or B goods. Trading between two countries in Category C goods is only controlled if carried out from within the UK.

31 Ev 58

32 Defence, Foreign Affairs, International Development and Trade and Industry Committees, First Joint Report of Session 2006–07, *Strategic Export Controls: 2007 Review*, HC 117, para 76, HC (2007–08) 254, para 31

33 HC (2007–08) 254, para 28

34 HC (2007–08) 254, para 31

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

36 *Export Control Act: Review of Export Control Legislation (2007)—Government's End of Year Response*, pp 4–5

28. Whilst we welcomed the creation of Category B, and UK control over extra-territorial transactions of people based in the UK and of British citizens overseas carrying out legitimate brokering in arms, in our last Report we concluded that the restriction of Category B to trading on items causing “heightened concern” was problematic as the subjective definition was likely to throw up inconsistencies.³⁷

29. Our more recent comments on the draft Export Control Order 2009 included a recommendation that the draft Order should not be enacted until it was revised to bring the trade in all goods on the Military List within Category B (see Annex 1). This was not accepted by the Government as the Order was introduced in 2009 without the change.³⁸

30. In its Response to our 2008 Report, the Government stated that the further extension of trade controls on activities by UK persons anywhere in the world to cover other weapons currently in Category C was being considered by NGO and industry stakeholders, with the aim of making a joint proposal for Government to consider further, with the possibility of implementing the proposals in further legislation at a later stage.³⁹

31. When questioned further on whether extra-territorial provisions of the export control legislation should be widened to encompass trade in all items on the Military List, Ian Pearson told the Committee that Government, NGOs and industry had a shared responsibility in considering further changes to the legislation:⁴⁰

I have to say that further measures need to be based on evidence of risk; they need to be proportionate and workable; and target activities of real concern in an effective way. We are not at the stage yet where there has been a consensus in terms of taking these matters forward. We still want to continue to work with stakeholders to come up with proposals for any further extensions which we believe are workable.⁴¹

32. In answer to the question on whether all groups on the Military List ought to be within Category B, Ian Pearson said: “I think you would need to look at whether that would impose a disproportionate burden on industry [...] If consensus [between stakeholders] cannot be reached, then, as I have said, it will be for the Government to form a view.”⁴²

33. When asked how discussions with the industry on widening Category B controls were progressing, Roy Isbister of Saferworld said:

[NGOs] have been in discussions [with EGAD] for some time, and we have probably got as far as we can together, talking about the way that you could possibly use registration and flexible record keeping as a way of extending the scope of extraterritorial control to allay business concerns about bureaucratic burden [...] We now need to get back together with Government, because obviously it is not for us to

37 HC (2007–08) 254, para 31

38 Export Control Order 2008 (SI 2008/3231)

39 Cm 7485, p 4

40 Q 2

41 Q 1

42 Q 4

make the decision and there are some questions that only Government can answer[...]⁴³

The Government has let us work, I suppose, at our own pace to a large extent, though they do inquire how we are getting on. I would not say they are putting pressure on us, but then I think it would be unfair to say that industry and NGOs have been pushing this forward just as fast as we can and that the Government have been slowing us down.⁴⁴

34. The Export Group for Aerospace and Defence (EGAD) questioned the Committees' previous recommendation that extra-territorial control be extended to all Military List goods:

the potential impact for UK nationals employed by perfectly legitimate and responsible overseas firms (such as Boeing, EADS, Lockheed Martin, Raytheon and Thales, etc, etc, etc) could be very great, despite the fact that they must undoubtedly very greatly outnumber those (potentially globally very few) UK traffickers and brokers whose irresponsible activities we all want to catch and curtail. Without a clear and concise definition of what HMG regards as being "trade" which is licensable, many perfectly responsible activities undertaken on behalf of these legitimate companies would be caught.⁴⁵

35. In evidence to us, David Hayes, Chairman of EGAD questioned why the UK thought that it could effectively "police the world" through extending extra-territorial controls and sought further clarification how it would work in practice.⁴⁶ Ms Bernadette Peers, a Member of EGAD's Compliance Support and NFO Liaison Sub-committees, questioned whether there was a level playing field for UK companies operating in trafficking overseas. She also questioned whether BERR and the FCO had the resources to enforce compliance or to properly inform UK employees working overseas of the changes in the UK legislation.⁴⁷ However, Mr Hayes told the Committee that EGAD accepted the reality that extra-territoriality was upon them—but did not believe that it was effective or the best way of achieving the end. Despite this, EGAD intended to continue its dialogue with NGOs and Government to determine how best extra-territoriality could be implemented whilst minimising the burden on legitimate industry.⁴⁸

36. It appears from the evidence that we have received that NGOs and industry have gone about as far as they can go in their discussions on their own on possible extensions to extra-territoriality. **We conclude that the Government must now take the initiative and set a deadline for NGOs and industry to bring forward draft proposals for consideration on the further extension of the trade controls on activities by UK persons**

43 Q 79

44 Q 80

45 Ev 60

46 Qq 105, 106

47 Q106

48 Q107

anywhere in the world to cover other weapons. We recommend that Government reports back to the Committees on progress on this work by the end of October 2009.

Anti-vehicle landmines

37. In its written submission to us, the UK Working Group on Arms raised the specific issue of anti-vehicle landmines (AVMs) which had been omitted from Category B, but for which they considered there were “compelling humanitarian and security arguments” for stricter controls on brokering and transport. For example, the use of AVMs in improvised explosive devices against civilians and UK forces in Iraq and Afghanistan.⁴⁹ The Working Group told the Committee that it thought that AVMs ought to be included in Category B as a “matter of urgency.”⁵⁰ In 2006 the UK had signed a joint declaration with 19 other countries that it would adopt certain practices as national policy in connection with AVMs (which included that it prevent the transfer of AVMs to any State that had not stated the same policy).⁵¹

38. Bill Rammell explained to us why AVMs were not in Category B:

The reason for that is that Category B occurs where there is an international consensus about the degree of concern. Not only does that not exist; but explicitly we did not achieve that. That is why we have gone down the road of trying to take individual actions in concert with 19 other states. However, I do not shut the door on Category B listing, if we could achieve it at a later stage; but because there is not that international consensus, we have not achieved it.⁵²

We achieved internationally the consensus on anti-personnel land mines, and because it is similar technology and there are similar concerns, in principle we would like to stop the sale of anti-vehicle land mines. We are not in a position to be able to do that at the moment[...]⁵³

[...] we are dealing with competitiveness and industrial concerns, not to create an un-level playing-field, and that is why we have gone down the route we have. We have made a number of specific commitments that I think clean up and police the export of anti-vehicle land mines.⁵⁴

Andrew Massey, Head of the Arms Trade Unit added: “When we talk about licensing of anti-vehicle land mines, we are only aware of one licence since November 2006, which was an export to Sweden where the AVMs were actually going to be disposed of. I do not think we are talking about a major problem in terms of export control from the UK.”⁵⁵ The then

49 Ev 72

50 Q 78 [Marilyn Croser]

51 Statement by HE Mr Bent Wigotski, Ambassador, Denmark at the Third Review Conference of State Parties to the Convention on Certain Conventional Weapons, Geneva, 17 November 2006, www.unog.ch

52 Q 199

53 Q 202

54 Q 205

55 Q 208

Minister wrote to us subsequently to confirm that 25 countries had now aligned themselves with the statement of 2006 on Anti-Vehicle Mines.⁵⁶

39. The Working Group did not accept the Government's argument that there was not an international consensus as AVMs being of heightened concern and so could not be included into Category B. They said:

[...] if you look at cluster munitions, there is now an international prohibition on cluster munitions, although a number of notable governments do not accept that prohibition, and yet cluster munitions are still included in Category A. Obviously there are a number of humanitarian security concerns around AVMs: the way that they prevent the movement of civilian vehicles, including, for instance, ambulances, aid vehicles; the fact that they can be triggered by civilians on foot, not just people in vehicles; the ease with which they can be transferred, similarly to small arms light weapons; and, also, as people have discussed this morning, the potential risk of the use of parts of AVMs in the IEDs (improvised explosive devices).⁵⁷

40. EGAD in response to the evidence given by the Minister on 22 April, wrote to the Committees on 22 May 2009 and shared an email that it had sent the Government on 22 December 2008 where EGAD stated that it supported the NGOs' stance on the possible inclusion of AVMs in Category B of the UK's trade controls. It also stated that the impact on UK industry would be minimal and therefore EGAD would have no objections to the subject being re-examined by the Export Control Organisation.⁵⁸

41. We are convinced by the UK Working Group on Arms' argument that there is a compelling case for anti-vehicle landmines to be included in Category B particularly as this stance is supported by EGAD. **We recommend that the Government extend Category B to include anti-vehicle land mines as a matter of priority.**

Transport and ancillary services, transit and transshipment

42. In our Report last year we concluded that the Government should decide whether or not to include the control of transport and ancillary services within Category B. We also concluded that the Government ought to consider which services to include, how to control them and the duties and liabilities that could reasonably be placed on those providing ancillary services.⁵⁹ In its Response to our Report, and the End of Year Response published later that year, the Government stated that it had decided that:

- finance or insurance services in support of movement of Category B goods would not be controlled;
- general advertising and promotion of Category B goods would not be controlled, but active or targeted promotional activities aimed at securing a particular business deal would;

⁵⁶ Ev 109

⁵⁷ Q 78

⁵⁸ Ev 109

⁵⁹ HC (2007–08) 254, para 33

- certain activities relating to transport are controlled depending on the risk associated with the goods. Therefore, whilst all activities associated with transport of Category A goods will be controlled, the sole provision of transport in relation to Category C goods will not be controlled;
- the supply and delivery of Category B goods between two third countries will be controlled, and individuals involved in arranging transport will also be controlled. However, the provision of the transport service will only be controlled in certain circumstances. For example, a UK transport provider who is sub-contracted by a UK entity to provide a driver and a vehicle to move controlled goods would not be controlled.⁶⁰The Government decided that requiring transporters of Category B goods between countries overseas to provide documentary evidence that those goods had been appropriately licensed by the overseas authorities would be too burdensome for the transport providers to do in practice, and
- licences would always be required for Category A goods transiting or transshipping the UK, and licences would be required for Category B goods for a specified list of destinations of concern.⁶¹

43. These changes were incorporated into the draft Export Control Order 2009 which was sent to the Committees for pre-legislative scrutiny. We wrote to BERR on 22 October 2008 questioning the need to exclude from the provisions UK sub-contractors to a UK concern that provides transport services as we believed that if they were included it would increase the effectiveness of the controls. We also asked what powers the Government had to seize goods in transit which did not fall within the specified categories, and how often the Government had seized goods under the then existing powers.⁶² The answers to these questions have not been provided.

44. The UK Working Group on Arms told the Committee that controls on transit and transshipment have been improved with the introduction of the Open General Transport Licences (OGTLs) in addition to the licences for specific shipments of Category A and B items. However, the Working Group thought that the controls are “quite complicated and confused across different jurisdictions”,⁶³ with frequent confusion over which party to a shipment was responsible for ensuring compliance with transit regulations—with the risk that non-compliance could occur as a result.⁶⁴ It wanted to see the UK Government engage in outreach to try to simplify transit across different jurisdictions to enable more effective international regulation.⁶⁵ The Working Group also questioned in what circumstances the list of destinations of concern would change (and how often could that happen) and whether that list of destinations referred to the final destination of the shipment, or all the intermediate destinations along the route.⁶⁶ Roy Isbister also noted that:

60 *Export Control Act: Review of Export Control Legislation (2007)—Government’s End of Year Response*, p 5

61 Cm 7485, p 6

62 See Annex 1

63 Q 82

64 Ev 73

65 Q 81

66 Q 81

[...]the law on transit now ranks sensitivity in part based on whether the goods are classed as Category A, Category B or Category C. However, the licence, the open general transshipment licence, seems to use a different system of judging the sensitivity of equipment, so some Category C goods (for example, military vehicles and components for military vehicles) seem to be regarded as more sensitive and to get lumped into the small arms/light weapons category. I am a bit confused about what the Government's thinking is. It would be good to have clarity that the same system is used from the law right down to the level of the licence.⁶⁷

45. We welcome the improved controls that have been introduced by the Government on transport and ancillary services, transit and transshipment.

46. We recommend that the Government should provide the Committees in its Response to this Report with more information, as previously requested, on the reason why it decided to exclude from the provisions of the draft Export Control Order 2009 UK sub-contractors to a UK concern that provides transport services, on what powers the Government had to seize goods in transit which did not fall within the specified categories, and how often the Government had seized goods under the then existing powers.

47. We also recommend that the Government should provide information in its Response to this Report on what practical steps it is taking to simplify transit across various jurisdictions and to ensure that transport providers, and parties to shipments, are aware of the relevant regulations. We further recommend that the Government should specify also in its Response whether, and how often, the list of destinations of concern would change and whether that list of destinations referred to the final destination of the shipment, or all the intermediate destinations along the route.

Register of arms brokers

48. In our Report last year, we again concluded that the EU Common Position on the control of arms brokering adopted on 23 June 2003 provided best practice and we reiterated our recommendation from previous Reports that the Government establish a register of arms brokers.⁶⁸ This followed evidence from the then Minister of State for Energy, Malcolm Wicks MP that BERR was “not opposed to the idea of a register of arms brokers in principle” and that he could see certain advantages of a register.⁶⁹ John Doddrell, Director of the Export Control Organisation told the Committee “we do see advantages for a register in terms of increasing compliance” but BERR would have to decide on practical considerations for entry onto the register and also its administration.⁷⁰ In its Response to our Report, the Government stated that it was not yet fully convinced that the benefits of a pre-registration system would outweigh the burden that it would impose on the industry.⁷¹

67 Q 82

68 HC (2007–08) 254, para 36

69 HC (2007–08) 254, Q 151

70 HC (2007–08) 254, Q 151

71 Cm 7485, p 6

49. We raised again the question of a register of arms brokers with Ian Pearson.⁷² Perhaps unsurprisingly given the Government's view, he told us that responses to consultation on the issue had been very mixed, and that in practice, a register did exist for BERR through the Government's electronic system for processing export licences—SPIRE. Mr Pearson raised the question of the administrative burden that would accompany a pre-licensing registration system, a point which was expanded upon by John Doddrell, who described it as "another hoop which an exporter has to go through before they can apply for a licence".⁷³

50. We were told that a pre-licensing registration system was still under consideration, but time was needed to assess the impact of introducing such a system and to consider what information would be required, and whether or not the register would be limited to traders and brokers or extended to exporters.⁷⁴ When asked whether a conclusion on whether to introduce a system would have been reached by January 2010, the Minister's reply was only "Possibly".⁷⁵ This level of uncertainty surprised us, and we found the Minister's explanations for the delay in reaching a decision on whether or not to introduce a register for brokers unconvincing.

51. As described in paragraphs 20–22, the list of UK brokers given to us by the Ukrainian Deputy Minister for Foreign Affairs raised concerns that UK brokers could be exporting arms to countries for which there are FCO policy restrictions without the knowledge, or supervision, of the UK Export Control Organisation or the FCO. **We conclude that the justification remains for the need for an additional element of vetting, whether through a separate system, or by some modification of the electronic export licence processing system. We repeat our recommendation made previously that the Government establish a register of arms brokers, the need for which was further confirmed by the Committees' visit to Ukraine.**

End-use control for torture equipment

52. We concluded last year that the Government was right to seek to introduce an end-use control on equipment used for torture, or to inflict inhuman or degrading treatment, through the EU, in order to ensure that controls on torture equipment were also implemented across the EU and so that UK exporters could not circumvent the control simply by temporarily exporting from other nearby EU countries. However, if this was not possible to achieve end-use controls through the EU, we recommended that it be introduced by the UK.⁷⁶

53. The Government's Response in November 2008 to our Report stated that the Government had made good progress in taking this forward with the Commission and other Member States, but if it was not possible to achieve through the EU, the Government accepted that it would consider introducing the end-use control on torture equipment

72 Q 24

73 Qq 24–26

74 Q 26

75 Q 33

76 HC (2007–08) 254, para 38

unilaterally.⁷⁷ Shortly afterwards, in its End of Year Response in December 2008, the Government stated that it would be meeting the Commission in early 2009 to discuss the introduction of a control where the exporter would be required 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. This control would supplement the current list of items already controlled by EC Reg 1236/2005.⁷⁸

54. In evidence to the Committee, Jayne Carpenter, Assistant Director of the Export Control Organisation, said that initial indications were that there was a good deal of support amongst other Member States for the UK proposals. However, the slow pace of the European process would mean that it would take some time before the UK Government considered the alternative of unilateral controls.⁷⁹ **We recommend that the Government should provide the Committees in its Response with an update with its progress in pursuing end-use controls on torture equipment through the EU.**

Re-exports

55. In previous Reports we have highlighted the issue of maritime patrol aircraft which were exported from the UK to India and then sold by the Indian government to Burma. We concluded that this undesirable outcome would not have been prevented by pre-licensing checks on a “friendly” country, but could have been avoided if a standard requirement of licensing had been in place that export contracts for goods on the Military List contain a clause preventing re-export to a destination subject to UN or EU embargo. Several other EU countries (Austria, Belgium, Bulgaria, Finland, France, Germany, Italy, Poland, Romania, Spain and Sweden) use re-export controls to some degree. In addition we recommended that the contracts included a subrogation clause allowing the UK Government to stand in the place of the exporter to enforce the contract in the British or Foreign courts.⁸⁰

56. In its Response to the Committees’ last Report, the Government rejected the recommendation of re-export clauses. It stated that the existing licensing process was sufficient:

The Government considers all export licence applications rigorously, against our Consolidated EU and National Arms Export Licensing Criteria, taking full account of the prevailing circumstances at the time of application and other announced Government policies. This consideration takes account of the risk of diversion to undesirable end users, including the risk of diversion to countries subject to EU or UN embargoes, and also consideration of the recipient countries’ attitude towards international agreements/commitments.⁸¹

77 Cm 7485, p 7

78 *Export Control Act 2002, Review of Export Control Legislation (2007)—Government’s End of Year Response*, p 6

79 Q 36

80 HC (2007–08) 254, paras 39–40

81 Cm 7485, p 7

The Government is not [...] attracted by the idea of using subrogation clauses in the way in which the Committees suggest. There are legal difficulties in doing so because of the limits of UK jurisdiction, as well as difficulties in enforcement. It is also difficult to see what a subrogation clause achieves that cannot be achieved by other means—for example, by refusing applications from the exporter to the end user in question on the grounds of risk of diversion (Criterion 7).⁸²

57. In January 2009, BERR gave evidence to the Committee on the efficacy of the licensing system in assessing the risk of re-export. Ms Jayne Carpenter, Assistant Director of the Export Control Organisation, said that before licence were issued, UK diplomatic posts overseas were asked to comment on the applications. That could involve them looking at the application documentation and physically going to see where the end-user entity was located and assessing what sort of operation they have set up.⁸³ The then Economic and Business Minister, Ian Pearson, reiterated the Government position:

Our view has always been as a government that the introduction of a no re-export clause on licences is not necessary or feasible and would be onerous to operate and virtually impossible to enforce [...] there is I think a commonsense view that this would be a desirable thing to do but in practice there are some very serious practical legal barriers.⁸⁴

However, the Minister added that he would be interested in seeing an assessment of how legally effective the no re-export clauses used by EU countries were.

58. When asked what end-use monitoring was undertaken by the Export Control Organisation (ECO) after the licence was issued to ensure that controlled goods were not exported to an undesirable location or misused, Ms Carpenter said where there were a variety of different reporting mechanisms on end use: reports from FCO Posts overseas, NGOs, human rights organisation reports, media reporting, intelligence reports. However, it was not possible to check everything: “Given that we issue 10,000 or 12,000 licences a year, there is a limit in practical terms to the extent to which we can monitor the end use of every exported item”.⁸⁵

59. After the evidence session, in a letter dated 19 February to the Committees, the Minister reiterated the Government’s view that controlling re-export clauses would be problematic. He pointed out that the Government already had the power to revoke licences if it had evidence that an exporter was sending military equipment or technology to a licensed production facility that was using it to breach an arms embargo. The Minister claimed that re-export clauses would not add anything to the process other than an administrative burden to the exporters and the ECO, specifically in the case of licensed production facilities overseas:

[I]n reality we would still lack any further power to stop equipment from the licensed production facility reaching sensitive destinations [...]stating that something should

82 Cm 7485, p 8

83 Q 39

84 Q 38

85 Q 39

happen in a contract is no guarantee that it will happen, and we would usually only become aware of breaches after the equipment in question had been exported. By that time, it would be too late to apply for an injunction to stop the export [...] there would be no guarantee that any injunction would be enforceable in the country of the licensed production facility.⁸⁶

60. In a subsequent letter, the Minister was able to provide the Committee with an example of where Government policy had changed towards an end user and destination as a result of information received from sources. One such example was Mapna Turbine Blade Company, for which licences had been granted in the past.⁸⁷

61. When the then Minister for State at the Foreign and Commonwealth Office, Rt Hon Bill Rammell MP, gave evidence to us on 22 April 2009 he too repeated the Government view that re-export clauses would ask UK exporters to do something that is beyond their control and would be beyond the UK Government's legal jurisdiction.⁸⁸ When asked how other EU Member States use re-export clauses, Andrew Massey, Head of the Arms Trade Unit, told us:

When I talk to my colleagues sitting around the COARM table in Brussels and say to any of them, "Okay, guys, this is all very well—when was the last time you tested it?" they all said, "We have never actually put it to the test". Then I ask them, "Do you think it is enforceable?" and there is then much staring at their toecaps. The reality is that they have this legislation there, but in my experience none of them have any confidence that if they went to apply it, it would make any difference. They do not believe that it is enforceable.⁸⁹

62. The UK Working Group on Arms remains opposed to the Government's position on re-export clauses and gave evidence to the Committees in March on the use of re-export clauses. Roy Isbister of Saferworld told the Committee, that in the case of the maritime patrol aircraft sold by India onto Burma, the Indian Government had told the UK Government that there had been nothing in the contract to say that the aircraft could not be sold on to Burma.⁹⁰

63. We are minded to take further evidence on the use of re-export clauses by other countries.

64. We conclude that, despite the Government's view that it considers that non re-export clauses would be an unnecessary burden as they would be difficult to enforce, the requirement to have a non re-export clause in contracts for the supply of controlled goods would send a clear message to both parties to the contract that re-export to certain countries is unacceptable. We recommend that the Government gives further consideration to blocking this demonstrable loophole in its arms export controls regime.

86 Ev 65

87 Ev 84

88 Q 191

89 Q 192

90 Q 89

Licensed production overseas

65. In previous Reports we have concluded that existing controls over licensed production overseas were inadequate and needed to be extended. We had considered the option that Government had set out in its 2007 Consultation Document that export licences for supplies to licensed production facilities or subsidiaries could be made subject to conditions relating to the relevant commercial contracts.⁹¹ After further consideration, we recommended in our last Report that the Government make export licences for supplies to licensed production facilities or subsidiaries subject to a condition in the export contract preventing re-export to a destination subject to UN or EU embargo.⁹² The Government Response to our Report stated that it had concluded that there was no convincing case for enhancing controls on the exports of controlled goods specifically in relation to licensed production.⁹³ **We conclude that we do not agree with the Government's decision not to enhance controls on the exports of UK controlled goods produced under licence overseas and we recommend that the Government should explain in its Response why it came to this decision and whether it will reconsider its policy.**

Military end-use controls and the "single action" clause

66. End-use controls already operate in relation to items or technology that:

are or may be intended [...] 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.⁹⁴

67. However, the current 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.⁹⁵

68. The Committees' 2008 Report recommended that the Government bring forward proposals for a systematic military end-use control regime.⁹⁶ The Government's Response stated that it was seeking an expansion of the current EU Military End-Use Control which would require licences for goods:

which the exporter knows are intended for use in listed destinations by the military, police or security forces, or has been informed by the Government that the goods are or may be so used, where there is a clear risk that the goods might be used for

91 HC (2006–07) 117, para 238

92 HC (2007–08) 254, para 42

93 Cm 7485, pp 7–8

94 Council Regulation (EC) No. 1334/2000, *Setting up a Community regime for the control of exports of dual-use items and technology*, (the *Dual-Use Regulation*), Article 4.1, 22 June 2000, www.berr.gov.uk/files/file8989.pdf

95 Cm 7485, p 8

96 HC (2007–08) 254, para 46

internal repression, breaches of human rights, or against UK forces or those of allies.⁹⁷

It is possible that the exports on the list provided to us in Ukraine would fall into this category. It was also intended that the control should be extended to apply beyond embargoed destinations, to additional listed destinations that are of heightened concern. The Government intended to hold further consultation with industry and NGOs on the wording of the proposed new control, including whether it would be workable in practice, with the intention of the UK negotiating changes at EU level.⁹⁸

69. Oliver Sprague of Amnesty International told the Committees that the NGOs were concerned that the control would not cover components parts, and questioned whether the proposals would cover the export of assembly kits of vehicles.⁹⁹ In its submission, the UK Working Group on Arms expressed disappointment at the slow progress of the proposals, particularly as the Government announced its decision in February 2007 to develop EU policy in this area.¹⁰⁰ The Working Group provided examples of cases where it believed that uncontrolled UK-made parts and components for military and security equipment being used in regions of instability: Land Rover vehicles used by Azeri military and UK traders allegedly involved in transfer of electronic components for Improvised Explosive Devices (IEDs) in Iraq.¹⁰¹

70. In our last Report we examined the “Einzeleingriff”, or “single action”, clause used in Germany, whereby the transfer of an unlisted item could in principle be refused.¹⁰² Although the NGOs thought that this approach would have advantages, EGAD and the Government had reservations. The then Minister told us that use of the clause had given the German authorities flexibility, but gave rise to uncertainty for exporters about what is and what is not controlled.¹⁰³ We also considered whether the ML6 category of the Military List should be amended to cover utility and transport vehicles supplied for military, security or police use, including those supplied as complete items or in kit form, and the ML10 category should be amended to cover utility and transport aircraft supplied for military, security or police use. The Government Response to our Report accepted that there was a case for tightening controls on the export of non-controlled goods but stated that its aim was to achieve this through expanding the EU Military End-use Control.¹⁰⁴

71. We are concerned that, since our last Report, the Government does not appear to have made much progress in its discussions with the industry on its proposals for an amended EU Military End-use Control. Our visit to Ukraine, and the information we received there about the possible exports made by UK brokers to overseas armed forces and police, has heightened our concern. **We recommend that the Government report back to the**

97 Cm 7485, pp 8–9

98 Cm 7485, p 9

99 Q 73

100 Ev 74

101 Ev 74–75

102 HC (2007–08) 254, para 43

103 HC (2007–08) 254, Q 204

104 Cm 7485, pp 8–9

Committees by the end of 2009 with further detail on the discussions that have taken place with industry and a timetable for introduction of its proposals for an amended EU Military End-use Control.

End-user undertakings

72. The Export Group for Aerospace and Defence (EGAD) raised the issue with us in evidence that some of its members had encountered difficulties when seeking End-User Undertakings from the Ministry of Defence at the request of other EU Member States. In particular, EGAD stated that extent of knowledge and understanding of export control issues was variable amongst Integrated Project Teams at the Ministry of Defence—to the extent that the exact definition of “End-User” were greatly misunderstood. This has led to the MOD refusing to sign End-User Undertakings for intra-EU trade that are required of exporters by other EU Member States.¹⁰⁵

73. We recommend that the Government ensure that Integrated Project Teams in the Ministry of Defence who deal with UK exporters are fully aware of the regulations surrounding End-User Undertakings.

Research

74. We have in our past three Reports highlighted the need for the Government to commission independent research into the operation of the export control system.¹⁰⁶ In our Report last year we repeated the recommendation of the previous year that the Government carry out a government-wide assessment of the effectiveness of the operation of export control legislation since 2004 and that the Government in responding to our Report produce detailed evidence to demonstrate the effectiveness of export controls.¹⁰⁷ To assist the Government, we highlighted a number of areas where we considered further research would be profitable:

- what volume and categories of the goods falling within definitions on the Military List and in the dual-use regulations were being exported without licences in breach of export controls;¹⁰⁸
- the extent to which dual-use goods not subject to control were exported from the UK and were then incorporated into equipment which had it been exported from the UK would have been subject to export control;¹⁰⁹
- whether the controls on the transfer of software were adequate, practicable and enforceable;¹¹⁰ and

105 Ev 109

106 Defence, Foreign Affairs, International Development and Trade and Industry Committees, First Joint Report of Session 2005–06, *Strategic Export Controls: Annual Report for 2004, Quarterly Reports for 2005, Licensing Policy and Parliamentary Scrutiny*, HC 873, paras 76 and 100; HC (2006-07) 117, paras 25-32; HC (2007–08) 254, paras 22–23

107 HC (2007-08) 254, para 23, HC (2006-07) 117, paras 29 and 31

108 HC (2005-06) 873, para 76; HC (2006-07) 117, para 25

109 HC (2005-06) 873, para 100; HC (2006-07) 117, para 25

110 HC (2006-07) 117, paras 90-91

- the reasons for the small numbers of applications for trade control licences from British citizens overseas.¹¹¹

75. The Government's Response to our last Report repeated the argument of previous years that the public consultation on the Review of export control legislation, the Government's own analysis, responses from COARM Member States to a UK questionnaire and consultation with Non-Governmental Organisations (NGOs), industry and the Committees provided evidence of the effectiveness of the system, and had fed in to the Review.¹¹² However, it also stated that once the Review had been concluded, the Government would take "a closer look" at the issue of the extent to which industry is aware of, and complies with, export controls. The Government was still considering commissioning a study but first needed to be certain that this would "add value to existing analysis, and would represent value for money."¹¹³ The Response stated that any study commissioned would not be primarily about quantification of levels of non-compliance with strategic export controls, but would focus on "how to best implement and enforce strategic export controls and raise industry's compliance and awareness, so as to provide a basis upon which to review, and potentially re-focus, Government's awareness activities."¹¹⁴

76. In our previous Report, we accepted that answers to such questions in the Consultation Document may have been useful but we pointed out that the respondents were self-selecting and the answers to some measure were unstructured. We were therefore not surprised that the Government said that it "did not get quite as much as we had hoped"¹¹⁵ in response to the 2007 Consultation Document.¹¹⁶

77. When asked in January 2009 whether the Government was still considering whether or not to commission a study, Ian Pearson, the then Economic and Business Minister, told the Committee that he would like to see a study happen, specifically "I do think that it would be a sensible use of public money to have a study that looked at non-compliance in the dual-use sector."¹¹⁷ We are disappointed that the Government still has not made a formal decision on whether or not to commission research. **We repeat our recommendation that the Government take steps to demonstrate the effectiveness of the export control system through the commissioning of independent research.**

111 HC (2006-07) 117, para 59

112 Cm 7485, pp 3-4

113 Cm 7485, p 3

114 Cm 7485, p 3

115 HC (2007-08) 254, para 23, Q 149

116 The responses were published at <http://www.berr.gov.uk/europeandtrade/strategic-export-control/legislation/export-control-act-2002/review/page42883.html>

117 Q 61

4 Enforcement

Introduction

78. In our Report last year we made recommendations concerning the provision of information in annual reports on strategic controls; specifically the number of seizures by HM Revenue and Customs and the trend and type of misuses of open licences.¹¹⁸ The Government agreed to provide additional commentary on the number of seizures and information on the misuse of open general licences in its next Annual Report.¹¹⁹

79. Due to the late publication of the 2008 Annual Report on United Kingdom Strategic Export Controls, after the date our Report was finalised, we were unable to comment on whether or not this information has been included.

Open General Licences

80. In our previous Report we raised the issue of enforcement of Open General Licences. We recommended that where breaches of the requirements to use open general licences are persistent and an exporter shows no inclination to bring his or her administrative arrangements up to the required level, the Export Control Organisation (ECO) should automatically remove the exporter's entitlement to use open general licences.¹²⁰ The Government Response stated that where breaches of the terms of the licences were found which appear to be systemic rather than an isolated incident of human error, the company would receive a warning letter from ECO setting out the issues, what must be done about them, and the timescale for improvements to be made with arrangements for a revisit. As of 19 August 2008, 13 such letters had been sent in one year. If, at the time of the revisit, the company has made little or no attempt to correct the faults identified, ECO will consider suspending the company's use of the open general licences where faults are still occurring.¹²¹

Civil penalties

81. In our last Report we considered suggestions from Amnesty International UK, the Omega Research Foundation and Saferworld that, rather than relying exclusively on the criminal law to prosecute breaches of export control, the Government should amend the primary legislation to be able to proceed through the civil courts as well as the criminal courts.

82. We concluded that the use of civil penalties for the breach of export controls appeared to offer a method of strengthening the UK's export controls. We recommended that the Government inform the Committees and the House of the outcome of its deliberations at

118 HC (2007–08) 254, paras 50 and 57

119 Cm 7485, p 10

120 HC (2007–08) 254, para 58

121 Cm 7485, p 11

an early date. We agreed to consider this matter further once the Government had completed its consideration of the use of civil penalties for the breach of export controls.¹²²

83. In February 2009, the Committees received a joint memorandum from Rt Hon Stephen Timms MP, Financial Secretary to HM Treasury, and Ian Pearson MP, the then Economic and Business Minister. The memorandum said that BERR and HMRC had concluded that “there is a clear case for introducing civil penalties in the field of strategic export control [...] not to replace any existing measures, but to supplement them.”¹²³

84. The memorandum set out the cases in which civil penalties would be of greatest value:

In particular, they could have value in cases of non-compliance with individual rather than open licences; where the frontier based seizure and restoration powers of HMRC cannot be used, (such as trade control cases, electronic transfers and situations where the goods have already left the UK); or for other breaches for which they offer a quicker and less costly means of sanction than full criminal prosecution of offenders. Key to this is that they are less resource intensive to administer than criminal penalties and require a lower level of proof.¹²⁴

85. The memorandum stated that primary legislation would be needed to introduce civil penalties and, after that, an independent tribunal would have to be established to deal with appeals. It was estimated that it would take approximately a year after the introduction of primary legislation to establish the tribunal. The memorandum promised a further update in 2009 with details of potential implementation timescales.¹²⁵ **We conclude that the Government’s decision to introduce civil penalties for strategic export control is a welcome one and we recommend that the Government inform the Committees by the end of 2009 of the timetable for primary legislation necessary to bring in civil penalties.**

122 HC (2007–08) 254, paras 60–63

123 Ev 66

124 Ev 66

125 Ev 66

5 Organisational and operational issues

The date of publication of the annual report on strategic export controls

86. In our last Report we commented on the unsatisfactory timing of the publication of the annual reports on strategic export controls. In essence, each year we are reporting on reports which appear out of date as they are published in July, 18 months after the end of the calendar year covered by the Government's Annual Report on United Kingdom Strategic Export Controls. We recommended that, in future, the Government publish its annual reports on strategic export controls by the end of March of the following calendar year.¹²⁶ The Government responded that as the final annual collation of data from across Government did not take place until April, it would not be possible to publish the report in March. However, it did aim to publish the 2008 report as soon as possible after April 2009.¹²⁷

87. We are disappointed that, yet again, the annual report on strategic export controls has not been published in time for us to include an examination of its contents in our annual report. **We recommend that the Government aim to publish its 2009 Annual Report on UK Strategic Export Controls by the end of May 2010.**

Form and content of annual reports on strategic export controls

88. In our last Report we recommended that the Government include monetary information on the management and enforcement of export controls in future annual reports on strategic export controls.¹²⁸ This was because we considered the information necessary for the scrutiny of the management and enforcement of export controls. We need to know what resources are going into export control and particularly whether the resources are increasing or decreasing year on year. The Government Response said that it would "look to include" this information in future annual reports.¹²⁹ Due to the late publication of the 2008 Annual Report on United Kingdom Strategic Export Controls, after the date our Report was finalised, we are unable to comment on whether or not this information has been included.

Export Control Organisation Reports and Statistics Website

89. The Government accepted our recommendations from previous Reports that the Government bring forward a proposal for a fully searchable and regularly updated database of all licensing decisions.¹³⁰ We received an update from the then Minister of State for Energy on 15 September 2008 on progress made on the development of the database,¹³¹

126 HC (2007–08) 254, para 80

127 Cm 7485, p 14

128 HC (2007–08) 254, para 83

129 Cm 7485, p 14

130 HC (2006–07) 117, para 386, Cm 7260, p 38, HC (2007–08) 254, para 85, Cm 7345, p 15

131 Ev 55

for which we were grateful. As previously mentioned in paragraph eight, in May 2009 we were also grateful to receive an advance demonstration of the Export and Control Organisation's (ECO) searchable database. The database is located on a new website which was launched by the Department of Business, Innovation and Skills on 8 June.¹³²

90. We were extremely impressed with the functionality of the database which enables the public to produce reports on licences granted and refused. We welcome that stakeholders were involved in the trialling of the database, and that the website was launched on time.¹³³The UK Working Group on Arms stated that it welcomed the introduction of a searchable database, but expressed concern that information was seldom given regarding the approved end-user and end-use of licensed goods: “[t]his makes it difficult for public or parliament to assess whether the Consolidated Criteria are being effectively and consistently applied.”¹³⁴ **We conclude that the new Export Control Organisation Reports and Statistics website is an important step towards greater transparency of the work of the Export Control Organisation and we commend the Government for ensuring that the website was launched on schedule. We recommend that the Government publicises more widely the facility both nationally and internationally with the aim of influencing other countries to follow the UK's example.**

Export Control Error

91. The then Economic and Business Minister, Ian Pearson MP, wrote to us on 3 June to inform the Committees that, due to an error by the Export Control Organisation (ECO), a Chemical Weapons Convention (CWC) Schedule 2 chemical (Cetaflam PD.P) was exported by a UK company to Taiwan and Israel. The company had been wrongly informed that the chemical did not require an export licence. In fact, under the CWC, chemicals listed under Schedule 2 must not be exported to States that are not party to the CWC. Neither Israel nor Taiwan are parties to the CWC.

92. Ian Pearson told the Committee that the control list containing the chemical had been overlooked by staff of the ECO and they had given the wrong advice to the company seeking to export the chemical. However, ECO has now taken steps to ensure that technical staff take special care in this area in future.¹³⁵ We note the action taken by ECO to remedy this breach of the UK's commitments and thank the Minister for bringing it to our attention.

¹³² See www.exportcontroldb.berr.gov.uk

¹³³ Ev 55

¹³⁴ Ev 78

¹³⁵ Ev 110

6 Challenging bribery and corruption

Introduction

93. In our previous Report we looked at allegations of corruption in defence contracts in the 1970s, and the challenges of bribery and corruption in the present day. Bribery remains a major problem globally. According to the World Bank approximately US\$1 trillion (£5,000 million) is paid in bribes each year, representing 10% extra on the cost of doing business and up to 25% on procurement contracts in developing countries.¹³⁶ Transparency International gave evidence to us in 2008 and told us that the arms sector was one of the top three in which bribes are paid.¹³⁷

94. The United Kingdom routinely ranks as one of the least corrupt countries in the world according to Transparency International's annual corruption perceptions index. Until recently, the UK has not been vigorous at investigating corruption, enforcing existing bribery legislation, and prosecuting offenders so it is difficult to gauge from this ranking how effective the UK's anti-corruption drive is. Even so, the UK's ranking recently slipped several places to 16th following the Serious Fraud Office's halted investigation into the Al Yamamah defence contracts with Saudi Arabia.¹³⁸

95. The current law of bribery has yielded few convictions (with 30 individuals found guilty of statutory bribery offences between 2004 and 2007).¹³⁹ The UK secured its first conviction for bribery of an overseas foreign official as recently as 2008, in contrast to the US where substantial numbers of convictions are secured each year under the Foreign Corrupt Practices Act 1977.¹⁴⁰

Tackling bribery through the licensing process

96. In our last Report we acknowledged that the Export Control Organisation (ECO) did not have the expertise to investigate bribery corruption at present without distorting its focus on the potential risk presented by the export. However, we 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 who had been convicted to corruption; and the amendment of the National Export Licensing Criteria to make conviction for corruption by an exporter grounds for refusing an export licence.¹⁴¹

¹³⁶ Ministry of Justice, *Impact Assessment of draft bill on reform of the law on bribery*, February 2009, p 3; "New draft Bribery Bill to support international fair trade", Department for International Development press release, 26 March 2009, www.dfid.gov.uk/news

¹³⁷ HC (2007-08) 254, Q 104

¹³⁸ See the annual perceptions of corruption index published by Transparency International, available at www.transparency.org

¹³⁹ Ministry of Justice, *Impact Assessment of draft bill on reform of the law on bribery*, February 2009, p 7

¹⁴⁰ "Bribery Bill and Corruption Clampdown", *Law Gazette*, 15 January 2009, www.lawgazette.co.uk

¹⁴¹ HC (2007-08) 254, paras 112–117

97. The responsibility for anti-corruption has moved in recent years from the FCO, to BERR and DfID respectively and, since October 2008, to the Ministry of Justice, where the Secretary of State for Justice was appointed the Government's Anti-Corruption Champion.¹⁴² **We conclude that the shifting of responsibility for anti-corruption from one Department to another raises questions over whether the Government has the necessary vigorous anti-corruption culture across all Departments to tackle the risk of bribery and corruption engaged in by UK-based companies and individuals.**

98. The Government Response to our last Report stated that it would not consider our recommendations further until the defence sector's Common Industry Standards Initiative had been introduced and the report of the Export Credits Guarantee Department on its anti-bribery and corruption procedures had been published.¹⁴³ We will follow this up with Government in due course.

Draft Bribery Bill

99. At the time of publication of this Report, the Joint Committee on the Draft Bribery Bill was in the process of preparing its own Report for publication after conducting pre-legislative scrutiny of the Draft Bribery Bill.¹⁴⁴

100. The draft Bribery Bill was presented to Parliament on 25 March 2009 by the Secretary of State for Justice, Rt Hon Jack Straw MP, who is also the Government's Anti-Corruption Champion. Its primary aim is to modernise and simplify the existing law of bribery, which has been criticised both domestically and internationally since at least 1976 when the Royal Commission, chaired by Lord Salmon, recommended changes to the law relating to bribery.¹⁴⁵

101. The Law Commission developed proposals for reform during the late 1990s that led to a draft Corruption Bill being published by the Government in 2003. It was heavily criticised during pre-legislative scrutiny by the Joint Committee on the draft Corruption Bill, particularly over its focus on an agent/principal relationship.¹⁴⁶ The Home Office subsequently invited the Law Commission to look at the issue afresh. Consultation began in 2007. The draft bill builds on the proposals in the Law Commission report "*Reforming Bribery*", published on 20 November 2008.

102. The Draft Bribery Bill aims to reform the criminal law to provide a new, modern and comprehensive scheme of bribery offences that will enable courts and prosecutors to respond more effectively to bribery at home or abroad. The Ministry of Justice states that the draft Bill aims to:

142 Department for Business, Enterprise and Regulatory Reform, *Corporate Responsibility Report*, February 2009, www.berr.gov.uk, "Anti corruption champion", Ministry of Justice press release, 15 October 2008, www.justice.gov.uk

143 Cm 7485, p 18

144 Ministry of Justice, *Bribery, Draft Legislation*, Cm 7570, March 2009

145 Royal Commission on Standards in Public Life, Cmnd 6524, 1976

146 Joint Committee on the Draft Corruption Bill, *Draft Corruption Bill*, Session 2002–03, HC 705, HL Paper 157, para 81

- provide a more effective legal framework to combat bribery in the public or private sectors;
- provide clearer compliance with international obligations;
- replace the fragmented and complex offences under common law and the Prevention of Corruption Acts 1889-1916;
- simplify legislation covering two general offences: offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting an advantage;
- create a discrete offence of bribery of a foreign public official;
- create an offence of negligent failure by commercial organisations to prevent bribery;
- support high ethical standards in UK businesses, and
- tackle the threat that bribery poses to economic progress and development around the world.¹⁴⁷

103. Key features of draft Bill, as considered by the Joint Committee, are:

- Two general offences of making a bribe (clause 1) and receiving a bribe (clause 2), commonly described as “active” and “passive” bribery respectively. These offences would replace the common law offence of bribery and a range of statutory offences under the Public Bodies Corrupt Practices Act 1889, the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 1916;
- A specific offence of bribing a foreign public official (clause 4), which is intended to put beyond doubt the UK’s compliance with its international obligations, particularly the OECD Convention on Bribery;
- A new offence for companies and partnerships that negligently fail to prevent bribery by persons working on their behalf, subject to a defence that may be available where “adequate procedures” were in place (clause 5);
- The territorial reach of the criminal law would be extended beyond acts abroad by UK citizens and companies to include non-citizens who are “ordinarily” resident in the UK or who are citizens of a British overseas territory (clause 7). The new corporate offence would also apply to non-UK companies and partnerships provided the company or partnership carries on business (or part of a business) in the UK (clause 5);
- Penalties for the new offences would be increased to a maximum of 10 years imprisonment or a fine in line with the scale for fraud under the Fraud Act 2006; currently the maximum sentence is seven years imprisonment. Companies and partnerships would face an unlimited fine if convicted of the new corporate offence (clause 11);

¹⁴⁷ Draft Bribery Bill, Ministry of Justice, www.justice.gov.uk/publications/draft-bribery-bill

- The current requirement for the Attorney General to consent to proceedings for a bribery offence would be replaced by the requirement for consent of the Director of Public Prosecutions, the Director of the Serious Fraud Office, or the Director of Revenue and Customs in line with proposals under the draft Constitutional Renewal Bill (clause 10);

104. Evidence given to the Joint Committee by the Society of British Aerospace Companies and the Defence Manufacturers' Association suggested the defence industry was in favour of the legislation.¹⁴⁸ BAE Systems, Thales UK and Lockheed Martin UK also gave evidence and whilst generally in favour of the draft Bill, raised some concerns, shared with the CBI, over the drafting of the Bill as it related to negligence.¹⁴⁹ We look forward to reading the conclusions of the Report of the Joint Committee on the Draft Bribery Bill.

148 Oral evidence taken before the Joint Committee on the draft Bribery Bill, HC (2008-09) 430-iii, Qq 224, 225

149 Oral evidence taken before the Joint Committee on the draft Bribery Bill, HC (2008-09) 430-iii, Q 297

7 The EU and the international perspective

Introduction

105. Previous work of the Committees has included scrutiny of the reviews on arms exports at a European level: we follow up that work here. In this section we also report on progress made by the UK in work towards an international arms trade treaty. Finally, throughout 2008 the Committees have focussed their evidence sessions with Ministers and stakeholders on the subjects of export of arms to Sri Lanka and Israel. We report on the evidence we have received so far.

Adoption of the EU Code of Conduct on Arms Exports as a Common Position

106. The EU Code of Conduct on Arms Exports adopted on 8 June 1998 forms the basis of the UK's decision-making process for licence applications. The Code contains political commitments, but is not legally binding. It represents minimum standards which all Member States have agreed to apply to exports of controlled goods. These standards are defined through a common set of criteria to be used in deciding whether proposed exports should be allowed. The Government has published consolidated EU and National Criteria which explain how it interprets the terms of the Code.¹⁵⁰

107. As noted in our previous Reports, the EU Code has been subject to a fundamental review and a revised code was agreed at a technical level with an agreement in principle that the revised text should be adopted as a Common Position under Article 18 of the Treaty of European Union. This Common Position would be legally binding on Member States, who would be obliged to ensure that their domestic legislation conformed with the Common Position.¹⁵¹ We welcomed the revisions and recommended in our last Report that the Government continue to press determinedly for the revised EU Code of Conduct on Arms Exports to be adopted with this status.¹⁵² In response to our recommendation the Government said that it remained strongly committed to seeing the Code of Conduct adopted as a Common Position and had detailed discussions with other Member States aimed at resolving concerns that had been raised. In addition, it had already subjected the text to parliamentary scrutiny, which would enable the UK to move quickly to adoption once consensus on adoption has been reached.¹⁵³

108. We recommend that the Government report back to the Committees by the end of 2009 on how discussions with other EU Member States have progressed towards consensus on a revised EU Code of Conduct on Arms Exports to be adopted as a Common Position.

¹⁵⁰ European Union Code of Conduct on Arms Exports, EU Council Document 8675/2/98; see also HC Deb, 26 October 2000, col 203W

¹⁵¹ HC (2005-06) 873, Ev 126, Q 303

¹⁵² HC (2007-08) 254, para 126

¹⁵³ Cm 7485, p 19

Peer review of implementation of EU Council Regulation 1334/2000 on dual use

109. In 2006-07, the Committees asked about progress in carrying out recommendations arising from the 2004 peer review on the implementation of EU Council Regulation 1334/2000 on the control of dual-use items in the enlarged EU. In a memorandum received in April 2008, and printed in our last Report, the Government said that there was no need for domestic legislation but that Council Working Groups were still considering the Regulation.¹⁵⁴ In our last Report we recommended that:

the Government explain whether the conclusions and recommendations from the peer review of the implementation of EU Council Regulation 1334/2000 on the control of dual-use items have led to changes in the operation of the export control system to improve its effectiveness.¹⁵⁵

In response, the Government said that work on the Regulation would be finished by the end of 2008, and “thereafter it will be possible to focus more attention on some of the other aspects of the Review’s conclusions and recommendations”.¹⁵⁶

110. Ian Pearson was questioned by us in January 2009 on the progress made by the Council Working Group review on the dual-use regulation:

I think there was some hope that during the French Presidency it would come to conclusions, but that has not been possible [...] There is still some more work for the Council Working Group to do and we are playing our full part in that.¹⁵⁷

111. In evidence to us on 11 March, the NGOs expressed frustration that little action appeared to have been taken on amending the dual-use regulation, even though the Government had promised to take a lead on EU discussions.¹⁵⁸ A main concern for the NGOs was to ensure that the EU implements its obligations on dual use so far as they relate to UN Security Council Resolution 1540 (2004) on the non-proliferation of weapons of mass destruction and their means of delivery.¹⁵⁹

112. EGAD also raised separate concerns about non-compliance and enforcement in the dual-use sector:

[I]t remains worrying that the Defence Industry, which accounts for approximately 2% of UK GDP, continues to account for over 60% of export licences. At the very least, this lends strong support to the (very considerable) anecdotal evidence that there is significant non-compliance in the dual-use sector [...] This non-compliance is not that which is often encountered by the relevant agencies, that of a mostly law-abiding and compliant exporter making an honest mistake or a technical breach of

154 HC (2007–08) 254, Ev 87

155 HC (2007–08) 254, para 127

156 Cm 7485, p 19

157 Q 51

158 Qq 73–75

159 Q 75

licence conditions; rather it is a sector of what should be a regulated Industry operating wholly outside of the regulatory regime.¹⁶⁰

EGAD recommended that the government put in as much effort into enhancing the effectiveness of the UK's export controls relating to the dual use sector as it put into controls on controlled goods within the conventional sector.

113. We recommend that the Government report back to the Committees by the end of 2009 the progress made by the EU Council Working Group on the implementation of the recommendations of the review on EU Council Regulation 1334/2000. In its Response the Government should set out the necessary steps that need to be taken by the EU to implement the recommendations of the review together with the Government's strategy for achieving implementation.

EU Arms Embargo on China

114. In our last Report we noted that the value of standard individual exports licences (SIELs) issued for exports to China had increased steadily from 2004 to 2007, despite the arms embargo being in place since 1989.¹⁶¹ When asked whether the embargo had any economic or commercial effect, the FCO responded:

It is important to note that it is not a “full scope” embargo. The export of some controlled goods to China was always envisaged and thus, increases in the volume of exports for controlled goods that are not covered by the terms of the embargo should not be seen as a barometer of the effectiveness of the embargo. It is also difficult to assess the economic and commercial impact of the embargo based on one year's figures, and this needs to be assessed against a longer period.¹⁶²

115. Whilst the Government told us that it continued to have “serious concerns” about human rights in China, it argued that: “Strengthening the arms embargo would do nothing to encourage dialogue, and would risk isolating the Chinese Government in a way which would make it significantly more difficult for us to raise human rights concerns.”¹⁶³

116. We repeat our conclusion that the British Government and the EU should maintain their arms embargo on China, and that the Government should provide us in its Response with an update on its assessment of the human rights situation in China and of the adequacy of the current arms embargo in place.

Progress towards an Arms Trade Treaty

117. We have previously commended the Government's support for an international Arms Trade Treaty (ATT)¹⁶⁴ and continue to monitor the progress of negotiations. This subject

¹⁶⁰ Ev 59

¹⁶¹ HC (2007–08) 254, paras 141–143

¹⁶² HC (2007–08) 254, Ev 90–91, Q 12

¹⁶³ HC (2007–08) 254, Ev 91, Qq 13–14

¹⁶⁴ HC (2007–08) 254, para 137

has also been covered more fully in the Foreign Affairs Committee's recent Report on non-proliferation.¹⁶⁵

118. The meetings of a Group of Governmental Experts (GGE) between February and August 2008 established the existence of divergent views as to the feasibility of the ATT, what should be its scope and which activities and transactions should be covered, and the parameters of the treaty, for example the “applicability of existing international human rights law and international humanitarian law”.¹⁶⁶ Subsequently, in December 2008, despite US opposition and a number of key abstentions, the General Assembly endorsed a First Committee resolution which called on the UN to establish an Open Ended Working Group (OEWG) to “further consider those elements in the report of the Group of Governmental Experts where consensus could be developed for their inclusion in an eventual legally binding treaty.”¹⁶⁷ The OEWG will be open to all Members States to participate and will meet a total of six times between March 2009, when it first convened, and 2011.¹⁶⁸ Despite voting against the General Assembly Resolution, the US are taking part in the OEWG and Bill Rammell described the contributions of the US delegate as “constructive”.¹⁶⁹ Jo Adamson, the FCO's Deputy Head of Counter Proliferation added that she had been “really struck by the change in tone from the delegate at that meeting”, but admitted that “we have now got to dig below what would be beyond engagement.”¹⁷⁰

119. The Export Group for Aerospace and Defence (EGAD) continues to support the Government in its pursuit of an ATT. However, EGAD referred to “the overly-enthusiastic pronouncements of some in the NGO lobby”, adding “we do not perceive this, alone, as being a panacea.”¹⁷¹

The scope and strength of an Arms Trade Treaty

120. One critical question remains the balance that will emerge between the strength of an ATT and the number of Member States willing to sign up to its provisions. One of the key elements of the strength of the treaty will be its scope. NGOs stressed to us that the a scope limited to the UN Register of Conventional Arms' seven categories of major conventional weapons with the addition of small arms and light weapons, the so-called “7+1 formulation”, would not produce a sufficiently comprehensive treaty.¹⁷² For example, it would exclude a number of categories of weapon, as well as components and parts.¹⁷³ Amnesty further suggested that states would find such a treaty difficult to implement

165 Foreign Affairs Committee, Fourth Report of Session 2008-09, *Global Security: Non-Proliferation*, HC 222

166 United Nations General Assembly, *Report of the Group of Governmental Experts to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms*, UN Document A/63/334, 26 August 2008, www.poaiss.org

167 United Nations General Assembly, Resolution 63/240, *Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms*, www.un.org/disarmament

168 Meeting dates of the Open Ended Working Group on an ATT, www.un.org/disarmament/convarms/ArmsTradeTreaty/html/ATTMeetings2009-11.shtml

169 Q165

170 Q167

171 Ev 60

172 Ev 84, Qq 86–88

173 Ev 84

“because [7+1] is not reflected in their own control lists”.¹⁷⁴ In oral evidence Amnesty, Saferworld and Oxfam went as far as to state that they would not lend support to a treaty based on 7+1.¹⁷⁵ Marilyn Croser of Oxfam said:

We feel very strongly that the Government needs to be out there arguing for broad scope, high standards, because otherwise they are going to end up with something that is not effective. If you go into a negotiation position with a kind of fairly low bar, then what tends to happen is the bar goes down as negotiations go on, and that is why it is very important going into a negotiation to have the bar high.¹⁷⁶

EGAD also highlighted the practical implementation problems of using the UN list as a basis for the treaty and additionally stressed that re-using the alternative Wassenaar Military list would run the risk of associating the ATT with the Wassenaar states.¹⁷⁷ Further, they expressed concern about adding to the burden on industry and suggested “some kind of harmonisation of the list so that everybody was playing off the same level playing field”. They stated that a harmonised list would be preferable to maintaining individual states’ rules on extra-territoriality.¹⁷⁸

121. Bill Rammell acknowledged the “absolutely legitimate concern” with respect to the strength of an eventual ATT and told us that:

we most certainly do not want a weak treaty and will do everything in our power—and I do have a difficulty without revealing a negotiating hand—to ensure we set the threshold as high as possible. If, at the end of the day, we get a weak treaty that does not make a material difference, I would regard that as a failure.¹⁷⁹

122. We conclude that the Government is to be commended for its continuing commitment to an international Arms Trade Treaty (ATT). We recommend that the Government continue to seek an ATT that is as strong as possible. We conclude that a successful ATT should be clearly enforceable, have as wide a scope as is achievable, and underline the applicability of international human rights and humanitarian law. We concur with the recommendation of the Foreign Affairs Committee, that if in the future, the Government is forced to choose between giving priority to the strength of the treaty or achieving the widest possible ratification, it should give priority to securing the strongest possible treaty.

Sri Lanka

123. In the course of our evidence sessions, we raised our concerns with witnesses on the subject of Sri Lanka. On 11 March 2009, we asked representatives of the Export Group for Aerospace and Defence (EGAD) to what extent they saw similarities between exporting arms to Sri Lanka and Israel. David Hayes, Chairman of EGAD, told us that an embargo

174 Q 87 [Oliver Sprague]

175 Q 88

176 Q 86

177 Currently used as the basis for the Wassenaar Arrangement’s export control regime <http://www.wassenaar.org/>

178 Q 108 [Nigel Knowles]

179 Q163

would be “a matter for Government, not for industry”.¹⁸⁰ However, Nigel Knowles, Vice Chairman of EGAD, felt able to offer an argument against an embargo, citing the leverage generated by trade. He suggested that it was sometimes necessary “to take a little grief in order to keep a friendship”.¹⁸¹ We were not persuaded either by the leverage generated in this case, or indeed the general principle. Indeed, the Campaign Against Arms Trade notes in its written memorandum that the Defence Industrial Strategy concluded that “the balance of argument about defence exports should depend mainly on non-economic considerations”.¹⁸²

124. We pursued the issue of Sri Lanka with Bill Rammell at our session on 22 April 2009.¹⁸³ He told us that the FCO’s judgment was that an embargo, or the threat of one, was not the best vehicle for trying to secure a ceasefire.¹⁸⁴ Using an embargo signalled “the end of the diplomatic road” and demonstrated that a lot of influence had been lost.¹⁸⁵ The Minister told us that few licences had been granted for exports to Sri Lanka since the beginning of 2007 which he cited as evidence of procedures being effective.¹⁸⁶

125. The issue of Sri Lanka illustrates the difficulties faced by the Government, and by those who, like us, scrutinise the licensing decisions made by Government, in assessing how exports of arms might be used by the destination country at a future date, particularly if political situation in the country at the time of the exports appears stable. Bill Rammell told the Committees that licensing decisions were based on evidence from FCO posts, from NGOs, newspaper and media reports and a variety of other sources.¹⁸⁷ He said that “you make judgments based on the situation at the time; you do not make judgments for ever and a day.”¹⁸⁸ In its submission to us, Saferworld listed the type of weapons that had been licensed for export to Sri Lanka from 1997 onwards, including the period of the fragile ceasefire starting in 2002.¹⁸⁹ During the ceasefire, a wide variety of military equipment and weapons were exported to Sri Lanka, and, due to the extremely limited access of international observers to Sri Lanka, it is impossible to be certain how many of those weapons were used subsequently against the civilian population when hostilities began to escalate again in 2006. Bill Rammell argued that few licences had been issued for Sri Lanka since 2007, but accepted that the international community had not focussed enough on what had been happening in Sri Lanka.¹⁹⁰ We note the fact that in the period 1 April 2008 to 31 March 2009, 34 licences were issued for export to Sri Lanka, and we will be keeping a keen eye on all future exports.

180 Q 94

181 Q 96

182 Ev 61

183 Qq 150–155

184 Q 150

185 Q 152

186 Q 153

187 Q 123

188 Q 150

189 Ev 87–106

190 Q 153

126. We conclude that the policy of assessing licences to Sri Lanka on a case-by-case basis is, in our opinion, appropriate. However, we recommend that the Government should review all existing licences relating to Sri Lanka and provide in its Response an assessment of what implications the situation in Sri Lanka will have on how the Foreign and Commonwealth Office judges the possible future use of strategic exports by that country and the risk that the export licensing criteria might be breached. We further recommend that the Government provide in its Response an assessment of what UK supplied weapons, ammunition, parts and components were used by the Sri Lankan armed forces in the recent military actions against the Tamil Tigers.

Israel

127. We have focussed particularly this year on arms exports to Israel, an issue on which we have previously commented. In parallel, the Foreign Affairs Committee has reported on these issues in its Report into Global Security: Israel and the Occupied Palestinian Territories.¹⁹¹ We will not repeat the full discussion of the evidence in that Report on the merits of imposing an arms embargo on Israel. Instead, we focus particularly on the more technical issues relating to whether or not components supplied under licence from the UK (particularly incorporated in products assembled in a third intermediary country) were used by the Israeli Defence Forces (IDF) in Gaza during Operation Cast Lead which began on 27 December 2008. The Foreign Secretary made a Written Ministerial Statement on 21 April which stated the Government's understanding of the situation.¹⁹²

128. We have previously commented on the Government's decision in 2002 to authorise the export to the USA of components for incorporation into aircraft for onward export to Israel, when it would not authorise the export of the relevant components or aircraft to Israel directly.¹⁹³ Under the 2002 decision, the UK has supplied components to the US for incorporation into F-16 fighter aircraft and Apache attack helicopters. We questioned Ian Pearson on this subject in January and he later wrote, clarifying the Government's position:

At the evidence session I stated, on the basis of advice that I had received, that no export licences for F-16 Head-Up Display (HUD) equipment to Israel had been granted since 2002.

While this is correct, I would like to clarify that this refers to licences for the export of F-16 HUD components direct (underlined) to Israel, for use in Israel. Since that date there have been a small number of licences granted for these goods where, although not going direct to Israel, we were aware that Israel was the ultimate end-user.¹⁹⁴

In his 21 April statement, the Foreign Secretary stated that the F-16s and Apache helicopters used by Israeli forces during Operation Cast Lead “almost certainly” contained

191 Foreign Affairs Committee, Fifth Report of Session 2008–09, *Israel and the Occupied Palestinian Territories*, HC 261

192 HC Deb, 21 April 2009, col 8WS

193 Defence, Foreign Affairs, International Development and Trade and Industry Committees, First Joint Report of Session 2001-02, *Strategic Export Controls: Annual Report for 2000, Licensing Policy and Prior Parliamentary Scrutiny*, HC 718, paras 136-147; Defence, Foreign Affairs, International Development and Trade and Industry Committees, Second Joint Report of Session 2002-03, *Strategic Export Controls, Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny*, HC 474, paras 130–154

194 Ev 64

British-supplied components incorporated in this way.¹⁹⁵ The Foreign Secretary also identified that Saar 4.5 naval vessels and armoured personnel carriers “almost certainly” included British-supplied components. The UK authorised the export direct to Israel of gun components for the former. The latter included converted British Centurion tanks sold to Israel in the late 1950s.¹⁹⁶ The UK has also supplied “minor components” for reconnaissance satellites which “might” have been used to prepare operation Cast Lead, but which “would not have played a significant part in the operation itself.”¹⁹⁷

129. Bill Rammell told us in April that the Government had not authorised any exports relating to F-16s, helicopters or armoured personnel carriers for Israel, including for incorporation in a third country, since the conflict in Lebanon in 2006 and that “all of these export decisions were in accordance with the criteria on that information that we had available at the time.”¹⁹⁸ In a memorandum to the Committee, the FCO outlined instances where licences were refused for the supply of components for F16s for use by the Israeli Air Force on the basis of Criteria 2, 3, 4 and 6 of the consolidated criteria.¹⁹⁹ Ian Pearson told us that “Israel regularly features in three destinations with the highest number of refusals”,²⁰⁰ and that the Government continues “to assess such applications on a case-by-case basis”.²⁰¹

130. The UK Working Group on Arms highlighted to us the issue of unmanned aerial vehicles (UAVs), specifically Hermes 450 UAVs which were used during Operation Cast Lead.²⁰² Hermes 450s are manufactured by Elbit systems in Israel and at least some engines are provided by Lichfield-based UAV Engines (UEL). Elbit has stated that Hermes 450s containing British engines are manufactured in Israel exclusively for export and are not used by the IDF.²⁰³ The Government has said similarly that British export licences have only been issued for the engines to be incorporated in Israel and then exported.²⁰⁴ The Foreign Secretary told the House in his 21 April statement that the FCO had “no evidence that goods licensed by the UK [for UAVs] were diverted within Israel for use by the IDF.”²⁰⁵ However the UK Working Group on Arms state that it “can find no other publicly available source to suggest that alternative engines are fitted into Hermes 450 UAVs operated by the IDF”.²⁰⁶ Oliver Sprague of Amnesty International told us that in 1997 and 1999 “technology transfers for know-how and related technology for their engine designs” were made and highlighted that “they could be manufactured in other countries which

195 HC Deb, 21 April 2009, col 8WS

196 HC Deb, 21 April 2009, col 8WS

197 HC Deb, 21 April 2009, col 8WS

198 Qq 122, 126

199 Ev 108

200 Q 6; see also Q 139

201 Q 13; see also Q132–141

202 HC Deb, 21 April 2009, col 8WS

203 Ev 78; Amnesty International, “Fuelling conflict: Foreign arms supplies to Israel/Gaza”, 23 February 2009, pp 30-31

204 Q 19

205 HC Deb, 21 April 2009, col 8WS

206 Ev 78; see also Q 64

would obviously raise concerns around licensed production issues or technology transfer issues”.²⁰⁷

Reviewing licences for exports to Israel

131. The Government is reviewing all extant export licences to Israel, to see if any need to be reconsidered in the light of the conflict in Gaza. Bill Rammell told us that licences would be revoked if necessary.²⁰⁸ It has been widely reported that the Government has revoked licences to export naval gun components to Israel but at the time of finalising our Report we had not received confirmation from the Government of this.²⁰⁹ The Foreign Secretary also told the House that the Government would take the conflict in Gaza into account in assessing all future licence applications.²¹⁰

132. We conclude that it is regrettable that components supplied by the UK were almost certainly used in a variety of ways by Israeli forces during the recent conflict in Gaza and that the Government should continue to do everything possible to ensure that this does not happen in future. We conclude that the Government is correct to assess the granting of licences for export on a case-by-case basis and we endorse decisions not to grant a number of licences in relation to Israel. This includes the refusal of licences to supply a variety of components for end-use by Israel since the war in Lebanon in 2006. We further conclude that the Government’s review of extant licences relating to Israel is to be welcomed, as is its stated intention of assessing the need to revoke any which should be reconsidered in light of the Gaza conflict. We recommend that the Government keep us informed of the progress of the review, of whether or not the Government chooses to revoke any licences and whether the Government believes that its eventual position has implications for the UK’s defence relationships with either the USA or Israel itself, or for the operational capabilities of the UK’s armed forces.

207 Q 64

208 Qq 123–124

209 “UK cuts Israel weapons contracts”, *BBC news online*, 13 July 2009, news.bbc.co.uk

210 HC Deb, 21 April 2009, col 8WS

Annex 1: Letter from the Chair of the Committees to the Department for Business, Enterprise and Regulatory Reform

The Export Control Order 2009

BERR wrote to the Committees on Arms Export Controls on 24 September inviting comments on the draft Export Control Order 2009 by 24 October. In the time available the Committees have not been able to take evidence but I am able to set out below the results of their deliberations on the Order.

Scrutiny of legislation by the Committees

The Committees were given two weeks to comment on the second tranche of secondary legislation in May/June 2008. In their 2008 Report the Committees concluded that two weeks to comment on the second tranche of secondary legislation “was wholly inadequate”. In the case of the third tranche we saw parts of the draft on 9 September and a fuller order on 24 September. While we take the points made by Malcolm Wicks in his letter of 17 September and acknowledge that some improvement has been made, we cannot accept that this provides an adequate opportunity to comment on the draft Order, particularly as a substantial amount of the time fell in the summer recess.

Members expressed concern at the terms in BERR’s letter of 24 September inviting the Committees to “consider whether the draft Order fulfils the policy commitments that were made in the Government’s Further Response”. Our primary role is consideration of the policy decisions behind the draft Order, not checking the technical aspects of the drafting.

That said, the state of the draft Order would in our view preclude detailed checking of the technical aspects. The draft we were sent on 24 September did not appear in a form that BERR apparently regarded internally as final—the third paragraph of the preamble (the origin of which was not identified) was in square brackets; so were parts of the definitions of “category A goods”, “category B goods”, “category C goods”, and “goods” in article 2(1), and many (but not all) of the cross-referencing provisions elsewhere; so was part of article 6(2). In addition there were blank parts of schedules referring to existing legislation to be imported, but that might itself contain material that needs bringing up to date or otherwise adapting. The state of the draft has hampered our scrutiny. We request that the Order be put in a state which the Department would regard as fit for signature and laying before being passed to the Committees for consideration.

The fact that the draft Order did not contain an Explanatory Note, or a text of the type of Explanatory Memorandum laid with orders when they are made, was a particular problem. For example, the primary enabling power quoted was section 2(2) of the European Communities Act, the availability of which depends on the existence of Community obligations to implement or supplement. While some were referred to in the text, absence of the other material meant that we were not given a full picture. We do not know whether what is proposed is within the range of what Community Law permits, or what is done

separately under the other enabling powers quoted (sections 1, 2, 3, 4, 5 and 7 of the Export Control Act 2002). We request:

- a. a full specification of the Community obligations to be implemented or (in the case of directly applicable ones) supplemented by the draft Order; and
- b. BERR identify the elements of the draft Order that are made under the cited provisions of the 2002 Act.

Extra-territoriality

At paragraph 31 of our last report we welcomed the creation of the new intermediate category—Category B—which covers goods such as small arms. In our view the Government needs to extend this principle to its logical conclusion to bring all goods on the Military List within extraterritorial control. In our view the draft Order should not be enacted until it is revised to bring the trade in all goods on the Military List within Category B (if not already within Category A).

Transport and ancillary services

We note the proposed provisions on transport services. We have two points. First, would the provisions in the draft Order have brought the activities of Foyle Air in 2000 within control? This company, which was based in Luton, was reported as transporting arms destined for Sierra Leone. (See “Missiles for rebels ‘flown to Africa by British firm’”, *the Independent*, 16 May 2000.) Second, we question the need to exclude from the provisions UK sub-contractors to a UK concern that provides transport services. In our view, if they were included it would increase the effectiveness of the controls.

Goods in transit

The changes in the third tranche of secondary legislation ensure that licences will always be required for Category A goods transiting or transshipping the UK and that licences will be required for Category B goods for a specified list of destinations of concern. We have two questions. What powers has the Government to seize goods in transit not falling within these categories? How often has the Government used its powers to seize goods in transit under the existing powers?

22 October 2008

Annex 2: Note of the visit to Ukraine

In May 2009, we made a visit to Kiev, sponsored by the Foreign and Commonwealth Office. This was a return visit following a visit to Westminster in 2007 of a delegation of Ukrainian MPs from the Committee for National Security and Defence of the Verkhovna Rada (Supreme Council), and local non-governmental organisations (NGOs) partners, to discuss and compare our two systems of strategic exports control and the parliamentary scrutiny of those two systems. In particular, we discussed the opportunities for Ukrainian parliamentary committees to examine further the licensing and policy decisions of the Ukrainian government. During our visit to Ukraine we met parliamentarians, ministers, officials and NGOs.

Participating Members:

Roger Berry (Chairman)

Sir John Stanley

Mr David S Borrow

Sunday 17 May 2009

Briefing dinner hosted by Judith Gardiner, Deputy Head of Mission, with Embassy staff.

Monday 18 May 2009

Meetings with:

Mr Valeriy Volodymyrovych Ivashchenko, the First Deputy Minister of Defence

Mr Oleksandr Gorin, Deputy Foreign Minister

Mr Oleksandr Nykonenko, Director of the Department of Arms Control and Military Cooperation

Mr. Yuriy Petrochenko, Head of the State Service for Export Control

Mr Stepan Havrysh, First Deputy Secretary of the National Security and Defence Council

Mr Hryhoriy Perepelytsia, Director of Foreign Policy Institute, Diplomatic Academy of Ukraine

Mr. Oleksandr Siver, Director of the Scientific and Technical Centre of Export and Import of Special Technologies, Hardware, and Materials

Mr. Mykola Sungurovskyi, Director of Military Programs, Razumkov Centre

Mr. Oleksiy Melnyk, Senior Fellow of Military Programs, Razumkov Centre

Tuesday 19 May 2009

Meetings with:

Mr Oleksandr Sushko, Director of the Centre for Peace, Conversion and Foreign Policy

Mr Oleh Bilorus, Chair, Committee for Foreign Affairs, Supreme Rada

Mr Aleksandr Skybinetskyi, Chair, Sub-Committee, National Security and Defence, Supreme Rada

Mr Anatoly Kinakh, Member of the Committee for National Security and Defence

Mr Yuri Samoilenko, Member of the Committee for National Security and Defence

Formal Minutes

Monday 20 July 2009

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

Members present:

<i>Business and Enterprise Committee</i>	<i>Defence Committee</i>	<i>Foreign Affairs Committee</i>	<i>International Development Committee</i>
Roger Berry	Mr James Arbuthnot	Mike Gapes	John Battle
Peter Luff	Mr David S Borrow	Mr John Horam	Richard Burden
Mr Mark Oaten	Mr Bernard Jenkin	Sandra Osborne	Andrew Stunell
	Mrs Madeleine Moon	Sir John Stanley	

Roger Berry was called to the Chair, in accordance with Standing Order No. 137A(1)(d).

Mr James Arbuthnot declared a non-pecuniary interest as Chair of Conservative Friends of Israel.

Richard Burden declared a non-pecuniary interest as Chair of the Policy Committee of Labour Friends of Palestine and the Middle East.

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

Draft Report: Scrutiny of Arms Export Controls (2009): UK Strategic Export Controls Annual Report 2007, Quarterly Reports for 2008, licensing policy and review of export control legislation

Draft Report (*Scrutiny of Arms Export Controls (2009): UK Strategic Export Controls Annual Report 2007, Quarterly Reports for 2008, licensing policy and review of export control legislation*), proposed by the Chairman, brought up and read.

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

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

Paragraphs 1 to 132 read and agreed to.

Annexes agreed to.

BUSINESS AND ENTERPRISE COMMITTEE

The Defence, Foreign Affairs and International Development Committees withdrew.

Peter Luff, in the Chair

Roger Berry

Mr Mark Oaten

Draft Report (*Scrutiny of Arms Export Controls (2009): UK Strategic Export Controls Annual Report 2007, Quarterly Reports for 2008, licensing policy and review of export control legislation*), proposed by the Chairman, brought up and read.

Resolved, That the draft Report prepared by the Business and Enterprise, Defence, Foreign Affairs and International Development Committees, be the Twelfth Report of the Committee to the House.

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

Ordered, That Roger Berry 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 21 January, 11 March and 22 April: Department for Business, Enterprise and Regulatory Reform (July 2008), Department for Business, Enterprise and Regulatory Reform (July 2008), Department for Business, Enterprise and Regulatory Reform (September 2008), Business, Enterprise and Regulatory Reform (September 2008), Foreign and Commonwealth Office (December 2008), Foreign and Commonwealth Office (April 2009), Business, Enterprise and Regulatory Reform (June 2009), Foreign and Commonwealth Office (July 2009).

[Adjourned till Thursday 24 September at 2.30 p.m.]

DEFENCE COMMITTEE

The Business and Enterprise, Foreign Affairs and International Development Committees withdrew.

Mr James Arbuthnot, in the Chair

Mr David S Borrow
Mr Bernard Jenkin

Mrs Madeline Moon

Draft Report (*Scrutiny of Arms Export Controls (2009): UK Strategic Export Controls Annual Report 2007, Quarterly Reports for 2008, licensing policy and review of export control legislation*), proposed by the Chairman, brought up and read.

Resolved, That the draft Report prepared by the Business and Enterprise, Defence, Foreign Affairs and International Development Committees, be the Twelfth Report of the Committee to the House.

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

Ordered, That Roger Berry make the Joint Report to the House.

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[Adjourned till Tuesday 13 October at 10 a.m.]

FOREIGN AFFAIRS COMMITTEE

The Defence, International Development and Business and Enterprise Committees withdrew.

Mike Gapes, in the Chair

Mr John Horam
Sandra Osborne

Sir John Stanley

Draft Report (*Scrutiny of Arms Export Controls (2009): UK Strategic Export Controls Annual Report 2007, Quarterly Reports for 2008, licensing policy and review of export control legislation*), proposed by the Chairman, brought up and read.

Resolved, That the draft Report prepared by the Business and Enterprise, Defence, 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 Roger Berry 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 21 January, 11 March and 22 April: Department for Business, Enterprise and Regulatory Reform (July 2008), Department for Business, Enterprise and Regulatory Reform (July 2008), Department for Business, Enterprise and Regulatory Reform (September 2008), Business, Enterprise and Regulatory Reform (September 2008), Foreign and Commonwealth Office (December 2008), Foreign and Commonwealth Office (April 2009), Business, Enterprise and Regulatory Reform (June 2009), Foreign and Commonwealth Office (July 2009).

[Adjourned till Tuesday 21 July at 10 a.m.]

INTERNATIONAL DEVELOPMENT COMMITTEE

The Defence, Foreign Affairs and Business and Enterprise Committees withdrew.

In the absence of the Chairman, John Battle was called to the Chair

Richard Burden

Andrew Stunell

Draft Report (*Scrutiny of Arms Export Controls (2009): UK Strategic Export Controls Annual Report 2007, Quarterly Reports for 2008, licensing policy and review of export control legislation*), proposed by the Chairman, brought up and read.

Resolved, That the draft Report prepared by the Business and Enterprise, Defence, 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 Roger Berry 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 21 January, 11 March and 22 April: Department for Business, Enterprise and Regulatory Reform (July 2008), Department for Business, Enterprise and Regulatory Reform (July 2008), Department for Business, Enterprise and Regulatory Reform (September 2008), Business, Enterprise and Regulatory Reform (September 2008), Foreign and Commonwealth Office (December 2008), Foreign and Commonwealth Office (April 2009), Business, Enterprise and Regulatory Reform (June 2009), Foreign and Commonwealth Office (July 2009).

[Adjourned till Tuesday 13 October at 10 a.m.]

Witnesses

Wednesday 21 January 2009

Page

Ian Pearson MP, Economic and Business Minister, Department for Business, Enterprise and Regulatory Reform (BERR), **Mr John Doddrell**, Director, Export Control Organisation, BERR, and **Ms Jayne Carpenter**, Assistant Director, Export Control Organisation, BERR

Ev 1

Wednesday 11 March 2009

Mr Oliver Sprague, Amnesty UK, **Ms Marilyn Croser**, Oxfam GB, and **Mr Roy Isbister**, Saferworld

Ev 14

Mr David Hayes, Chairman, Export Group for Aerospace and Defence (EGAD), **Mr Nigel Knowles**, Vice Chairman, EGAD, and **Ms Bernadette Peers**, Member, Compliance Support and NGO Liaison Subcommittees, EGAD

Ev 21

Wednesday 22 April 2009

Rt Hon Bill Rammell MP, Minister of State at the Foreign and Commonwealth Office (FCO), **Ms Jo Adamson**, Deputy Head of Counter Proliferation Department, FCO, and **Mr Andrew Massey**, Head of Arms Trade Unit, Counter Proliferation Department, FCO

Ev 27

List of written evidence

1	Department for Business, Enterprise & Regulatory Reform (BERR)	Evs 40, 41, 43, 55, 56, 57, 64, 66, 84, 109
2	Foreign & Commonwealth Office	Evs 57, 107, 108, 110
3	HM Treasury and BERR	Ev 66
4	Home Office	Ev 42
5	Campaign Against Arms Trade	Ev 61
6	Export Group for Aerospace & Defence	Evs 57, 109
7	Saferworld	Ev 84
8	UK Working Group on Arms	Ev 68

List of Joint Reports from the Committees during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2007–08

First Joint Report	Strategic Export Controls (2008): UK Strategic Export Controls Annual Report 2006, Quarterly Reports for 2007, licensing policy and review of export control legislation	HC 254 (Cm 7485)
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Session 2006–07

First Joint Report	Strategic Export Controls: 2007 Review	HC 117 (Cm 7260)
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Session 2005–06

First Joint Report	Strategic Export Controls: Annual Report for 2004, Quarterly Reports for 2005, Licensing Policy and Parliamentary Scrutiny	HC 873 (Cm 6954)
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Oral evidence

Taken before the Committees on Arms Export Control on Wednesday 21 January 2009

Members present:

Roger Berry, in the Chair

Mr Adrian Bailey
John Battle
John Bercow
Malcolm Bruce
Richard Burden

Mr David Crausby
Mike Gapes
Linda Gilroy
Sir John Stanley

Witnesses: **Ian Pearson MP**, Economic and Business Minister, Department for Business, Enterprise and Regulatory Reform (BERR), **Mr John Doddrell**, Director, Export Control Organisation, BERR, and **Ms Jayne Carpenter**, Assistant Director, Export Control Organisation, BERR, gave evidence.

Q1 Chairman: Good morning and welcome. May I start with a question on where the Government has reached in its consideration of extra-territorial controls. As you know, we very much welcome the Government's decision to extend extra-territorial controls to cover small arms, MANPADS, cluster munitions but our main concern, as we have repeatedly stated, has been to bring within legal control activities which, if they had taken place in the UK without a licence, would be criminal activities; that is that all items on the Military List effectively should be brought within extra-territorial controls. We are aware that there have been discussions between the NGOs and the industry stakeholders. My first question therefore is: what has the progress been in relation to those discussions?

Ian Pearson: The first thing I would like to say is that I think there have been a number of significant successes in general terms over the past year or so. We have introduced significant changes to controls in high risk areas where stakeholders have been calling for change for some time: new controls on sting sticks that were introduced in April, the introduction of a new three-category trade control structure with stronger controls on cluster munitions, small arms and MANPADS, which you have just referred to, which were announced in October 2008, stronger trade controls on light weapons. I think the review that has been undertaken, which undoubtedly we will get into as well, is one of a number of achievements over the last 12 months. With regard to the specific question that you raise on extra-territorial controls, as you know, controls are already in place on a wide range of goods, as I have indicated and as you are very well aware. In April 2009, those will be extended further to cover light weapons—again a not insignificant development. You rightly point out the fact that stakeholders are currently working to produce a joint proposal in relation to any further extension. I have to say that further measures need to be based on evidence of risk; they need to be proportionate and workable; and target activities of real concern in an effective way. We are not at the stage yet where there has been a consensus in terms of taking these

matters forward. We still want to continue to work with stakeholders to come up with proposals for any further extensions which we believe are workable.

Q2 Chairman: Some have said that you have sub-contracted this job to the NGOs and the defence industry. We have made the very simple case, and year by year you have given us a bit more, so as the years have gone over you have extended extra-territorial controls. The Government has extra-territorial controls in other areas of public policy. Do you not think that the Government ought to be leading on this rather than leaving it to the NGOs and the industry stakeholders to come up with a solution?

Ian Pearson: I believe we have a shared responsibility. There is a process underway, as you are aware, that started well before I was appointed Economic and Business Minister. In the time that I have had to look at it, it really fits quite well with my view about how policy is best made. I happen to believe that we ought to be doing more of what you might call co-production of policy, working with outside groups, trying to build a consensus on the best way forward. My understanding is that is exactly the sort of process that we are trying to follow in this case. I think that that co-production method is a good one and we ought to look to see if there is consensus about how we take things forward. Ultimately, of course, if there is not going to be any agreement, then it will be up to Government to make a decision as an arbiter of where the balance of advantage lies.

Q3 Chairman: Finally on this, as you are aware, it took years for this Committee and others to persuade the Government to include small arms and light weapons in the category of equipment that is subject—

Ian Pearson: Yes, and we have responded.

Q4 Chairman: Minister, you have. I am delighted, as I said at the very beginning, and I always want to praise where praise is due. Do you not think that at

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the end of the day the logic of this is that all the groups on the Military List should be within your new Category B in the export control order?

Ian Pearson: I do not necessarily accept that that is the logic because I think you need to look at whether that would impose a disproportionate burden on industry. As I say, we need to look at evidence of risk; we need to look at proportionality; we need to look at what is workable as well. I think the co-production method that I am talking about, getting stakeholders to discuss this, is the best way if consensus can be reached. If consensus cannot be reached, then, as I have said, it will be for the Government to form a view.

Chairman: Thank you very much. It was worth a try.

Q5 Malcolm Bruce: I am sure all of us will welcome the fact that we have a ceasefire in Gaza and hope to God that that will continue without provocation or response to it from either side. There has been a lot of concern about the conduct and the proportionality of the Israelis forces on what they have and have not done. There are specific points. In the past we have been concerned about the equipment in the cockpits of the F-16s. We had evidence in 2006 from the British Embassy that confirmed that F-16s, to which we had supplied equipment, had been used in incursions to Lebanon and Gaza, which would appear to be in breach of the stated policy. In the conflict that has just finished, the Hermes system which we applied has also been reported to have been used in ways which may or may not contravene international agreements and our own policy. The specific question is: what is being done to assess whether or not the policy has been broken by Israel in terms of our supply, although I would have to say, Minister, I think there is a very strong view of public opinion that the easiest way to resolve this is to stop supplying Israel with anything that could conceivably be used in this way.

Ian Pearson: Firstly, I share your view, and I think it is a very widespread view as well, about the sense of relief that Israel has withdrawn. We hope that negotiations continue and will bring a long and lasting settlement. The first thing that I want to say in response is that, as I am sure you are aware, Israel has for a long time been a very complex and difficult country to deal with from an export licensing perspective. As a government, we have always acknowledged that Israel has a right to defend itself, but at the same time we have been very mindful of concerns about human rights and in particular also regional stability. Our policy on Israel has not changed. All applications are assessed, as the Committee is aware, in the light of all the available information. We will not issue a licence where we have human rights or other concerns under the consolidated criteria. That has been an established policy for us as a government. The extent to which licence applications are refused or approved, which is determined by the circumstances at the time of the application, will of course change over time. That obviously brings particular difficulties. With regards to the recent action by Israel in Gaza, I am advised

that it is not yet completely clear which equipment has been used. Since the introduction of the criteria in 2000, we have issued licences against risks of goods being used aggressively in military operations. Where we have identified a clear risk, we have refused to issue a licence. As you would expect, we will want to take into account the recent conflict when making future licensing decisions and the conduct of the Israeli defence force in our assessment of licensing applications in the future. As part of that process as well we will want to examine exactly what had happened with previous licensing decisions and whether equipment has been used contrary to the consolidated criteria.

Q6 Malcolm Bruce: That was my follow-up point. I will finish with this question. If the British Embassy confirmed that F-16s were used in Gaza in 2006, it seems highly probable in a much more sustained and larger incursion they will be used again. What I am asking is: proactively what are we doing to investigate that? We have also seen a situation where in 2002, 84 licences to Israel were refused; this had fallen to 13 in 2004. The figures show that exports in value have gone up this year. We were told when we protested in the past and others protested by Jack Straw was that the importance of the exports and the UK's trade relationship with the US outweighed concerns against the consolidated criteria. I am putting to you, Minister, that the British public would not find that a very satisfactory justification if we find that these weapons that we have equipped have been deployed in Gaza in this most recent conflict.

Ian Pearson: Firstly, I do not want to go into detail about the way in which we obtain information about how military equipment may or may not have been used, but there are obvious ways in which we can ascertain that information. With regard to licence applications, as the Committee will be aware, the UK has refused a number of licence applications to Israel over the years. On the figures, in 2002 we refused 84 standard individual licences and since then the annual figures have fluctuated between 9 and 26. Israel regularly features in three destinations with the highest numbers of refusals. I think the figure for last year is that 13 SIELs were refused. We will always look at these things on a case-by-case basis, based on the consolidated criteria. There is a point that I want to make that not all of the licences granted for Israel involve exports which will remain there because Israel does actually systems integrate and incorporates a number of British exported goods into larger equipment for onward export to third countries. You will be aware of Israel's role in that way. We will of course continue to monitor the situation in Israel extremely closely. I agree with him in his views about the British people and how people in Britain see this. This is an area where we need to proceed extremely cautiously. If we have information from any source that UK equipment is being misused, then this has to be factored into future decisions when it comes to making licence

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assessments, and indeed will I think probably undoubtedly be raised with the Israeli Government as well.

Q7 Chairman: The question about the F-16 issue was raised. With respect, I think we need to have an answer. Everyone knows that F-16s amongst other weapons of conflict were used in Gaza. We know that in 2002 the Government shifted its policy specifically to allow head-up display units to be exported to the United States to be put in F-16s that could then be exported to Israel. The question that Malcolm is raising is: is there not some sort of conflict between our knowing that is what is going on and the state of government policy that arms exports to Israel only take place when there is no significant risk they will be used in the Occupied Territories? Is there not a fundamental conflict between those two policies?

Ian Pearson: I understand that the decision on head-up display units was taken some time ago. This is a piece of equipment that is put into the F-16 fighter plane. My understanding is that the decisions were taken on that at the time by Ministers looking at the consolidated criteria. I have no doubt that this was a finely-balanced decision at that time.

Q8 Chairman: With respect, the Foreign Secretary at the time said very specifically that the reason was our economic relationship, our defence industry relationship, with the United States. That was the reason given for changing the policy. It does not sound particularly finely-balanced to me. My question was to the Government, and maybe I am not going to get a further answer, and that is no criticism of you, Minister: is there not a fundamental conflict within the stated policy that is supposedly applied in ordinary circumstances, namely that licences are not granted if there is a significant risk that the equipment will be used in the Occupied Territories or aggressively, whereas in the F-16 case we do knowingly export head-up display units for F-16s to be used in Gaza. That is Government policy.

Ian Pearson: I do not accept that there is a fundamental conflict in policy. I do repeat that Israel is a complex country and a difficult one to deal with. Our policy has always been that Israel has a right to defend itself, but we have also always been very mindful about concerns on human rights and regional stability, and we have been particularly concerned with human rights, given the recent conflict in Gaza. These are difficult decisions, as I am sure the Committee is very well aware.

Q9 John Battle: On a point of fact, because I think the focus is on Israel, we need to keep that focus and that means we need to do more particular work. There are calls on the Order Paper in the Early Day Motions listing all the types of weapons sold to Israel. The particular question is: in the whole of 2007 there were 7.5 million recorded exports to Israel, but in the first three months of 2008 there were 19 million, a massive increase. You may reply to me that the evidence shows that this was for radio communications; that may have been radio

communications for use on naval vessels. The whole of that complex system was applied for late in 2007; it was granted early in 2008, so it went through at rapid speed. I would be prepared to put together an argument to say that the military terms in the present conflict would not have been possible without the back-up of that extremely complicated, sensitive equipment that keeps the whole communications systems operational from offshore to cover the whole of a small area. We could put together an argument to say that we created the conditions for conflict by those sales; in other words, unless we are checking much more rigorously and keeping a much closer account of what is going on, we are just making future conflict more possible, not less.

Ian Pearson: I am not sure that I accept the arguments that you put there, John. I think that dramatises the situation. I repeat the fact that we look at any potential export licences to Israel extremely carefully and extremely thoroughly. A great deal of mention has been made of head-up display units. As I think the Committee is aware, no licence applications have been granted for them since 2002. I think that that needs to be borne in mind by the Committee. We will continue to assess the situation when it comes to future licensing decisions. We will want to factor in how the previous export licences for equipment have actually been used in practice. I can assure the Committee that that will be part and parcel of the rigorous assessment process that we will continue to make on these matters. I think the Committee is aware of the basic process about how decisions are reached on this.

Q10 Chairman: Before I forget it, you are saying that no licence has been granted for the export of head-up display units since 2002?

Ian Pearson: Yes, that is my understanding.

Q11 Chairman: Have any been applied for and rejected? Perhaps you could drop us a note on that. That is a relevant question. It is an important point.

Ian Pearson: We would be happy to drop you a note on that.

Q12 Richard Burden: Could I establish on this issue whether or not the trade relationship with the US outweighs the consolidated criteria. You say, Minister, that you do not think there is necessarily a conflict between the UK's trade relationship with the US and the consolidated criteria. It was very specific in 2002. The foreign Secretary then said that the trade relationship outweighed the consolidated criteria. My first question is this. In the light of what has been happening over the last three weeks and arguably for longer than that, which comes first now? Do the consolidated criteria come first or does the trade relationship with the US come first?

Ian Pearson: I am not going to contradict the Foreign Secretary and what the Foreign Secretary said. Richard, you will be very aware of how supply chains work from the fact that you are an expert in the automotive industry and you understand how there are integrated supply chains in the aircraft

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industry as well. I think we need to bear in mind some of that in terms of the practicalities. Government will continue to assess applications on a case-by case basis against the consolidated criteria.

Q13 Richard Burden: Will they be the pre-eminent consideration? That is a matter of policy. They are either going to be the pre-eminent consideration or they are not.

Ian Pearson: Yes, they are. May I read out what the then Foreign Secretary actually said in July 2002? “The Government will continue to assess such applications on a case-by-case basis against the consolidated criteria, while at the same time having regard to, *inter alia*, the following factors: (a) the export control policies and effectiveness of the export control system of the incorporating country; (b) the importance of the UK’s defence and security relationship with the incorporating country;”—and that is the point I think the Committee are making—“(c) the materiality and significance of the UK-origin goods in relation to the goods into which they are to be incorporated, and in relation to any end-use of the finished products which might give rise to concern; (d) the ease with which the UK-origin goods, or significant parts of them, could be removed from the goods into which they are to be incorporated; and (e) the standing of the entity to which the goods are to be exported.” The then Foreign Secretary was very clear that the overriding concern would be that the Government would continue to assess such applications on a case-by-case basis. He gave a number of different criteria. I think it is very clear from what he said that the consolidated criteria are important.

Q14 Mr Crausby: I hear what the Minister says about a case-by-case basis and I completely accept, as many do, that Israel has the right to defend itself. I think the real issue is this. Is not killing hundreds of children outside its borders just a bit beyond defending itself? Can we not get back to the issue that when we look at that point of hundreds of dead children in Gaza as a result of Israel’s actions, we have to think a little bit beyond a case-by-case basis. It is all right being dragged off into the detail of this. It seems to me that the question really should be: should we not have a new, fresh and overall look in the circumstances that we have just experienced? It seems to me that in a conflict of this extent they are pretty well bound to have used almost everything that we have sent to them.

Ian Pearson: I think we are all horrified about the loss of lives and in particular of innocent children in Gaza during the recent conflict that has taken place. That sense of outrage has been expressed clearly in the House and you will have heard the statement made by the Foreign Secretary only very recently on these matters. Of course, given these incredibly distressing recent events, we will need to re-assess the situation when it comes to any future licensing applications for the export of goods to Israel. You would expect us to do that; that is exactly what we will do. We will want to factor in all the information we have available about how possibly previous

equipment has been used. As I say, we do not yet have a clear picture of that, but we will certainly want to factor that sort of information into any future export licensing decision.

Q15 Sir John Stanley: Minister, you said earlier that in your view there has been no change of government policy towards arms for Israel. I must put it to you that that is factually, over a timescale at least going back to the previous Government, simply incorrect. The policy that was followed, made up by the previous Conservative government, and I have first-hand ministerial experience of implementing it, followed by the previous Labour government before that as well, was that arms exports were not made to areas of conflict or potential conflict. That was the policy and it was very carefully adhered to. I put it to you that that policy has changed profoundly, as has been brought out in the questioning so far. It has been changed to allow arms sales to be made to Israel and, contrary to the impression that you might have left with some members of the Committee and possibly to the wider public that head-up display is some sort of minor piece of kit, the head-up display on an F-16 is the key piece of targeting electronics. The F-16 is the key ground attack aircraft used by the Israeli Air Force. I put it to you, Minister, that it is in my view an absolute certainty, though if you wish to deny it that would be most interesting, that British head-up displays were in place in the F-16s that have recently been bombing Gaza and been responsible for the death of over 1300 innocent civilians. Do you deny that British equipment was used in those F-16s?

Ian Pearson: We do not have a complete picture about whether British equipment was used. As far as head-up displays is concerned, my information is that no licence applications have been approved since 2002 for that. Israel does have a right to defend itself, but we do have very great concerns when it comes to human rights issues and also the stability of the region. We have a settled policy when it comes to the consolidated criteria and how we judge on a very rigorous case-by-case basis whether to grant or not export licence applications. Israel is one of the countries where we have most cause for concern and where we refuse a significant number of licence applications. Obviously decisions are taken over a number of years and in some cases licence applications are granted. They will be granted because at that time, following a thorough assessment at an official level and, if there is any disagreement, by ministerial agreement, it is appropriate to do so, given the consolidated criteria and all the concerns that are built into the criteria, of which the Committee are fully aware.

Q16 Sir John Stanley: Minister, I put it to you that the issue of the Government not licensing any more F-16 head-up display units since 2002 is irrelevant to the point I am making. The point I am making is that as a result of the change of policy which the Government made, announced by the then Foreign Secretary Jack Straw, under which head-up displays were licensed, those displays will have been exported

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to Israel; they will have been installed in the Israeli Air Force's F-16s. I ask you, Minister, when you have completed your assessment, if you will provide confirmation to this Committee that the F-16s that were in use over Gaza over the last three weeks that have been responsible for the deaths of 1300 plus innocent Palestinians did incorporate within them British head-up displays?

Ian Pearson: I am happy to see what further information I can make available to the Committee about the use of head-up displays. As I repeat, my advice is that at the moment it is not completely clear what equipment has been used. Clearly, there will be further information available in due course as we and other governments look at these matters. I will happily endeavour to make information available to the Committee. Can I just say, Mr Berry, that this is very clearly an incredibly difficult situation. Certainly the UK Government never wanted to see the action that has taken place in Gaza. We have been resolute in condemning that action and calling for an immediate ceasefire. We will continue to work and do what we can to promote peace and stability in that part of the region.

Q17 Sir John Stanley: Finally, Minister, if it does transpire—and in my own view it is a well nigh certainty—that British head-up displays were in use in the F-16s that have been responsible for the civilian deaths in Gaza, if that transpires to be correct and I believe absolutely certainly that will be shown to be correct, is the Government willing to revert to the previous policy in this area in particular in Israel and the Occupied Territories of no British arms sales into this area?

Ian Pearson: I think the hon. Gentleman with respect is trying to paint a different picture to what happened under previous administrations to that which I understand to be the case. I do not want to go there and make this party political; it is far too serious for that. What I do want to say to the Committee is that we will want to factor in all relevant information when it comes to making future decisions about export licences of equipment that could be used in Israel.

Q18 Mike Gapes: I have two specific questions. Firstly, I received an email from a Dr Wilson in Lichfield, Staffordshire, who says that people in the Lichfield area, concerned about the situation in Gaza, had read in the national press that UAV engines produced in a factory in Shenstone were being used in the drone aircraft deployed over Gaza in the course of bombing missions. Minister, is that correct?

Ian Pearson: My understanding is that we have spoken to this exporter and they have confirmed what we already know from our own database, namely that whilst they do export UAV engines to Israel, the engines are a particular variant which is not used in Israel but is incorporated into UAVs for onward export so they would not have been involved in the current conflict.

Q19 Mike Gapes: That is what you understand. Do you have any information from Gaza or Israel as to whether that is true?

Ian Pearson: I would make the point that Israel has a very significant UAV industry and many of the UAV-related exports to Israel are subject to further work or incorporation there and then re-exported to another country. We believe that we made the sort of normal rigorous checks that we would have done before agreeing to the export licence in this case. Jayne Carpenter may want to add to that.

Ms Carpenter: Our licensing database shows that we have only issued licences for those particular engines for incorporation in Israel and then onward export to a third destination. If the engines had stayed in Israel, then that would be a contravention of the licence condition and that would be an offence. Whilst we cannot categorically confirm that we physically checked that the engines have been incorporated, we have only licensed them for incorporation in Israel and onward export to another destination.

Q20 Mike Gapes: Perhaps you could give us more information, if you have it. That takes me to my second question. On 7 October, our then Clerk wrote to the Foreign and Commonwealth Office on the Quarterly Report on Arms Exports requesting a reply and received a reply from the parliamentary team dated 20 November. The question we asked, and this was in October and the reply came on 20 November, was: We would be grateful for a note on the Israeli naval and land blockade of Gaza and whether the Government is prepared to export arms that can be used to enforce the blockade. The reply said: We would be grateful for further time to formulate a detailed response. We will aim to respond to the Committee by 8 December. We are still waiting; seven weeks after 8 December this Committee has still not received the information that was requested at that time. That information is very pertinent because the upsurge of the conflict began in December. Clearly the blockade and the naval aspects of it are a very important part of what has been happening over the recent weeks. When are we going to get that reply? More importantly, will we have a more prompt response to our request for information about what has been happening during the actual conflict than waiting several weeks or perhaps months before we get that information?

Ian Pearson: Mike, you have made your point. It is up to the Foreign Office to reply. You are Chairman of the Foreign and Commonwealth Office Select Committee. I am sure you are taking it up with them.

Q21 Mike Gapes: Minister, that is not good enough. The Foreign Office does not reply just in and of itself; there are government departments involved. They have to get the information from the Ministry of Defence and from your own department and they need to co-ordinate the response. You know very well that they respond on behalf of the Government collectively, so it is no good trying to pass the buck on to another government department. This is a serious issue.

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Ian Pearson: If I had a chance to finish what I was saying, it is that it is the Foreign Office's responsibility to lead in producing a reply on this. I will personally chase it up with them and see that you get a reply as quickly as possible.

Mike Gapes: We would like a response on the other issue quickly as well, please.

Q22 Linda Gilroy: This is a general point following on from what Mike has just raised. You said in response to the first question on this series of questions that apart from the fact that there were some obvious ways in which you would be proactively monitoring what has been happening in a very distressing conflict of recent times, you were not prepared to share openly with the Committee exactly what the nature of that would be. Clearly we all need a very high level of confidence that that is going to be done on almost a case-by-case audit of every licence that has been issued in recent times under the consolidated criteria. Would you be prepared to share with the Committee more detail of how that will be done on a private basis, if necessary?

Ian Pearson: We always seek to be as open and transparent as we can in providing information, in particular information to the Committee. We do have a number of sources, including intelligence sources, where it might be difficult to actually put that information into the public domain, but we will do as much as we sensibly can to make sure that information is available to the Committee. Certainly I can guarantee that we will look at all the sources at our disposal and make sure that we factor those into licensing decisions and that those licensing decisions remain consistent with the consolidated criteria.

Q23 Richard Burden: Minister, could you clarify something that has been bothering me. The argument you have been advancing is that whilst Israel has the right to self-defence and it would be perfectly acceptable within the consolidated criteria to supply arms equipment for self-defence purposes, on a case-by-case basis you want to be assured that those arms are not being used for internal repression or external aggression. What I do not understand is that if that is the position in relation to Israel, why is it that in relation to the Palestinians there is an arms embargo and that this week the Prime Minister has said that without exception any arms going into Gaza should be intercepted even with the use of the Royal Navy to help with that. Why is it not said in relation to the Palestinians that arms that might be used for self-defence, for example small arms or maybe something to stop a tank coming into Gaza, might be licensed but arms that could involve rockets being fired into Israel would not be licensed? Why the difference? Surely if there is an arms embargo on one side, there should be one on both sides, should there not?

Ian Pearson: The difference, as I understand it, is that there is a UN resolution which has been agreed upon and the UK acts in accordance with supporting UN resolutions. You will be aware of that. It is something that the FCO lead on rather than my department. There is a difference. I

understand how we might have difficulties with this but I do not think anybody is suggesting that the UK Government as a matter of policy should be arming Hamas.

Richard Burden: I am not suggesting that. I am just suggesting that if there is an arms embargo on one side, should there not be an arms embargo on both sides?

Chairman: We have had quite a lot of discussion on this issue. I think the concerns of members of the Committee of all parties have been clearly expressed. The only other thing I would say is that obviously we would appreciate as quick a response as possible to the specific questions that have been asked.

Q24 Mike Gapes: I want to switch the focus to broker registration. Mr Doddrell, in evidence to our Committee, said that the Government was not yet fully convinced at that stage of the benefits of a registration system and that although in principle you are not objecting to it, there is still no proposal for such a register. Why are you not yet convinced, or was that last year and are you now convinced?

Ian Pearson: There are a number of things I want to say on this, and John can obviously speak for himself. The first thing I want to say is that the responses to the consultation document for the 2007 Review of Export Controls were quite mixed—some strongly in favour of a scheme and others opposed or cynical about the value of actually having a register. The second thing I want to do is to make a distinction between a register and a pre-licensing registration system. In practice, we already have a register of traders because we have a comprehensive database and can use it at any time to show who is using trade control licences. We can use this information to direct our awareness-raising or compliance-visiting activity. What we do not have is a pre-licensing registration system under which traders have to be vetted before they can be registered. I have looked at this. At the moment, I am not fully convinced that a pre-licensing registration scheme at this stage would be the right way to go and whether it would justify the additional bureaucratic burdens that would be involved in doing this, particularly in view of some of the other steps we are taking at the moment. I would prefer us to look at how well the initiatives that we are currently pursuing are working, such as clamping down on those who misuse open licences and focusing our awareness activity on traders at work, before considering this further. I am not saying that I would rule it out but at the moment I am not convinced that it is absolutely necessary.

Q25 Mike Gapes: You mentioned bureaucratic burdens. Are these bureaucratic burdens on the Department because you would have to have more people monitoring this or is it business burdens?

Ian Pearson: It would be both but there certainly would be burdens on legitimate businesses that would have to comply with this, and we would have to see whether we think it is proportionate or not to place those additional burdens on them.

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Q26 Mike Gapes: Have you done any assessment of what kind of burdens you are talking about or is this just some unquantified fear which has not really been assessed?

Ian Pearson: John Doddrell might want to say something on that in detail. If you are going to have some sort of pre-licensing registration system, it clearly is going to involve some additional burden on companies. I would really like to see how some of the other measures that we have announced and are taking forward are going to work out before deciding whether it is important.

Mr Doddrell: The difficulty about a register is that it is another hoop which an exporter has to go through before they can apply for a licence. There are detailed questions that need to be worked out about what the registration process involved, what the requirements would be on information to be provided by the trader or the exporter in order to become registered. All of those sorts of things would need to be looked at very carefully. There is a question of how far you draw the register. Is the register to be limited to traders and brokers or is it to be extended to exporters as well? Even if you limit it to traders and brokers, you are not only catching the people who are doing the illicit arms dealing or are verging on the edge of the grey arms market; you are catching a lot of very legitimate businesses with rather big names like potentially Rolls-Royce or British Aerospace who are involved in moving arms equipment around from one country to another. So potentially you are talking about a significant burden here on business. We as a department would need to be absolutely convinced that that was justified before going ahead with the register.

Ian Pearson: Just to labour the point, we do have a *de facto* registration scheme at the moment for companies that have applied for licences.

Q27 Mike Gapes: If you have that, then surely you just need to add some kind of vetting system on to your existing SPIRE system, and that therefore does not put extra burdens necessarily on business; it just requires you to put some more resources up to carry out this necessary process.

Ian Pearson: In effect, we assess every licence application anyway, do we not?

Q28 Mike Gapes: The question is how rigorously?

Ian Pearson: I would maintain that we have a thorough examination of each and every licence application. We should not forget here that in the UK we have one of the best and strictest export control licensing arrangements that would be found anywhere in the world. While it is absolutely right for the Committee to want to probe us and to press us to strengthen it, we should not underestimate the very real strengths of the UK system at the moment. We can hold our heads up high compared with other countries.

Q29 Chairman: Given that the Department has said in the past that it can see clear advantages into such a system, this is still under consideration, is it not?

Ian Pearson: It is under consideration. As I have said, we have not ruled it out but officials would need to convince me that it is a proportionate thing to do and that the advantages of doing it would exceed the disadvantages in terms of the burdens that would be imposed on businesses.

Q30 Chairman: Officials recognised that there is the case here some months ago. They are still looking at it?

Ian Pearson: Yes.

Q31 John Bercow: I listened to Mr Doddrell's response to Mike a moment ago and it did strike me as an absolutely impeccably Sir Humphrey response, if I may say so, and I do not mean that discourteously. It did strike me as a response in which the only words not stated but were implicit were "long grass". I gained the very distinct impression that any such idea was heading for or had already arrived at the long grass. My concern is just for a degree of clarity and specificity. If the situation is that quite frankly you think the whole thing is not worth it, that it is too expensive and it is going to upset business and it is not worth the candle, that may well dissatisfy the Committee but a blunt statement to that effect would at least have the advantage of candour. If the reality is that you want to preserve the fiction that the matter is under review, you are always open to persuasion and you are listening to the arguments, what I really want to know is this, Minister or from Mr Doddrell: is active work on the complexities being undertaken? Is work being done by officials looking at what Mr Doddrell described as the range of operational details that would need to be covered in order to draw a full model of how such a system might work in practice? Is such work going on or not?

Ian Pearson: Yes, it is going on. My understanding is that officials will, at the appropriate time, produce a submission to me and I will take a view as to whether I think it is worthwhile pursuing or, as you say, can it and say that we are not going to do it.

Q32 John Bercow: Therefore at a subsequent meeting if the same question were posed, we would be advised of some more detailed work that had been undertaken and precisely what conclusions could be drawn from it? We would get the impression at that point, would we, that the decision was not in abeyance or relegated to the long grass but distinctive and probably final?

Ian Pearson: Yes, work is going on. As I have indicated, I would like to see how some of the other things that we are doing actually pan out because that would affect our decision as to whether we think that there is a balance of advantage in having a pre-licensing registration scheme or not. If we think that there are other policy instruments that can obviate the need for something like this, then obviously you would expect us to take those into consideration.

Q33 John Bercow: The work currently under way, and I am quoting Mr Doddrell, has been under way since 2007 but it is so immensely onerous and

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burdensome and long term that in 2009 a conclusion has not been reached. Will a conclusion have been reached by this time next year?

Ian Pearson: Possibly.

Q34 John Bercow: I said “long grass”, Minister. It is extremely long grass!

Ian Pearson: Can I explain why I say “possibly”? I do want to ensure that there is sufficient time for us to assess the impact of us putting some small additional resources into this area so that we can clamp down on those who misuse open licences and those sorts of areas will have effect as a policy. You cannot simply say: we will assess this in one month or two months. You need to give it a time period.

Q35 John Bercow: You are in no danger, Minister, of being accused of excessive haste in this.

Ian Pearson: Thank you for that, John, but, as you know, I have always believed in confronting decisions and making them and I will be perfectly prepared to make a decision in this area. Some of these things have a natural timescale in which it is appropriate to make a decision. When it is the appropriate time, I will not shirk it; I will make it.

Chairman: We have had to wait in some other areas for decisions. We prefer the right decision and a little waiting than to have the wrong decision tomorrow morning. Thank you for that.

Q36 John Battle: I am afraid mine is that question: is work going on, and I am tempted to say is real work going on, to quote the Prime Minister, and, rather than just looking at an in-tray, are things moving on? The reason is that as a Committee in our last report we have welcomed the Government’s intention to introduce end-use controls through the EU if possible. I gather that has not proved possible. The Government did suggest that they could be introduced independently in the UK. Could you update us on the EU negotiations? Have they fallen follow now and are you making preparations to introduce a system into the UK? Are you looking at it and are people working on another monitoring system and preparing industry for it? How far has all that shifted?

Ian Pearson: As a Government, we have always taken the view that the best thing to do is to go down the EU route because that ensures there is a level playing field and that we have other countries involved in doing the same thing. We do need to get this right. We have been working on a proposal to extend the scope of the EU military end-use control that was introduced in 2000. Once finalised, this will be put to the Commission and other Member States. John or Jayne may want to say something about how the particular work that we have been doing internally has been taken forward. I would say that getting agreement in Europe is not a simple or straightforward process in many of these areas, but it is our preferred route. We would certainly consider introducing a national control if we were convinced that going down the EU route was very unlikely to be able to produce the sorts of results that we would want to see in the short to medium term, but for the

moment I think our view is that this is still worth engaging on. Jayne will say more about the detail of this.

Ms Carpenter: There are two potential end-use controls that we are pursuing in Europe: one is the military end-use control and the other is the torture end-use control, as you know. The position on each is slightly different. On the torture end-use control, we have actually had some discussions within Europe which have been generally supported. In fact, there was a meeting in Brussels last week where we raised this with other Member States. We have begun the process of trying to get support within Europe. Initial indications are that there is a good deal of support but, as you know, the European process is fairly slow-moving, so we need to let that run for at least some time before we take a decision as to whether to consider an alternative. On the military end-use control, again we are pursuing that in Europe but we are less far forward with the specific proposal on that than we are with the torture end-use control. That is really because in looking at the ways in which we might propose enhancing the military end-use control, it has become evident that there is quite a lot of complexity in terms of the sorts of goods that we would need to cover, the sorts of destinations that we would need to cover and the sorts of end-use we would need to cover. Broadly speaking, what we are proposing to do is to put forward a proposal which builds on the current military end-use control by including whole pieces of equipment, whereas the current military end-use control only covers components and production equipment for military items. That would, for example, enable us to catch whole vehicles, which would not otherwise be controlled. The current control does not cover police and paramilitary use or use by security forces, so we would be seeking to extend its coverage to those end-users as well. We are also looking at the possibility of extending the use of end-use control beyond embargoed countries to which it is limited at the moment.²⁰¹ That is, very broadly speaking, the sort of proposal we are looking at.

Ian Pearson: May I add one point to this in that I think there has been a significant amount of focus on this since the issue arose of Land Rovers that were then militarised and exported from Turkey to Uzbekistan. We are all familiar with that. I was asking officials if they could tell us about other instances that we need to be aware of. In general, I believe that we ought to be looking at where the problem is and how do we provide a solution, rather than providing theoretical solutions to problems we are not sure exist. I have agreed to give the Committee information. If the Committee has information about where it thinks that there are particular problem areas, I think that would be very helpful to us because we are not aware, as far as I understand it, of significant problems that have been raised since that episode. We would welcome any information that is available, whether it is from the Committee directly or from others who hear our proceedings.

¹ *Clarification from witness:* This statement refers to the military end-use control.

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Q37 John Battle: Just to follow that through, we were promised information on Europe, for example, which we now have, by the end of 2008. I think the information you have given is helpful and it creates a little bit of a sense of a conversation of things moving on a bit. I appreciate the difficulties involved in Europe but we need the updates; we need a better feed-back to create a sense of dynamism in the whole thing. As a last point, you mentioned the military, you mentioned torture, but there was also going to be a report back to us on end-use controls of non-military goods. You were going to have a consultation on it and report back to the Committee before the end of the year and again suggest a system for those as well. I know there is consultation in progress. How is that going?

Jane Carpenter: What we are proposing under the military end-use control would actually cover non-military goods i.e. goods not on the military list or dual-use list.

Q38 Mr Bailey: Could we cover the issue of re-exports. Basically the position in this Committee, as you know, has been in favour of such restrictions. I think it is fair to describe the attitude of the ministers and former ministers as being that they have genuflected in the direction of that but will not make a decision to alter current policy. The former foreign secretary said that it might have been desirable and another minister said, "I am seriously thinking about the practicalities of this," but it has not happened. What are the legal or practical difficulties that have prevented them from taking this decision? Why are those practical or legal difficulties not relevant to the other 11 EU countries that to a greater or lesser degree do have restrictions on re-exports?

Ian Pearson: First let me say something in terms of the Government's view and then address directly the problems that you raise in terms of answering the question what are the legal difficulties. The Government's view has always tended to be that any risks posed by a country of ultimate disposal or end user will be factored into our risk assessment under the licence application. We have not necessarily believed that we need specific re-export clauses because we can and do, in fact, refuse applications because of concerns about re-export. Our view has always been as a government that the introduction of a no re-export clause on licences is not necessary or feasible and would be onerous to operate and virtually impossible to enforce. The comments that you quote from some government ministers reflect that there is I think a commonsense view that this would be a desirable thing to do but in practice there are some very serious practical legal barriers. You mentioned a number of countries that do have a no re-export clause. I would say in response that I would be interested to see any assessment about how legally effective they think they are and how operationally useful they think they are as policy instruments compared with the sort of policies that we have at the moment. Our view is that the key difficulty in including a no re-export clause as a licence condition is determining, first, to whom it

would apply and, second, against whom any action would be taken. If it is to the exporter, then it would be wholly exporters responsible for events outside their control. If it was to the overseas customer, then the obligation would be unenforceable as it would be beyond the UK's legal jurisdiction. Both those instances present really quite difficult obstacles to having an enforceable clause. If the Committee thinks those difficulties could be overcome, we would be interested to hear the practical ways in which they think it would be possible to do so.

Q39 Mr Bailey: I accept that it would be quite an interesting exercise to see how, if you like, this process works with other countries, but I do not want to be sidetracked down that particular path. As of this moment it might be interesting to know, given the fact that you have said these issues are factored into the granting of an export licence, what monitoring is done to ensure that once that export licence has been granted there has not been, if you like, re-export of the items in question. Can you give any sort of figures or at least outline what process is carried out to ensure that this does not happen?

Ian Pearson: On the first point, we do pay particular attention to some countries where we have strong concerns of the possibility of re-export. Indonesia might be one example we would cite as a country where if we were to export goods to a company in that country we would have concerns.² That is why, where we have those sorts of heightened concerns, we have to factor them very closely into account in terms of the decisions that we take. We will also use the information that we have available on the nature of the company and the past practices of the company in question to which export is being made, and, I repeat, we can and do refuse applications because of concerns about export. On the second point in terms of monitoring previous decisions, perhaps I could ask Jayne or John to say something about the detail.

Ms Carpenter: Before the licence is issued, it is part of the assessment process to ask UK diplomatic posts overseas to comment on the applications. That can include asking them to check the accuracy of the information in the application, looking at the documentation, and physically going to see where the end-user entity is and what sort of operation they have set up. All those checks are already done as part of the assessment process. The use of military equipment overseas in destinations of concern is also monitored by UK diplomatic posts, so people from the embassy keep an eye on the equipment that is being supplied from the UK and how it is being used in that destination and they report back to the FCO on that. We also take account of a variety of different reporting mechanisms on end use which include NGOs, human rights organisation reports, media reporting, intelligence reports. Posts overseas have standing instructions to report to us or to the FCO any misuse of UK-supplied equipment, so there is a certain amount of end-user monitoring being done. Given that we issue 10,000 or 12,000 licences a year,

² *Note from witness:* This statement should refer to Malaysia rather than Indonesia.

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there is a limit in practical terms to the extent to which we can monitor the end use of every exported item, but there is some end-use monitoring already being done.

Q40 Mr Bailey: In effect, it is very difficult to have a totally comprehensive monitoring process.

Ian Pearson: It is not necessarily very difficult but it would be hugely expensive and, again, I think you would want to look at the proportionality of doing that.

Q41 Mr Bailey: Have you in recent years revised your policy towards either a company exporting or a country as a destination for these exports?

Mr Doddrell: Yes, we have.

Q42 Mr Bailey: That would imply at least that it had been got wrong, to put it crudely, in a previous assessment.

Mr Doddrell: I will try not to sound like Sir Humphrey this time. Not necessarily. Situations change over time and we continuously update and revise our policy towards particular exports to reflect the circumstances of the time.

Q43 Chairman: Would it be possible to let the Committee have a note of some examples here. If for whatever reason you are absolutely convinced it needs to be strictly confidential, of course we can deal with that. We do that all the time. A note of some examples on this would be quite useful.

Ian Pearson: One of the key things to point out as well is that when we are assessing export applications, we will look at the destination and the export licensing regime of the country to which the goods are going to be exported and, also, that country's record on a range of issues from human rights to meeting international obligations as well. There are some countries obviously about which we would not have any strong concerns.

Q44 Chairman: Of course, but it is a question about changes in policy. The quarterly data and the annual reports are a snapshot of where we are at some point in time. This question raises a very interesting point about shifts in policy as a result of experience. I dare say there is some limitation for what can and cannot be said in public about examples, but, either way, I know colleagues would be interested in a few examples and perhaps a brief note might help on that.

Mr Doddrell: I am very happy to provide that. I am thinking particularly of diversionary destinations, where, as we close off one diversionary route, countries find another way of getting what they want. This is an example of the sort of thing I am referring to and I would be very happy for the minister to write to you on that.

Ian Pearson: As an alternative, if you would like it on an informal basis, it is my understanding that it has been round about 18 months since the Committee visited the Export Control Organisation,

and if you wanted to have a further visit and a session where these issues could be discussed, I would be happy to arrange that.

Chairman: We would appreciate that. Perhaps the note could be done and we could then think about fitting a visit into our programme—which we would be keen to do.

Q45 Sir John Stanley: Minister, I hope we can agree at least on this: do you agree that if a British arms exporting company was able to establish licensed production for a particular arms reference overseas and from that licensed production facility overseas was able to export arms to destinations that would not be approved of if they had been exported from the UK that would represent a serious breach of arms control policy?

Ian Pearson: I certainly agree with you that this is an important area. The extent to which we could or should control licence production overseas, as you know, featured very strongly in the 2007 review, and in the Government's response we concluded that there was not a convincing case for enhancing controls on the export of controlled goods specifically in relation to licensed production. There is a stronger case for enhancing controls on the export of non-controlled goods and the cases of overseas production where issues have arisen have all related to goods for military end use, which were not controlled when exported from the UK, in embargoed or other destinations of concern. This is an area where you will appreciate there are some practical difficulties. To attempt to directly control the activities of overseas concerns and, in effect, treat them as if they were based in the United Kingdom is not legally viable and would be impossible to enforce under international law. There are some very real practical limitations here but within the limitations that do exist clearly we want to make sure that our export controls policy is followed.

Q46 Sir John Stanley: I myself cannot accept that the difficulties to which you are referring are in any way insurmountable or, indeed, in any way necessarily unprecedented. The Committee's recommendation was quite clear, that the Government make export licences for suppliers with licensed production facilities or subsidiaries subject to a condition in the export contract preventing re-export to a destination subject to UN or EU embargo. That is a recommendation which is perfectly enforceable as a condition of the Government granting the licence for production overseas. It stipulates that that particular contract has to be coupled with an undertaking from the recipient of the licence that they will not export from the licensed facility overseas items to an area which is subject to a UN or EU embargo. There is nothing difficult contractually about making that a condition of the granting of a licence.

Ian Pearson: I think there is a difference between the extraterritorial controls that we have over UK citizens and seeking to have extraterritorial controls over companies. We have discussed the military end-use control and our priority is to take that forward as

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an issue. With regard specifically to the Committee's recommendation, we are still considering whether including conditions relating to contracts on the licence would add anything to the military end-use control. I have to say that our current view is that it would potentially add significant extra burdens without providing real additional control. The finished goods, you have to remember, would still be outside the UK's control. I have to say that I do think there are some practical international law difficulties here that we need to recognise, while not disagreeing with you about the practical purpose of what we are trying to achieve here.

Q47 Sir John Stanley: Minister, perhaps you need to take some further legal advice. We are talking here solely about UK domicile businesses. The proposition is a very simple one: if it is a UK-domiciled business, just as the Government was announcing yesterday, the Government is perfectly able to make a particular agreement with a UK-domiciled business subject to particular conditions. We are asking that you make the granting of a licence to such companies who have licensed production overseas subject to your particular requirements about output not going to countries that have a UN or EU embargo. There is nothing legally difficult about it at all. I have to say that the answer you are giving, with the greatest of respect, sounds to me like pure bureaucratic mumbo-jumbo.

Ian Pearson: I disagree with that entirely. Let me have another go and then I will let John say something from his perspective. If you are talking about UK-domiciled businesses that have a licensing agreement in a foreign country, then there is the potential under UK law to be able to stipulate some requirements that need to take place. But I have to point out as well that the business that is operating in the third country will be subject to that country's laws. The legal and ownership structure rules would be quite easy to circumvent in many respects. I just have to say that I think there are some practical, legal, company law difficulties in terms of trying to apply UK company law to companies in other territories.

Mr Doddrell: The only point I would like to add to that, if I may, is that we should not underestimate the extent of the controls that we currently have. If a company wishes to set up a production facility in a country overseas to make particular goods, weapons say, they would need to export technology to that country, they would probably need to export equipment for the manufacture in that country, all of which would be controlled under the licensing arrangements as they stand. If we have any reason to believe that that production facility overseas would be used to supply countries where we would not want the goods to go, then we would refuse the licence for the transfer of the technology.

Sir John Stanley: With respect, it is not a question of refusing a licence; the issue is once the licence has been granted. The Committee is saying that it is a condition of the grant of a licence. The Government includes in the conditions the power to revoke the

licence—which is the key point: to revoke the licence—if there is transit of goods from the licensed production facilities to countries that are subject to an EU or UN embargo destination. It is very simple. The key lever that the Government has is to build into the original conditions pertaining to the licence the ability to revoke the licence if that particular requirement is not met.

Q48 Chairman: We seem to be getting: “Yes, we can,” “No, we can't”. Sir John has made an argument, a very clear one I think, that he can see no legal impediment to doing this. Could you perhaps write to us, Minister, explaining what your advice is on what is wrong with that argument?

Ian Pearson: Following on from what Sir John has said—and I appreciate the strength of feeling about this issue but also the argument that he makes—let me take it away and look at it again.

Q49 Chairman: Thank you very much. Minister, your predecessor told us that any changes arising from the review of export controls would be implemented by April this year. Is that still the case?

Ian Pearson: Yes, my understanding is that that still is the case. We are on track to do that.

Q50 Chairman: Thank you for your letter, by the way, but we will not go there.

Ian Pearson: I am sorry if there was some feeling that we did not give as much time as possible to matters.

Chairman: Yes. We will go on to dual use.

Q51 Malcolm Bruce: It has obviously been of concern to the Committee the extent to which we can ensure that both the licence system and the potential exporters are really connecting on the potential for abuse of products which could be converted. That is well rehearsed. You have set up a working group to consider the EU Council Regulation and the Government's position has been that you did not think it would require domestic UK regulation. What is the current state of that review? If it has finished, as we are told it has, are you of the view that it could be incorporated simply in the EU and that it does not require legislation?

Ian Pearson: Dual use is certainly an area where there is EU regulation under the EU dual-use regulation. You are right to say there has been a Council Working Group review. I think there was some hope that during the French Presidency it would come to conclusions, but that has not been possible. On the Council Working Group, as I understand it, the latest information is that you will need to consider a Commission proposal of 5 January this year. The Commission propose introducing licences to a range of destinations for low value shipments, export after repair or replacement, temporary export for exhibition, computers, chemicals, telecoms and information security. The Working Group will also need to consider its input into the new lines for action by the European Union in combating the proliferation of weapons of mass destruction and their delivery

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systems which was endorsed by the Council on 8/9 December. There is still some more work for the Council Working Group to do and we are playing our full part in that.

Ms Carpenter: As to the question of the need for UK legislation, the dual-use regulation has direct effect in Member States and so it is not necessary to enact legislation on top.

Q52 Malcolm Bruce: In terms of the desire to ensure that we do not have embarrassments such as we have had in the past, are you satisfied that the regulations will be clear enough and give the necessary guidance to UK exporters? Are you also satisfied that our own domestic arrangements will be able to use it effectively?

Ian Pearson: We want to continue to play a leading role in the discussions to ensure there are improvements to the dual-use regulations. Obviously they are still being discussed at the moment, so we do not know what the outcome is likely to be, but I can certainly assure the Committee that the UK will play an active part in those discussions.

Q53 Malcolm Bruce: Presumably it remains an obligation on Member States once these regulations are in place to provide effective means of communication.

Ian Pearson: Yes.

Q54 Malcolm Bruce: We have had deliberate abuse, but I think that has been so well publicised that it is not likely to happen again, but it is the inadvertent, naïve, middle-ranking supplier who gets caught up in it and does not quite know. I want to ensure that this regulation and this process has reduced the risk of that happening and is an effective means of ensuring that it does not happen.

Ian Pearson: I agree with you that those are sensible objectives and those are the sorts of things that we would like to see as outcomes, because we want to see a proportionate dual-use regulation that is fit for purpose and that we agree on.

Q55 Chairman: We had a bit of difficulty, as you know, in terms of understanding what was happening in relation to the average time for dealing with SIEL applications and arising from the fact that collectively the department was using the word “average” to mean two different things—and I am tempted to slip in a third, the mode, as well as the median and the mean. Because one answer to a parliamentary question gave the mean figure and the other data we had was the median figure, it looked like things were getting worse. I am happy to accept totally that the figures are not in terms of the time for dealing with these applications, but it would be a good idea if people stopped using the word “average” and just said whether it was the mean or the median, or, indeed, the mode—a slightly techy comment, but GCSE stats and all that!

Ian Pearson: I think we have clarified any misunderstanding between ourselves.

Q56 Chairman: Yes, but we have a script for interrogating you on this point.

Ian Pearson: We will try to make sure that we are very clear and precise in terms of our use of language in the future.

Q57 Chairman: Thank you. In terms of the searchable database, is that still on course?

Ian Pearson: Yes, it is.

Q58 Chairman: I think we are going to have a briefing on it.

Ian Pearson: Yes. It is on course. In response to the Committee I can say today that we have accepted its recommendation and we will be taking it forward. We hope that the database will be available for public use later this year. We have not yet settled on some of the detailed issues.

Q59 Chairman: Do we know what is meant by the end of this year?

Ian Pearson: Certainly sometime in 2009.

Q60 Chairman: That will also go down as a “Bercow comment”.

Ian Pearson: I am told that we are aiming for April, so that is going to be pretty quick, but obviously we wanted to seek to consult with people to make sure that it is helpful in terms of those who want to use it as well.

Q61 Chairman: Thank you. My final question is that the Committee have on a number of occasions suggested that the Government carry out some research on the effectiveness of the export control system, purely as good practice. The last time we suggested this, the Government’s response to the Committee was that the Government was still considering commissioning a study but was basically looking into that. Is that still under consideration? Are there any terms of reference? Where are we now?

Ian Pearson: Yes, it is under consideration. I would like to see it happen. I have discussed it with officials in the run-up to appearing before you today and I think there is a good case that this is an acceptable use of public funds. There are some figures that get bandied about at the moment in terms of non compliance which worry me, because I do not think that they reflect the reality. On specific facts and figures, because I think it might be helpful to the Committee, Her Majesty’s Revenue and Customs regularly retain dual-use goods at the frontier to establish whether the necessary licences are in place, and in 2007, on the figures I have, HMRC detained goods at port on 969 occasions. On 88% of these occasions goods were found not to require a licence at all, but of those that did require a licence only 25% or 3% of the overall total required a dual-use licence. These figures suggest a much smaller problem than some of the figures that have been bandied around previously. When it comes to the specific point, I do think that it would be a sensible use of public money

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to have a study that looked at non compliance in the dual-use sector. Whether the Committee were thinking about a wider study I do not know, but specifically with regard to the dual-use sector I think this is an area where we should be commissioning some research.

Q62 Chairman: Thank you very much indeed, Minister. I would like to thank you, Mr Doddrell and Ms Carpenter for coming to our Committee. We have raised a number of questions and there will be other questions no doubt that we will wish to write to you about. Particularly on the earlier discussion, you will appreciate the concerns that the Committee

has about the Government's policy in that area and so any response on those issues as quickly as possible would be very much appreciated.

Ian Pearson: We will certainly endeavour to do all that we have said we will do during this Committee Stage. Thank you, as always, for the courteous way in which you have probed me and my officials in this area. As I say, just as a parting comment, I do believe that we have one of the best export control regimes to be found anywhere in the world. That is not to say that it cannot be improved. I think through scrutiny these things can be improved, and we appreciate the work of this Committee and its predecessor the Quadripartite Committee in helping us do just that.

Chairman: Thank you.

Wednesday 11 March 2009

Members present:

Roger Berry, in the Chair

John Battle
John Bercow
Mr David S Borrow
Malcolm Bruce
Mr Michael Clapham

Mike Gapes
Mr Fabian Hamilton
Mr Adam Holloway
Sir John Stanley

Witnesses: **Mr Oliver Sprague**, Amnesty UK, **Ms Marilyn Croser**, Oxfam GB, and **Mr Roy Isbister**, Saferworld, gave evidence.

Chairman: Good morning. Before I ask our witnesses to introduce themselves for the record, I will ask a new member of the Committee, Adam Holloway, to declare any relevant interests.

Mr Holloway: As a reporter on *News at Ten* I worked in the so-called Investigative Unit and did a number of pieces which included working with or getting stuff from independent, London-based arms dealers and also dealing with the anti arms trade campaigners, Omega, in Manchester. Also, I plan at some point to do an interview for the Parliament Trust Fellowship with BAE Systems in order to learn about UAVs.

Q63 Chairman: Thank you very much indeed. Roy, would you like to introduce yourselves and your colleagues for the record, please?

Mr Isbister: Sure. I am Roy Isbister from Saferworld. I am joined by Marilyn Croser from Oxfam GB and Oliver Sprague from Amnesty UK.

Q64 Chairman: Welcome and thank you for your written submission to the Committee. Adam has mentioned UAVs. Perhaps I could start with an issue that arose in our last evidence session with the Minister, and it was an issue to which you referred in your submission, about whether unmanned aerial vehicles (UAVs) operated by the Israeli Defence Force contain engines manufactured in the UK. Can we try to bottom this one out. In your submission you say, "In January 2009, evidence was published suggesting that UAVs (piloted drones) operated by the Israeli Defence Forces and manufactured by Israeli company Elbit Systems may contain engines manufactured in the UK." You went on to say, "UAV Engines (UEL) based in Lichfield has stated that it manufactures the engines for Hermes 450 UAVs produced by its parent company, Elbit Systems of Israel." In the letter we received from Ian Pearson, the Economics and Business Minister, dated 19 February, he made two comments. First, he confirmed that export licences have only been granted on the UK company mentioned to supply UAV Engines to Israel for incorporation into complete UAVs which were then re-exported to other countries, and he went on to say, "The UK exporter has advised us that Elbit, its parent company, the Israeli defence manufacturer, attached prestige to the engines supplied from the UK and for those reasons the term UEL has become a

designator of a type of engine rather than an indicator that it was UK manufactured. It is therefore possible that engines used by the Israeli armed forces would be referred to as UEL even though they would have been made in Israel itself." My question is—forgive me for the long background but it is to clarify this, given your submission—Do you accept that the Government is right to say there is some confusion over terminology here in relation to what is a UEL engine? Given that, do you believe there is any evidence that UK manufactured engines were supplied to Elbit for use in UAVs in the occupied territories?

Mr Sprague: I will start off with that because the case is most closely associated with us, Amnesty. I think it is important to say, first, that we have never said that we have categorical proof that UK engines or parts or components from UK sources are in UAVs operated by the Israeli Defence Forces. We have pointed to established, we would say credible, sources suggesting that the engines used in these drones, even from the company themselves, are of UK origin. For us, the onus now is on the UK Government to ascertain the origin of engines, components, and all technology in the UAVs operated by Israel, because the credible sources suggest there may well be the UK connection. I can go on to all the reasons why that might be. There still is no other listed engine supplier for the Hermes 450, the particular variant of the UAV. The engine itself is a specialised Wankel-designed rotary engine. I have heard comments that there are a significant number of manufacturers of UAV engines that could be used in drones. Whilst that is true, and I am not the fount of all wisdom on UAVs, it would appear that the engine manufacturers of this particular variant, the specific rotary engines listed as UEL engines, are made by a very small handful of companies. I think I could find eight companies, none of which are based in Israel, and there is no public record citing source of any other manufacturer. Of course it is entirely possible that we are talking about transfers, and it is a supplementary point to our evidence submission that examples may well go back a long time in history. The Israeli Defence Force first acquired the Hermes 450 in 1997 and it was at that time that the experts from Jane's Defence reported the first-reported use of UEL type engines, so it is entirely possible that the original batch of engines may well have been exported more than ten years

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ago and they may well have been exported by the previous administration, for example. The question is now, therefore, not just about whether or not whole engines have been supplied by this Government but have UK engines at any stage in the development of the Hermes 450 been supplied and have we supplied any follow-up components, parts, spares or technology since then? I looked through the UK companies' annual reports prior to coming here and in both 1997 and 1999 they made technology transfers for know-how and related technology for their engine designs: one of £200,000 to the Israeli parent company who owns the engine supplier and, in 1999, a further £376,000 to an unspecified supplier. That does give some indication that technology has been supplied for these engines, which raises the possibility that they could be manufactured in other countries, which would obviously raise concerns around licensed production issues or technology transfer issues.

Q65 Sir John Stanley: I would like to ask each of you to respond to this question, if you would. It has been the policy of successive British governments that there should be no approval of military exports from this country of offensive weapons—and I stress “offensive” not defensive—into areas of conflict or potential conflict. The question I would like to ask each of you: Do you consider against that criterion that there are any breaches of that policy that have been taking place in respect of any particular weapon or weapon component to any particular country?¹

Mr Isbister: Any particular country? It is quite difficult to think about such a general question and then think about specific instances. I certainly would say that we have concerns on “balance of risk” questions; that is, the Government is making its decision not on the basis of certainty but on the basis of risk. Regarding the consolidated criteria, there will be occasions where on the balance of risk, on imperfect information/less information than the Government has, I may well have come to a different decision.

Q66 Sir John Stanley: That is all very generalised. I am asking each of you whether you wish to cite any particular weapon or weapon component which you consider the Government is approving of an offensive nature that is going to a country which is either in conflict or is in an area of potential conflict.

Mr Sprague: I would go back to what Roy said that this is a risk-based system. We are not the end-use monitoring agency. It is very difficult for us, especially when we are talking about component parts. The drone example is a classic example. The answer to the question lies in the drones operated by the IDF, all we can do is point to a reasonable risk and evidence to suggest that somebody needs to check the origin of the engines. In the Israeli example, because it is current and topical—the Committee has raised it, we have raised it in the past—the decision to change the incorporation

guidelines in 2002 did allow, specifically stated, components for offensive weaponry—not just the F16s, but the same rules probably apply to things like Apache helicopter—there probably are other technologies that have been licensed using a similar policy—to go to Israel.

Q67 Member of the Committees: Via the United States?²

Mr Sprague: Yes. We have not found the UK component in equipment used in Israel because that is something we cannot know. Just as a matter of interest, Amnesty has just done an assessment mission in Gaza. We went to view some of the damage from the military shelling and bombing. We did look at components that were in wreckage from things like the hellfire missiles on the ground that had been used in indiscriminate attacks. Whilst there is not a UK connection, it does show the international connection. Whilst this is an American missile system, one of the electronic components had a “Made in France” insignia on it, so one of the components for hellfire missiles used in indiscriminate attacks in Gaza had come from France. The possibility—and I say possibility—exists, because UK manufacturers are also involved in similar kinds of transactions via the United States, for that to have happened. There are also numerous examples that we have cited in evidence, that the Committee has raised itself, going back through history. I could cite Indonesia, for example, and military vehicles. We might well come onto this but there are issues around the re-export from licensed production facilities. All of these issues would lead us to believe that there are some instances where UK policy has directly contributed to violations.

Mr Isbister: I suppose there is more than that as well. We had issues a number of years ago with some of the decisions that would be taken on the promotion of sales of equipment into India at a time, I would say, of heightened risk of conflict—conflict did not break out but, again, we are talking about the basis of risk and the possibility of conflict. There is also some of the supply of equipment into Iraq, and that is obviously complicated because it is a conflict that involves the UK but there is a concern over the end use of equipment that is going into conflict situations where there are doubts about the quality of end-use control—where equipment may find its way into the hands of those who are not the intended recipients.

Ms Croser: I do not really have a great deal to add to what has already been said.

Q68 Malcolm Bruce: You have kind of identified the problem. This Committee was obviously very unhappy about suggestions that British equipment might have been used in the recent conflict. The question really is would an arms embargo solve that problem. Your difficulty in answering these questions gets to the heart of that. Do you have a

² This question was asked by one of the Members of the Committees on Arms Export Controls but on the uncorrected transcript was incorrectly attributed to one of the witnesses. It is not possible to identify the questioner from the sound and video recordings.

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view as to whether there should be a UK arms embargo towards Israel and, if so, how it might operate? In that context, the Palestinian human rights group Al-Haq is looking for a judicial review, effectively arguing that the Government has an obligation not to assist Israel in doing that kind of thing. It is under judicial review and you cannot determine that, but do you think they are justified in making that call?

Mr Sprague: There are two parts to that question. First, Amnesty International is on public record as calling for an international arms embargo on all sides of the current conflict, given the tremendous devastation that has been unfolding in Gaza. Also, we need to factor in the 18-month blockades that have been going on and the use of naval equipment, for example, in that blockade, basically collectively punishing up to 1.5 million Palestinian civilians. The situation in Gaza is very serious. There are credible reports of very serious violations of international human rights and humanitarian law and indiscriminate attacks on civilians. In those circumstances, we feel it is wholly appropriate for the international community to place an embargo on all sides.

Q69 Malcolm Bruce: I personally have no difficulty with that, but our concern is with the UK Government's policy and the extent to which a UK arms embargo is going to make a difference or whether it would, perhaps alternatively, be an indicator that might apply pressure to the international community.

Mr Sprague: Obviously that is true. Any government signal of that nature has a political and diplomatic lever and would hopefully cause the various protagonists in the conflict to think differently about how it might conduct its operations. Israel does have its own defence industry. We know that: it is an established industry, it does make its own munitions. But our evidence also suggests that it is very reliant on a whole range of international suppliers, including some EU governments, for its military equipment, and therefore it seems reasonable that those suppliers should seek to put very tight restrictions in the current circumstances. Just to go back to your point about the judicial view, it is something on which we cannot specifically comment because it is not our judicial review, but on the general point of whether or not government policy should be scrutinised through the courts on legal challenges, of course we wholly support that. Any system needs to be tested. On that particular issue, I would like maybe for the focus to be on specific types of equipment, where there is risk that they have been used. Because of the way that the annual reports present information on end users and because we do know that a significant number of licenses are not licensed for use by the Israeli military, I think it might be a mistake to assume that every single licence issued over a specific period would automatically facilitate human rights violations. It would be better maybe to focus on specific examples; for example, the incorporation licences, and look at head-up displays, look at

specific weapon systems that we know have been used (the Apache, the F16) and look at the licensing decisions around those, and maybe the drones as well. There still is a case to answer for the origins of engine components and the technology for the drones.

Mr Isbister: The impact of a unilateral UK embargo is clearly limited. We know, as Ollie said, that Israel is one of Israel's main suppliers and the other is the US, so the practical impact of a UK decision is clearly limited but it has a symbolic value and it has the value of example as well.

Q70 Mr Holloway: I have just been in Gaza and I am under no illusions about the incubator of mass radicalisation that has been created there, but our troops are in conflict too and the whole UAV sector is racing ahead and the Israelis are at the front of it. Is there not a real point about us needing them in order to protect our own troops?

Mr Sprague: That is a valid point but it is something that Amnesty I think would be unwilling to comment about because, essentially, we are a humanitarian organisation dealing with human rights violations and for us the absolute bottom line on these things is that you should not licence any equipment where there is a reasonable risk that that equipment will be used in the commission of a human rights violations. That, in our view, is a fundamental golden rule that cuts across export controls, and other considerations cannot break that fundamental golden rule.

Q71 Mr Holloway: Therefore there is a limitation to your view.

Mr Sprague: In what respect?

Q72 Mr Holloway: You are not looking at the complete picture, you are looking at it from a very specific angle.

Mr Sprague: It is beyond our mandate to talk about industrial defence considerations which I understand that others would say would be important, yes.

Q73 John Bercow: Is it realistic to think that the Government will ever be able fully to regulate non controlled goods on a military end-use basis outside of this, given the variety of items that this will cover and the ingenuity of those who would seek to avoid controls?

Mr Sprague: The Government is now on record of working to enhance military end use. It has perceived there to be a need, which we fully support, to try to enhance controls in this area. The controls are not the magic solution, so they are never going to control all situations where a variety of components or other civilian items may be used. It is like the arguments around the torture end-use control. It does allow control to be applied when evidence comes to light that such things are being used. At the moment it is simply not possible to do that, outside the fairly limited scope of the current dual-use controls, the military end-use catch-all clause that specifies that the goods have to go into a military

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system in an embargo destination. We fully support the Government's view that there is a case to be made to extending that beyond embargo destinations to sensitive destinations and, also, to introduce an end-user provision that is not just about listed military equipment. It is also about unlisted military equipment. The classic example here is utility vehicles that have been used in the commission of human rights violations and other violations in a number of different countries. I guess our supplementary point here is that we are concerned that that process will not involve the component parts and we might be in danger of creating a control that does not address the main example that was brought to light about why these things are important. Would the proposals cover the export of assembly kits of vehicles which will be assembled in what is essentially a NATO country? That is a question for the Government to answer. The other supplementary point I would like to add is that we had these discussions in 2007, and we are now in 2009, and I think these are really, really important discussions for how we view export controls because, like the torture end-use control, they change the emphasis onto the use of equipment rather than just a technical specification of equipment and it is the use that we should be really, really concerned with. There are very difficult discussions currently ongoing within the ATT process—we will probably come on to that later—about what types of equipment should be covered. The issue of military end use is pretty important in the discussion around dual-use goods and whether to include dual-use goods. It is going to be extremely difficult and slow to get agreement on this within the EU Dual-Use Regulation, and we have not even started that yet, so I would urge a sense of speed from the Government to start introducing this at the EU level and, if possible, get something at the UK level first.

Q74 John Bercow: In the light of what you have just said, which implies perhaps a degree of frustration at the snail's pace of progress—my language, admittedly, not yours—do you have any indication that the Government is planning any action, even if it has not got around to the action itself. Is it planning any action in the EU to initiate discussions on military end-use control?

Mr Sprague: It is a question you would have to ask colleagues in government. I do not know if Roy knows any better, but my impression is that discussions have not yet happened at an EU level, either via the Council of Ministers, the COARM grouping, or within the dual-use working group.

Q75 John Bercow: That is quite an interesting, though arguably disturbing, reply, because if you had read the report of the last meeting of this Committee, which you may very well, for all I know, have done, you will see that there was one particular substance that featured in the minutes and that was grass, and in particular long grass, in relation to a particular subject about which we were quizzing ministers. You, of course, have all the notable

courtesy for which most of our witnesses are renowned, but I have a hunch that you are fearful that this subject might be headed in a similar direction.

Mr Isbister: Yes, long grass features in my thinking of it as well. I get no sense of urgency—I will use similar language. Also, the Dual-Use Regulation is under review at the moment to bring it into line with the UN Security Council Resolution 1540. The timing is unfortunate in that the Government has announced that it is willing to look at this just after quite a lot of work has been done on the Dual-Use Regulation already. The line we get is that it is very difficult to do this now because you are going to revisit something which has only just been worked on. It feels like there is very little urgency at the moment. The Government have said, if I recall correctly, that if there was no progress at the EU they would look at doing this at the UK level, so if they believe there is no likelihood of progress at the EU level then it is perhaps time they did move unilaterally.

Q76 John Bercow: Could I be clear, because I am just a humble lay person—or at any rate a lay person who ought to be humble—if we are talking about improvised explosive devices, our understanding, as a Committee, is that because these are improvised non-standard weapons they may not be covered by the UK Military List which covers only devices associated with IEDs for handling, operating, detonating or jamming which are specifically designed for military use. Exporting unlisted components for improvised IEDs, however sophisticated and deadly their consequences, may therefore not be controlled, even with intelligence that the components were destined for IED production. That presumably, am I right, is the nub of your concern on the matter.

Mr Sprague: Yes. It is an extremely complex area and there may well be other bits of law to do with terrorism controls and things that would apply. We do not have an end-use control on goods that you would want to control for very real security grounds. These devices are regularly used to attack UK forces in Iraq and Afghanistan and elsewhere. Our understanding of the current controls is that—we use an example of a thing called an inclinometer, which in a US case has recently been successfully prosecuted on because of its potential use in Iraq for improvised explosive devices. In the UK system that kind of equipment would not be controlled. An end-use control that we would like to see would allow the ability to put controls on that technology where the exporter or the Government had reasonable knowledge to suggest that it was going to be used for those purposes.

Mr Isbister: There is a slight additional element here. It is about the change in technology and the change in the use of technology. A few years ago IEDs were not quite the issue they are now. By having an end-use control, you allow flexibility of response rather than having to go through a potentially laborious process of updating from law.³

³ *Note from witness:* the potentially laborious process would be to update a list of equipment and amend the law.

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Q77 John Bercow: Forgive me saying so, but I was rather foxed and befuddled by your answers to Sir John, because Sir John asked a very, very, very specific question, deliberately so, I am sure, and I was slightly surprised that you either did not want or felt unable to specify an offensive weapon that you thought was being wrongly exported to an area of actual or potential conflict. The reason that surprised me is that I would have had the general sense that there would be quite a number of examples that could be adduced by campaigners in this field.

Mr Isbister: The danger of being asked such a specific question and being on the record is that if we do not have our facts exactly right then it can come back to bite us. Could I suggest that we send you something written afterwards?⁴

John Bercow: That would be very helpful. Thank you.

Chairman: That would be very helpful. Thank you very much indeed.

Q78 Mr Hamilton: Could I move us on to extra-territorial trade controls. I know the NGOs have broadly welcomed the new three-tier trade control system and I know that you are currently in the process of trying to widen some of the category B controls in your discussions with EGAD. Has the Government indicated to you that they are considering moving anti-vehicle landmines into Category B at any time in the near future?

Ms Croser: No, we have not had that indication, but we feel that AVMs should be included into category B as a matter of urgency. The decision not to include them in category B runs counter to the UK's existing commitments in that area, as AVMs have clearly been identified as items of heightened concern and the UK Government is at the forefront of efforts to reduce the risk of their proliferation. Following the third Review Conference of the Convention on Certain Conventional Weapons in November 2006, the UK was committed to preventing the transfer of AVMs to certain end users and those commitments should be implemented immediately. The Government have argued that AVMs have not been identified through a process of international consensus as being as of heightened concern, and, as such, that is the decision not to include them in Category B. But we do not accept that, because if you look at cluster munitions, there is now an international prohibition on cluster munitions, although a number of notable governments do not accept that prohibition, and yet cluster munitions are still included in Category A. Obviously there are a number of humanitarian security concerns around AVMs: the way that they prevent the movement of civilian vehicles, including, for instance, ambulances, aid vehicles; the fact that they can be triggered by civilians on foot, not just people in vehicles; the ease with which they can be transferred, similarly to small arms light weapons; and, also, as people have discussed this morning, the potential risk of the use of parts of AVMs in the IEDs

(improvised explosive devices). We would like to see AVMs included in Category B as a matter of urgency.

Mr Isbister: I think it is bizarre. I just do not get it, I just do not understand, and I would hope that the Government could move very quickly to change this.

Q79 Mr Hamilton: It is quite baffling. Can you please let us know where you have got to in your discussions with EGAD over widening Category B controls?

Mr Isbister: We have been in discussions for some time, and we have probably got as far as we can together, talking about the way that you could possibly use registration and flexible record keeping as a way of extending the scope of extraterritorial control to allay business concerns about bureaucratic burden, et cetera. So we have some ideas that we have thrown around but it now needs to go back to government. I do not really think we are in that position to go public with what we have come up with. We now need to get back together with Government, because obviously it is not for us to make the decision and there are some questions that only Government can answer.

Q80 Mr Hamilton: Is there enough pressure, enough impetus by the Government, to push forward these discussions or it is simply being left to you and the defence industry to work it out for yourselves?

Mr Isbister: The Government has let us work, I suppose, at our own pace to a large extent, though they do inquire how we are getting on. I would not say they are putting pressure on us, but then I think it would be unfair to say that industry and NGOs have been pushing this forward just as fast as we can and that the Government have been slowing us down.

Q81 Mr Hamilton: There is some urgency here though, is there not?

Mr Isbister: There is urgency. As I say, we have made, we think, some progress. We are now at that point of going back to government. That next meeting could be very, very soon.

Mr Sprague: I think it is worth stating here that, within the three-tier system, Category B remains equipment of heightened concern. There is a debate about what goes in Category B and we NGOs would like to see, for example, anti-vehicle mines in Category B as a matter of urgency, but discussions are about other items on the military list and whether extra territorial controls can be applied to what is currently Category C. Category B is ring-fenced as full controls on transporting, the other full detailed controls on extraterritorial activities, et cetera.

Chairman: We want to ask you a question about transit and transshipment. Because Adam is out of the room—our peculiar system—Mick, you can pursue this as far as you wish. I will provide a briefing on that later.

⁴ Ev 84

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Q82 Mr Clapham: Transit and transshipment controls have recently been improved. Presumably they have been improved so that the Government is able to stop transit into areas that are embargoed, but still you have some concerns. Could you tell us what those concerns are?

Mr Isbister: First of all, I should acknowledge that the controls on transit and transshipment have been improved and that is all to the good. One of the problems is not completely within the Government's control and that is that transit and transshipment controls are quite complicated and confused across different jurisdictions, so even when the UK gets its own house in order, if you have agents who are operating from different jurisdictions and are transiting goods through a number of different jurisdictions, it can very quickly get very complicated for them as to how they are supposed to operate. Bernadette, who is going to be here from the industry group after us, can say more on this than I can, but there needs to be some outreach by government about trying to simplify transit across different jurisdictions so that this can be more effectively regulated internationally. We also have concerns about the use or the extent of the lists that are in place. These are lists of countries where tighter transit controls apply but there are examples where we think these restrictive lists should be more tightly drawn. It is not clear to us how often they can be changed. When circumstances change, will the list change? It is not clear how that might work. There is also the issue, with the restricted destinations, of whether are we talking about simply the final destination of these goods or all intermediate destinations along the way. If we are dealing with transit, every destination becomes an issue, so we would like some clarity on that. One more slight area of confusion which I have noticed as I have been going back over this, is that the law on transit now ranks sensitivity in part based on whether the goods are classed as Category A, Category B or Category C. However, the licence, the open general transshipment licence, seems to use a different system of judging the sensitivity of equipment, so some Category C goods (for example, military vehicles and components for military vehicles) seem to be regarded as more sensitive and to get lumped into the small arms/light weapons category. I am a bit confused about what the Government's thinking is. It would be good to have clarity that the same system is used from the law right down to the level of the licence.

Q83 Mr Clapham: Presumably you have not been able to discuss this issue with government to examine their rationale for different listings.

Mr Isbister: On that last point, no. It is something that I have only picked up on as I have been preparing for this session. I think it is something that we would be interested to go back to government on and find out. They may have a very good explanation. I would like to know what it is.

Q84 Mr Clapham: Could you say whether there is any evidence of inappropriate transit licensing that has caused concern?

Mr Isbister: It is kind of a negative question in a way, because up until now there has been very little control of transit.⁵ The means for more effective control are now only just being put in place. Basically this has been an unregulated area, but the UK is a significant transport hub for all kinds of equipment. I think it is reasonable to assume that there are controlled goods moving through UK territory, but we do not have the evidence on exactly what that might be.

Q85 Mr Clapham: What is required then, because the Government has tried to improve the system of controls and you have some concerns, is to sit down with government and see if you can iron some of the concerns out. Is that what you intend to do?

Mr Isbister: Yes. Just an explanation of how these things are going to work in practice, and it also might be a case of a review a little further down the line once we see how the things are working in practice. In certain respects it might be too early to have that discussion.

Q86 Sir John Stanley: There is another broad question where I am looking for a precise answer from each of the three of you if you could, and this is in relation to the Arms Trade Treaty. As we know, the dilemma here is that the British Government can hang out for what it wants in an ideal world, and it ends up with support of a relatively small handful of nation states who are prepared to sign up and ratify and the treaty is basically a minority participatory treaty as far as the world community is concerned, or you go for greater and greater participation, signing up, greater and greater consensus, and in the process you water down, a lot of the things you want have to be discarded, and you end up with a treaty which then may be called a treaty but is probably not much more than a bit of rhetoric and does not really have any credibility or substance. The question I would like to put to you is this: Given that is the dilemma, what do each of your organisations consider should really be the minimum bottom line position that the British Government should be holding out for incorporation into this international Arms Trade Treaty? What do you think are the minimum parameters, the minimum provisions, the minimum areas that you would want to see covered within it?

Ms Croser: Our position is that if it is not a strong treaty then it will not be effective, and we think that it would be very dangerous to enshrine at international level low standards. Effectively, for some states that would be a step back from where they currently are, and you would have enshrined in international law these low standards that were then very difficult to build on at a later stage. We really want to see the highest possible standards, and that is what we want to see the UK Government aim for. We have just come back from the first meeting of the open-ended working group on the ATT this week, where there

⁵ *Note from witness:* As there has been very little control of transit there is very little information about transit available.

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were discussions around scope and parameters of the treaty. The discussions have moved on from feasibility now, which is very positive. On parameters, for us it has to be based on international human rights law, on international humanitarian law, and on sustainable development. On scope, the discussions at the moment are focusing around what is described as “7+1” (the UN Register of Conventional Weapons plus small arms and light weapons). For us that should not even be a basis for the start of discussions, because it is just not appropriate. The UN Conventional Register is a transparency mechanism, it is not a control mechanism, and it misses out whole categories of items that really need to be included if there is going to be an effective treaty. We want to see the UK Government sticking to its line, which it articulated in its submission in 2007 to the UN Secretary General’s consultation exercise on the ATT, of a treaty that covers all conventional weapons. They also talked about the need for the experts’ group which met in 2008 to consider dual-use items as well. We feel very strongly that the Government needs to be out there arguing for broad scope, high standards, because otherwise they are going to end up with something that is not effective. If you go into a negotiation position with a kind of fairly low bar, then what tends to happen is the bar goes down as negotiations go on, and that is why it is very important going into a negotiation to have the bar high.

Mr Isbister: You mentioned each of our organisations.

Q87 Sir John Stanley: Yes, please. I would like to know what you all think would be the minimum requirements that makes it worthwhile signing up.

Mr Isbister: There is a lot of similarity among us. It must be fully comprehensive, so applied to all conventional arms, applied to their components, applied to their ammunition, et cetera. It has to include these fundamental principles: international humanitarian law, human rights law, address issues of sustainable development. I think we are all very similar minded in the NGO community on that.

Mr Sprague: From Amnesty I can only echo what my colleagues at Oxfam and Saferworld have said. We do not support a weak treaty that sets a low standard. It has to be comprehensive. It has to cover more than UN Register 7+1. I was thinking on my way here this morning that implementation is absolutely key in these kinds of issues. I am struggling to see how many of the world’s export control systems would implement a UN Register plus small arms and light weapons classification, because that is not reflected in their own control lists. Just in the UK context, the UN Register does not appear in the control lists, whether it is ML10 for aircraft or ML6 for vehicles, so that by the time you add components and technology for those categories it becomes almost impossible to cherry pick the control lists, and that would cut across an entire range of different countries. All the EU countries, all the Wassenaar countries, all the countries that

subscribe to that kind of control list, so that is a clear warning sign of how difficult these discussions would be and why we think it must be comprehensive.

Q88 Sir John Stanley: Just so we have this quite clear, as I have understood your three responses, you are saying to the Committee that if the British Government, with the rest of the international community, came up with an enforceable treaty but one that was limited only to the 7+1 categories, your view is that the British Government should walk away from that rather than take the half a loaf on offer. Have I summarised that correctly?

Mr Isbister: Yes. I would not support any government supporting that treaty.

Mr Sprague: Amnesty would not support that because our evidence suggests that a whole lot of military equipment that is not included in those categories is used in the commission of violations, and a treaty based on that scope is not good enough.

Ms Croser: Our position is the same. We would very much hope that international support is there for a stronger treaty. We have seen that in a number of votes at the UN. The detail was not there but our belief is that there is widespread support for something that goes much further.

Q89 Malcolm Bruce: In your submission you give a number of examples where weapons have been sold on after the export to undesirable destinations. On which is quite well focused is Indian equipment to Burma, and there are others. The minister is almost throwing up his hands and saying, “It was always going to be difficult. It will be over bureaucratic, it does not really work, and we should not really put a contractual obligation because we could not enforce it and we could not police it.” Do you agree?

Mr Sprague: I do not think I do agree. I do not see why you cannot place a contractual obligation not to re-export without permission. A lot of other countries do that. A lot of EU countries do that; the Americans do it. If the violation happens at a company level, then take legal action against that company because it is in violation of its contract. If it is a government, yes, it is more difficult, but the same rule should apply. You still should be able to apply considerable diplomatic and political pressure on that government for abusing its obligations. The Indian example is very interesting because the previous Foreign Secretary in evidence to this Committee acknowledged that with the benefit of hindsight it would have been better in that particular example to have a re-export provision. I do not want to put words into the Government’s mouth but I think they have said that they would look at this in future in cases such as these. The Indian response to that example was quite interesting. They basically said to the UK, “We will do what we like” and because there was no re-export provision there seemed to be very little they could do to stop it. A similar example happened with the parts that were given to India to help develop the Advance Light Helicopter that was then subsequently reported to be sold to Burma. It would appear that the deal was stopped because a number of European

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governments who also supplied parts and components, the French, the Germans and the Italians, for example, did have contractual obligations on re-export.

Mr Isbister: I think it goes slightly further than that, in that, if I recall correctly, the Indian response to the UK request on the Maritime Surveillance Aircraft was, “There is nothing to say we can’t sell these on.”

Q90 Malcolm Bruce: First of all, your argument is that even if you do not have enforceability you should still have a contract because it has leverage. Do you have some practical suggestions? You talk about developing “a forgery-proof internationally standardised end-user and delivery verification certification process” and you talk about “end-user

checks . . . each year”. Do you think that is a reasonably affordable and achievable cover to make contracts, not just an obligation but—

Mr Isbister: The Swedish nationally have an export certification system which is using bank-note quality paper which is designed to prevent this kind of fraud, so if they can do it I do not see why the UK—

Q91 Malcolm Bruce: We should ask the Government to look at what the Swedes are doing?

Mr Isbister: Yes.

Malcolm Bruce: That is very helpful.

Chairman: Thank you very much indeed. We are sorry to have rushed towards the end. Thank you for agreeing to provide further information in response to one or two questions that were raised. Thank you very much.

Witnesses: **Mr David Hayes**, Chairman, EGAD, **Mr Nigel Knowles**, Vice Chairman, EGAD, and **Ms Bernadette Peers**, Member, Compliance Support and NGO Liaison Subcommittees, EGAD, gave evidence.

Q92 Chairman: Good morning. For the record, David, would you mind introducing yourself and your colleagues?

Mr Hayes: Thank you. I am David Hayes of David Hayes Export Controls and the Chairman of the Export Group for Aerospace and Defence. To my left is Bernadette Peers of Strategic Shipping, to my right is Nigel Knowles of Chemring Countermeasures.

Chairman: Thank you again for your written submissions, they have been very helpful, and we will pursue some of those issues now. Fabian.

Q93 Mr Hamilton: Thank you Chairman. Can I move straight into the issue of Sri Lanka? There have been calls for an arms embargo on Sri Lanka given the current eruption of violence there again, certainly starting in January. You have put forward strong economic arguments as to why arms exports should continue to Israel; can you make out a similar case for Sri Lanka?

Mr Hayes: The distinction I would make between Israel and Sri Lanka is partly the distinction that the NGOs made in so much as Israel has its own very well developed defence industry, so the difference between the two is to some extent that a lot of the exports to Israel are actually for equipment that is not ultimately going to be used in Israel or by the Israeli defence forces; in some cases in fact the end user is our own Ministry of Defence. That is not true of Sri Lanka. I do not think there is a level of comparison economically between the two as defence markets although I do not know what the figures are in terms of licensing within the annual report.

Q94 Mike Gapes: Can I take this further? That is a very important point because it means that the international community could have a level of leverage on the Sri Lankan Government that it does not have with regard to the Israelis. Given the appalling scenes that are coming out of Sri Lanka,

the bombing of schools and other incidents that have happened—that does not justify what the Tamil Tigers have done but nevertheless it could be argued that the international community one way or another, or those countries that do export to Sri Lanka, are actually giving the green light politically in a symbolic way. I know this is not a matter for you to decide, it is a policy issue for Government, but nevertheless the British Government does refuse large numbers of exports to Sri Lanka if you go through the list, as I did the other day. Nevertheless, there would not be much further to do except to make a political statement which would symbolically be very important, I think, to send signals to the Sri Lankan Government about their behaviour by adopting such an approach. It would not have the offset problem that you have referred to in the sense of the differences between Israel and Sri Lanka. Would you like to comment on that?

Mr Hayes: At the risk of answering your question with part of the question, whether or not to impose an embargo on a particular country is a matter for Government, not for industry.

Q95 Mike Gapes: But you would agree that there is less likelihood of the Sri Lankan Government being able to manufacture its own components or its own weapons systems and being able to fill the gap except by importing from another country.

Mr Knowles: That would be an important consideration to take account of. If the Western democracies were to place embargos on countries like Sri Lanka they may, because they do not have an indigenous production, go elsewhere and they may go and become influenced by nation states that we would not otherwise wish them to be influenced by.

Q96 Mike Gapes: Assuming they are influenced by us, when the Government appoints an envoy to Sri Lanka we are told that we cannot send that envoy there, so we do not seem to have much influence at the moment.

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Mr Knowles: It is very important for the Western democratic peoples to make friends and sometimes you have to take a little grief in order to keep a friendship.

Q97 John Battle: I completely accept that it is government policy whether there is an arms embargo or not but I would be rather more encouraged if I thought you were interested in, as well as the size of the market, monitoring the end use so that you know what happens to the goods you sell. Why I say that is that in Sri Lanka at the moment there is a lot in the North East, 200,000 or more people displaced and it is now spreading to a curfew in Colombo. Given that the media have been excluded from Sri Lanka, in a way that they were not from Israel—to draw a comparison with my colleagues—even during the present conflict; there were embedded journalists able to watch what happened to the gear. That cannot happen in Sri Lanka; does that make a difference to your judgment of whether it is the proper place to sell arms to?

Mr Hayes: It makes a difference to the ability to make the judgment reliably because of the lack of availability of information, so to that extent, yes, it is a concern in that we do not have the level of transparency that we do with Israel.

Q98 Mr Borrow: Going on to Israel itself, which we referred to in the previous session, I understand your opposition to an embargo but that then begs the question as to whether or not the existing controls are working. Are you satisfied that the existing system is effectively controlling the use of UK components within military equipment used in Israel?

Mr Hayes: Like the NGOs I cannot cite a specific case of any UK offensive weapon or component having been exported to that destination in contravention of UK policy, so in that sense it is an impossible question to answer. I am not aware of any particular violation of the current government policy or arms export criteria.

Q99 Mr Borrow: If I am right part of the thrust of your opposition to a blanket arms embargo as far as Israel is concerned is because of our defence relationships in terms of military equipment. Does that mean that there are components built in Israel that are used in UK equipment that cannot be sourced anywhere else other than Israel?

Mr Hayes: Only the companies who are manufacturing the equipment and only certain people within those companies with technical expertise will be in a position to answer the question.

Q100 Mr Holloway: I asked earlier what would be the effect of an arms embargo on Israel in terms of our ability to keep up with the very, very fast pace of technological development of unmanned surveillance and weapons systems?

Mr Hayes: Because of Israel's prominent position in the UAV market, which is in part at least evidenced by the fact that the UK MoD has made a procurement decision to obtain equipment from

Israel, we have to reach the conclusion that a total arms embargo on Israel—which would of course impede our ability to procure equipment from Israel—would have a devastating effect on the operational capability of our own Forces and put our own military personnel at increased risk.

Q101 Mr Clapham: Could I just turn, Mr Hayes, to the dual use sector? It is important because we see that there is a lot of anecdotal evidence anyway that there is a great deal of non-compliance, yet it is in this particular dual use sector that we are likely to see, for example, elements that could go towards the construction of a dirty bomb being on that list rather than on the military list.

Mr Hayes: Yes.

Q102 Mr Clapham: How do you see controls being brought about that are going to give us a little more certainty about compliance?

Mr Hayes: There are two elements to that and you highlighted them in your question, the controls and the compliance. One of the problems with the dual use control list is that it is very, very complex to understand for people in the industry, much less for lay people who have no involvement with it at all or, worse, people who believe they have no involvement with it at all. How you deal with the level of complexity is itself complex because the lists are drawn up in a number of multilateral regimes and it is those regimes that define the technical parameters in the list, so trying to change the list in order to make it more user-friendly would be a very difficult and very time-consuming task. Looking at the enforcement angle we are aware of nine prosecutions between May 2005 and today; of those nine seven related to military items, items on the military list, two related to items that are on the dual use list. Given what we are told in that as you expressed the threat is in relation to non-state actors using dirty bombs et cetera, then looking at the enforcement that is happening the enforcement priorities appear not to be matched to the threat. It may be that the enforcement priorities are being dealt with in another way—we hear from HMRC about compound penalties being used. It would be of great help if we could have some clarity from the Revenue and Customs Prosecution Office about their policy on the use of compound penalties and some publication of events in which compound penalties have been imposed. Appreciating that part of the compound penalty process is that the details are not revealed it does not seem impossible to devise a system as is used for television licensing where an advert is put out that says a 33 year old woman from Croydon was fined £1000 for not having a TV licence; we cannot actually identify the lady concerned from the poster but it does act as a deterrent. To that extent we have to look at the enforcement priorities in the context of the risk and if the enforcement priorities are actually being dealt with in a way that is not currently visible, like for example through compounding, to make that visible so that we are reassured that the enforcement priorities do match the risk.

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Q103 Mr Clapham: You seem to be saying that the penalties are not sufficient to deter people from non-compliance.

Mr Hayes: In some cases that is true. In the case of compounding we do not know how many cases are being compounded or what the penalties are.

Q104 Mr Clapham: It really is a complicated and complex issue but nevertheless, as you said earlier, it will take time and effort to actually bring in a control system but because of the risk do you feel that that time and effort should be spent in actually bringing them into a control list?

Mr Hayes: Yes, I do, I firmly believe that the time and effort should be spent and there are ways now in which we can potentially improve the enforcement or improve the awareness of companies in the dual use sector that they are in fact dealing in controlled items. Perhaps an exercise by the relevant authorities, be it BERR and/or HMRC, could look at websites. It is quite obvious in some cases from websites that the products of certain companies are controlled and it should not be impossible, particularly now we have the NES export system, to identify shipments by those companies and give them a greater level of scrutiny than is currently the case, stop some shipments and actually ask them to provide the technical specifications of the items they are exporting as not requiring a licence.

Chairman: Thank you, that is very helpful. Sir John.

Q105 Sir John Stanley: Mr Hayes, as you know over what is a period of seven years now this Committee has strongly advocated the extension of extra-territoriality to items on the military goods list, that being, making it a criminal offence that is capable of criminal jurisdiction in this country if a British person in a third country carried out arms trading that would otherwise require an arms export licence if carried out from this country. I have to say it has always been something of a mystery to me why your organisation, EGAD, has been so doggedly resistant to our proposal, which I would have thought is wholly in the reputational interests of your member companies, because it would appear to me that if any of your member companies or individuals associated with your member companies got involved in arms exporting from a third country of that company's military equipment, which otherwise would require an arms export licence from the UK, and thus is clearly circumventing the arms export licence regime, then the company concerned is going to be the subject of a totally deserved absolute hammering in this Parliament and no doubt in the media also. Could you say to us why is EGAD so resistant to the extension of extra-territoriality in the way that this Committee has in successive reports recommended?

Mr Hayes: The first thing would be that the absence of total hammerings makes us question whether there really is a problem in that regard. The problem with extra-territoriality—if I can refer you back to the previous question from Mr Clapham—is that if we are not terribly effective (and it appears that we are not) at enforcing the current laws within the

current level of resource when we are only talking about our own domestic law, why would we believe that we can effectively police the world?

Q106 Sir John Stanley: I do not think we would be suggesting that you should police the world but in every walk of life there are individuals who, for gain, will bend the rules and will act contrary to their organisation's interests—you have many glaring examples of that, not least in the news today. In these circumstances the responsibility ultimately for enforcement would lie with the criminal jurisdiction in the UK, so why do your organisations, your companies, not feel it is very much in their interests to have the buttress of the criminal jurisdiction in this country against members of your company's staff who might, at some future date, be persuaded to act in a venal way and try to make money out of what effectively would be criminal illegal exports of your member companies' goods from a third country?

Mr Hayes: My colleague is burning to answer your question.

Ms Peers: I would like to step back. I agree ignorance of the law is no excuse but the awareness campaign that has taken place so far by BERR to make industry UK employees aware of this has been limited. Whilst they have made their best efforts, David and I were recently in the US at a large conference there; nobody in the audience had any knowledge—these were large defence companies—of the changes in the legislation, so as industry representatives we were advising these possible UK employees about UK legislation which I feel is the Government's job to be doing and not necessarily ours, although we will assist. To say that they have gone to embassies and advised embassies and consulates is a step towards it, but they need to check that those embassies and those consulates have done something with the information that they have received from the UK Government. If I am a UK employee in a Swiss company legitimately moving defence equipment, I now have to apply for an export licence to be involved in the transaction. I am now being put at risk of possibly losing my job because I could delay the process, or if I am a UK company operating overseas they could go to a non-UK company because they do not have to get an export licence. So this idea of a level playing field does not exist for a UK company operating in the trafficking or brokering who are acting extra-territorially. Going back to the US and looking at their extra-territorial controls which they do rigorously enforce it is still quite minor and they have huge resources available to them for enforcement. The Department of State quoted that they have 900 voluntary self-disclosures, i.e. industry has found the errors and told Government, and just under 100 directed disclosures, i.e. they have found out. Therefore, even with the best country operating enforcement their deduction and finding out is still quite minimal, so industry in the compliance sector is being policed and acting properly but industry who is ignorant is acting outside of all of this and the

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enforcement is not there to back up to find out who these companies are, so we do not have a level playing field.

Mr Hayes: I would like to add something if I may, Chairman: there are additional practical issues around this. For example, if I were working for a major UK Plc which was exporting goods from the UK that required a licence, that Plc—not me as an individual—would be required to obtain a licence. If I am working for a major defence company in the United States then I am still a British person; am I the broker or is the company? If I am the broker do we really believe that if the British Government were to say, “sorry, but we are not granting a brokering licence to David Hayes who works for you”, the US company would not make the export once it got a licence from the US Government? It would not actually prevent anything happening.

Ms Peers: A further concern with this, harking back to the US because they have such rigorous enforcement, even they do not control carriers—truckers, airlines—because, I believe, it is unenforceable. If you approach BA, as we did to advise them of the change, that transport companies will have to get licences, British Airways just said “We are not going to carry small arms and light weapons” so the result will be the compliant industry, i.e. freight forwarders like ourselves, will have to find another legitimate carrier to move it. The non-compliant freight forwarders will either mis-declare or go to a less compliant company which I do not think is the direction that the NGOs would like us to go in.

Q107 Sir John Stanley: Can I just ask one final question for Mr Hayes on this? As you are aware the Government has moved in two steps towards the Committee’s position, the first when Patricia Hewitt was secretary of state and then we had further movement last year. The question I would just like to ask you finally, Mr Hayes, the Government has yet to complete the remaining moves to the Committee’s position, which we hope it will, and bring the remaining items on the Military List within the ambit of extra-territoriality. Is EGAD still opposing the Government moving to the remaining position wanted by the Committee?

Mr Hayes: EGAD has concerns. As the NGOs said, we are working with them and we hope to have a meeting with the Government shortly to discuss the extension of extra-territorial controls to the whole of the Military List and to determine whether that is possible in a way which would minimise the burden on legitimate industry whilst enabling Government to target those people it intends to target. I would not interpret the fact that we are working towards it as meaning that we are supportive of the concept of extra-territoriality. We accept the reality that extra-territoriality is upon us; do we believe that it is effective, do we believe that it is the best way of achieving the end, no, we do not.

Q108 Chairman: Which sort of takes us to the Arms Trade Treaty, a proposal that you have in general terms welcomed for obvious reasons, but equally

you have pointed out some severe practical problems with it. You have talked, for example, about the need for greater clarity on definitional issues. I wonder if you could identify two or three of the key definitional issues that you think are problematical in all of this.

Mr Hayes: Yes, it has already been touched upon by one of the NGOs in terms that the UN list does not read across into the lists of other countries. The EU of course operates on the basis of the common Military List at an EU level and individual military lists at the Member State level. Wassenaar has its own Military List and if we were to try to use the definitions that exist in Wassenaar the danger is that the Arms Trade Treaty itself will be perceived as being promoted by the Wassenaar states, almost being imposed by the Wassenaar States on Wassenaar members. Conversely, if we move to a completely different methodology for defining the items that are covered under the International Arms Trade Treaty that will increase the burden on industry around the world because we will have to work under one list for the Arms Trade Treaty and another list for our own national controls.

Mr Knowles: From industry’s point of view we would really want to see some kind of harmonisation of the list so that everybody was playing off the same level playing field and the tendency towards confusion would be removed. Also, if the Arms Trade Treaty was a success with a harmonised list then that would be preferable to extra-territoriality because can one imagine 160 countries of the world all having their own extra-territoriality rules? Citizens throughout the world would be very vulnerable to be arrested, extradited and imprisoned almost anywhere at any time for anything.

Q109 Chairman: In some areas of course there are such rules but in terms of your particular concerns, do you have working group negotiations on all of this and have you got any input into that? Have you passed your concerns on to simply the UK Government or how closely are you involved in the UN negotiations?

Mr Hayes: Not closely at all, we have passed our concerns on to the UK Government.

Q110 Chairman: Thank you. Could I turn to an issue that cropped up earlier this morning about re-exports, the whole question about re-export clauses. As you know the Government say that re-export clauses and licensing would make little difference in reality, they are sceptical about it, whereas a number of us on this Committee, with various examples in mind, seem convinced that actually a re-export clause from time to time would be exceedingly helpful. Do you think the Government has got it right when they say re-export clauses would make little difference?

Mr Hayes: Broadly speaking yes. For one thing they are an interference with sovereignty and if I can recall the events where Lord Drayson was involved in the debates concerning the Joint Strike Fighter, one of the things that the UK was saying to US about it in relation to the ability to share information

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with other parties on the programme—other parties within the UK because the culture in the US is to regard a transfer between any parties as a re-export—was that we needed operational sovereignty. It would be incredibly arrogant of us to take the position that the UK needs operational sovereignty over its defence equipment but other countries should not be entitled to the same treatment.

Q111 Chairman: If there is an embargoed destination—the UN embargoed Sudan, Burma and so forth—if the UK is exporting to a non-embargoed destination and there is no provision for a re-export clause to prevent the re-export to an embargoed destination, does that not provide a greater impediment to British exports because the natural reaction is—and I could name some countries but I had better not—if you think that the UK exporting to a certain country runs a real risk of that country exporting to an embargoed destination, if you cannot use a re-export clause to try to discourage that, are you not going to apply common sense and not export to that country at all? We are talking about some major UK export markets here and I need not name the countries for you to know what I am talking about. Do you not actually think that not only is it morally right to consider embargoed destinations seriously—and that does involve being concerned about re-exports—but if you do not have the re-export clause could that not stifle the arms trade even more?

Mr Hayes: To some extent we already have a mechanism for dealing with this because one of the considerations in the code of conduct is the likelihood that the goods will be diverted, and that is assessed upfront by the UK Government before the licence is issued, and the Government of course is better placed to assess the risk than industry is. If the re-export clause were to be included in the contract and the foreign company were then to breach that contract, who would bring the action for the breach of contract? The UK Government is not a party to the contract; would the UK company be expected to bring an action for breach in the UK courts? Would, for example, the Government be prepared although not a party to that action to fund that action, even though there are arguably legal reasons why it cannot, or would it be left to industry to bring the action? Once the breach occurs, i.e. once the re-export occurs, the goods are in the undesirable destination anyway and bringing the breach of contract action is not likely to actually result in the goods being returned to the country to which they were originally exported, so I do not actually see that it provides any greater reassurance than the current mechanism of assessing the risk of diversion. Of course in either case, whether it was a breach of contract action or whether the licence was issued in the belief that there would not be a diversion but the diversion occurred, the end result would be the same: it would be that in future licences to that particular destination for that type of equipment would be much less likely to be granted.

Q112 Chairman: That of course is the inevitable consequence, I agree. You do not think the re-export clause actually clarifies that responsibility?

Mr Hayes: Again you get into the definitional weeds.

Q113 Chairman: Let me briefly put it another way. What is wrong with saying to countries we export to, our friends and allies if you will, that a condition of a UK export to your country is that you do not go off and re-export it a UN-embargoed destination—you do not pass it on to Sudan, you do not pass it on to Burma. What is the problem?

Ms Peers: That happens now. When you apply for an individual licence you have to submit an end-use undertaking which specifies exactly that, and with an open individual export licence you have to have a consignee undertaking saying that he will not export it to a destination not on the licence, so there is a sort of re-export clause in the undertaking from the company or the country that it is going to. If it then gets re-exported after a period of time it is back to David's point, who is going to do the enforcement and the prosecution? Perhaps the way forward is to have something like a denied parties list for that company that has breached and re-exported, but this is a matter for Government.

Mr Hayes: Another question to bear in mind is what do we mean by re-export? Do we mean re-export of the individual item in its original state in which it was exported from the UK or are we seeking to control that component when it is re-exported, incorporated into, say, an aircraft or a ship?

Q114 Chairman: That is the Turkey/Uzbekistan case of the Land Rovers.

Mr Hayes: Yes.

Q115 Chairman: You are suggesting that you think having a re-export clause is pointless because it is not really enforceable, but the other argument is these undertakings are already given which begs the question why on earth is the Government asking for undertakings if they are not enforceable.

Mr Hayes: In the Turkey/Uzbekistan case there would not have been an undertaking because of course the goods were not controlled.

Chairman: That is absolutely correct, that was a non-military vehicle flatpack that went to Turkey. Adam is desperate to come in on this so I will shut up.

Q116 Mr Holloway: Is it not the case that if you have an end-user certificate to go for argument's sake to Angola—to use a real example from a few years ago—and the plane so much as touches its wheels down in Angola and then goes off to Sierra Leone, which it did not do in that case because it did not want to waste money on fuel, that is perfectly legal, is it not?

Mr Hayes: No.

Q117 Mr Holloway: In terms of the person who has got the end-user certificate, the company selling the arms.

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Ms Peers: If they had an end-user certificate—

Q118 Mr Holloway: It is a question.

Mr Hayes: No, because if what they are doing is touching down in Angola or flying over Angola and the original end-user was actually someone else, and they knew at the time that the end-user was not them it was someone else, then no, they are not the legitimate end-user.

Q119 Mr Holloway: What if they touch down, offload the goods and then the Angolans or whoever choose to re-export them?

Ms Peers: They are in breach of the undertaking that they would have given to the UK Government because the end-user certificate clearly states that they will not export it to a destination without permission.

Mr Holloway: That is very helpful.

Chairman: David, you wanted to come in on this; I am sorry if we have poached on some of your territory.

Q120 Mr Borrow: If we move on, EGAD raised complaints about the efficiency of the MoD in signing end-user undertakings. I would be interested in whether the MoD has given an explanation for the inefficiency in dealing with this.

Mr Hayes: I believe so, but that is something that we would need to come back to you on, if that is okay.⁶

Mr Borrow: I have got a lot of questions, Chairman, would it be better to deal with that in writing as well?

Chairman: Yes, okay, we will do that. David, thank you to you and your colleagues, and I am sorry we kept you waiting a little earlier. Thank you again for the written response, as for the others this morning it was very helpful as always and we are very grateful. Thank you.

⁶ Ev 109

Wednesday 22 April 2009

Members present:

Roger Berry, in the Chair

Mr Adrian Bailey
John Battle
Mr David S Borrow
Malcolm Bruce
Richard Burden

Mike Gapes
Mr Adam Holloway
Mr Bernard Jenkin
Peter Luff
Sir John Stanley

Witnesses: **Bill Rammell MP**, Minister of State at the Foreign and Commonwealth Office, **Ms Jo Adamson**, Deputy Head of Counter Proliferation Department, and **Mr Andrew Massey**, Head of Arms Trade Unit, Counter Proliferation Department, Foreign and Commonwealth Office, gave evidence.

Q121 Minister, welcome. For the record, can you introduce yourself and your colleagues?

Bill Rammell: Bill Rammell, Minister of State at the Foreign Office; on my left, Jo Adamson, who is the Deputy Head of the Counter Proliferation Department at the Foreign Office; and on my right Andrew Massey, who is head of our Arms Trade Unit within CPD.

Q122 Chairman: Thank you very much indeed. I want to start with questions on arms exports to Israel, so could I also thank you for yesterday's written statement, following the questions that we put to Ian Pearson about whether UK-supplied equipment may have been used by the Israeli defence forces in the recent conflict in Gaza. Thank you for the advice that we were going to get that before this meeting; it is very helpful. We would have been slightly miffed if it had come out tomorrow, and we are very grateful that it came out yesterday because we have a basis for a conversation. Minister would it be fair to say that the answer to the question, whether any UK-supplied equipment was used by the IDF during the recent conflict in Gaza, essentially is "yes" but that it was mainly in the form of components for incorporation in the United States, in F16s and Apache Attack Helicopters, and then were exported to Israel, and also there were some components directly supplied to Israel? Would that be a fair summary?

Bill Rammell: Yes. Let me start by saying, Chairman, that I am grateful for your thanks that we gave you advance sight of the ministerial statement. It had been our intention to get it out before the recess, but we wanted to double-check and make sure that it was as accurate as possible, and therefore it only proved possible to do it yesterday. Broadly, your description is correct. We say within the statement in the third category, where we are talking about combat aircraft helicopters, naval vessels and armoured personnel carriers, that we believe that there is IDF equipment that was used in Operation Cast Lead, and it almost certainly contained British-supplied components. What it is important to make clear is that our arms export control procedures have not changed in any way; all applications are assessed on the basis of the information that we have

available at the time, and all of these export decisions were in accordance with the criteria on that information that we had available at the time.

Q123 Sir John Stanley: Minister, as you know, in your response to the debate we had in Westminster Hall on the Committee's last Arms Exports Control Report, you referred to further work taking place within the Foreign Office to establish whether or not UK arms exports and components exports were in breach of the EU consolidated criteria. Is the written statement that you issued yesterday the end product of the considerations going on in your Department as to whether or not the criteria have been breached, or is there further work going on, and will there be a further statement?

Bill Rammell: Let me be clear: we are confident that the criteria were not breached when the sales were approved, because you look at all the available evidence and you take that evidence from our posts, from NGO, newspaper and media reports, and a whole variety of sources; and then based upon that evidence you make a judgment about whether there is a risk that the various criteria will be breached. In all of these cases, at the time the decision was made, we did not believe, based on the evidence, that there was a breach of those criteria, and that is why the sales were approved. That is the case. Looking forward, what we have said is that we are reviewing all of our extant licences, and if information becomes available so that we believe, based upon the information we now have, there is a risk the criteria will be breached, those licences can and will be revoked. That process is ongoing, and I hope that that can conclude as quickly as possible. We have said that, as is absolutely correct, with all arms export sales, you take account of the evidence that is available, and the evidence from Operation Cast Lead will be taken account of when we reach future decisions on new exports.

Q124 Sir John Stanley: Yes, but that skirts round what is the key issue of concern. It may be that the criteria were being adhered to at the time the licence was granted—and I very much welcome your risk assessment as to what might happen in the future in relation to British weapons systems and components that have been licensed to go to Israel either directly or indirectly—but the key issue is whether or not the

use that was made of British-made weapons systems and components in the recent conflicts, in Lebanon and most particularly in Gaza, did or did not represent a breach of the EU consolidated criteria. That is the issue that I hope the Foreign Office is addressing, because it was not addressed in your written statement as of yesterday, nor in your reply to the Committee today.

Bill Rammell: Forgive me, I believe we have addressed it, where we specifically say that we are looking at all of our extant licences to see whether any of these need to be reconsidered in the light of the recent events in Gaza. That process is ongoing, and should we conclude it appropriate, those can and will be revoked. That is very clear. We are looking at this issue at the moment and we will reach a conclusion. In addition to that, for future sales we will take evidence from Cast Lead. That is very clear, that it is a process we are undertaking.

Q125 Sir John Stanley: Minister, can we assume that you will make certain this Committee will be informed as to the outcome of this review that is taking place, not merely whether some licences are being revoked, but I am sure the Committee wishes to know whether you have taken a decision that no licences have been revoked in the light of your view of what is going on. In either circumstance, I am sure the Committee will wish to be informed of your conclusions.

Bill Rammell: I can certainly give that commitment; that when we have reached the end of that process, I will ensure that not only—as is inevitable—that be made aware publicly, but we will communicate directly with this Committee.

Q126 Chairman: Has the Government refused any licence applications, say over the last five years, for the supply of components for F16s for use by the Israeli Air Force?

Bill Rammell: Yes, and let me provide some additional information. In respect of F16s, helicopters and armoured personnel carriers, either on an incorporated or an unincorporated basis, there have been no approvals since Lebanon 2006.

Q127 Chairman: Why were they refused?

Bill Rammell: Based upon our assessment against the arms export criteria, and the risks inherent in the application that there could be a breach of one or more of the criteria.

Q128 Chairman: Can you be more explicit?

Bill Rammell: Without going back in detail through the files, no. As I said before, we take account of the information we have before us, and the fundamental judgment is: do we believe there is a risk that one or more of the criteria will be breached?

Q129 Chairman: Was it because it is well known that F16s have been used offensively by the Israeli Air Force against the occupied territories? Is that not the obvious reason why you said no?

Mr Massey: In answer to the question, have we refused any licences in the type that you describe, the answer is “yes”. Without pulling up the licences and going through them forensically, it is difficult for me to give you a direct answer as to the grounds on which that particular licence was refused. It could have been refused for any number of reasons. We can certainly go away and come back to the Committee with the details as to why those particular licences were refused.¹

Q130 Chairman: I can only think of one reason why you should seriously consider rejecting a licence application of that kind; it is because everybody knows the history of the use of F16s by the Israeli Air Forces. My question is, therefore: if in these cases you made a decision that it was unacceptable to provide components for F16s for use by the Israeli Air Force, why does that policy not extend across the piece?

Bill Rammell: Because inherent within our arms export processes is that each application has to be judged by its merits on a case-by-case basis. If I were to go down the road now of committing, in all circumstances, regardless of what was happening on the ground, to refusing in principle an application, not only would that be a breach of our procedures, but it would be judicially reviewable by an arms export manufacturer, who could say, “You have not judged this in accordance with the Arms Export Act.”

Q131 Chairman: It would be fair to say that my understanding of what I believe the reason for refusal to be is not a million miles away from the truth, is it?

Bill Rammell: Again, I think I would take up Andrew’s suggestion that we write to you specifically on the circumstances.² I dealt with a number of these and previous ministers have, so I am not going to pluck arguments out of the air.

Mr Massey: If I could clarify, the reason I say this is that without the information in front of me I cannot tell you specifically whether it was refused under criterion two, criterion three, possibly criterion four or possibly even criterion seven, and that is my reluctance to state the grounds without going back and reviewing it.

Chairman: We thank you for the offer of the detail.

Q132 Mr Holloway: In all but name, and for practical purposes, we have a kind of arms embargo against Israel at the moment!

Bill Rammell: No, we do not. We judge each application on its merits, on a case-by-case basis.

Q133 Mr Holloway: Since 2002 there has not been an application that has been granted?

Bill Rammell: Not, for want of a better phrase, for a whole item. There have been sales for incorporated items by the United States, but not since Lebanon 2006.

¹ Ev 108

² Ev 108

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Q134 Mr Holloway: As I say, in practical terms, in all but name, is that not an informal embargo against Israel?

Bill Rammell: No, I do not believe it is because you judge each case on its merits.

Q135 Mr Holloway: Are you planning to grant any?

Bill Rammell: What I am planning to do is to do what we are properly authorised to do, which is to judge them on their merits. What I cannot say is that the circumstances change. Your judgment may change because you operate according to the—

Q136 Mr Holloway: But our judgment since 2002 has pretty much been not to sell arms to Israel, so that is a kind of informal embargo, then.

Bill Rammell: Again—sorry—there have certainly been incorporated items that have been approved for sale since 2002; but since Lebanon 2006 for F16s, helicopters and armoured personnel carriers, there has not been a sale either on an incorporated or an unincorporated basis.

Q137 Mr Holloway: Because we do not trust the Israelis to use them properly.

Bill Rammell: We make a judgment based upon the evidence at the time. That is not a definitive judgment for all time. If you go back in history, there are all sorts of locations and countries where there may be particular concerns based on the circumstances at the time, which change over a period of years. If you set your procedures in tablets of stone, you would not be responding to the reality of the situation.

Q138 Mike Gapes: If we are exporting components to the United States, is it not in reality impossible to have an embargo on a country like Israel, given that 95% of Israeli military hardware is imported from the United States, and much of that hardware of various kinds will include small components that have come from other countries? Is that not the real problem that you have got?

Bill Rammell: Certainly on a historical basis, yes. Once you have sold the component, it can get through to Israel. The point you make is an important one. I think it is right that we scrutinise our arms export to Israel, but the contextual point that you make, that we are relatively, both historically and accurately, a very small exporter to Israel is absolutely right. I read the Amnesty report, which I do not resile from, that 95% of Israel's imports on a defence basis come from the United States. If you add gifted items it is probably about 99%, and even within the European Union we are not one of the big exporters. That does not mean we should not properly scrutinise what we do, but sometimes when I read stuff in the newspapers about what we are doing, it somewhat misses that contextual point.

Q139 Richard Burden: Can I pause to add my thanks for the statement, which I think is very transparent and very welcome. We have been here before, have we not? The issue of armoured personnel carriers

being used in contravention not at that time of consolidated criteria because the criteria were not consolidated, but in contravention of the licences for which they were granted, was exposed several years ago. The then Foreign Secretary said the fact that they were being used for purposes in contravention of the licences would be taken into account in future arms sales. That was well before Lebanon. After that, it seems that they were sold, and after that there was the sale of components for F16s, before Lebanon. What I want to establish is this: have we now changed and firmed up policy, or are we just doing a re-run of the previous policy, which is constantly saying, "in the future we will check if the basis on which licences have been granted has been breached"? If we are doing the latter, it sounds as though we are in a perpetual state of shutting stable doors after horses have bolted. If it is the former, should we not say we are toughening up our stand on Israel?

Bill Rammell: I genuinely do not want to mislead the Committee. I do not want to pluck answers out of the air about what happened five, six, seven years ago, at that particular sale. What I can say—and I know this to be the case, because not just in respect of Israel but all other countries these regularly come across my desk—is that it is an issue of such import that you do not just sign it off as a minister. More often than not I will ask for a meeting. John, as a previous minister I know you have gone through this process. I ask for a meeting with officials to go through it in fine detail and bat it backwards and forwards; and we do take account of previous practice. It is a fact that in the last five or six years, each year between nine and 26 applications to Israel have been refused, and Israel regularly features in the top three or four countries for which sales are refused. That is the reality, and that does attest to the fact that we do take account of previous history when we are reaching conclusions.

Q140 Richard Burden: It presumably also indicates that the UK believes that there is a very, very serious risk that arms exports or components exports, directly or indirectly to Israel, will be used in contravention of the consolidated criteria irrespective of whether guarantees have been given that they would not.

Bill Rammell: If I reply in the affirmative to that, then I actually breach our procedures, because we have to judge each one of them on its merits, on a case-by-case basis. That is what we do.

Q141 Richard Burden: Jack Straw, when he was Foreign Secretary, said precisely that; he said that actually Britain would not in the future rely on guarantees given by Israel; it would do further checks. Does the UK consider there is a considerable risk that Israel would use arms exports for reasons other than included in the consolidated criteria?

Bill Rammell: There are all sorts of legitimate sales to Israel that do take place, for items that are used within the Israeli defence manufacturing industry and for re-export to other countries, for dual-use items, for civilian items, and we have historically, as

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is a matter of record, approved arms sales to Israel but on a case-by-case basis we take account of the evidence before us prevailing at a particular period of time, and we reach a conclusion about whether there is a risk of any of the criteria being breached. It is on that basis that we reach conclusions.

Q142 Richard Burden: The reason I am asking this question is that to me it looks as though if there has been over the last few years, certainly since Lebanon, an increase in the number of refusals, if it has been known in the past that armoured personnel carriers have been used in contravention of the licences for which they are granted, if it is now known and acknowledged that F16 fighters on two major recent conflicts have been used in contravention of those criteria, then the main problem is components that are re-exported to Israel: why do we not include Israel as a list of prohibited countries for re-export under the new open general trade control licences?

Bill Rammell: Because we do not have an embargo of Israel, and quite apart from the specific merits of the arms export control procedure I do not think politically—and I know this is something you are very committed to—an embargo against Israel would help us achieve the kind of outcome more broadly in the Middle East that we are all looking for.

Q143 Richard Burden: I was not asking about an embargo and I will ask a final question about an embargo in a minute, but this is about control and implementation of the criteria. If there is a risk—and there clearly appears to be a risk—that components will be used for purposes other than we think would be acceptable, why do we not give ourselves more control over whether or not they are going, rather than allow them to be exported through a third country, where inevitably we have less control?

Bill Rammell: We can go back to the statement that the then Foreign Secretary Jack Straw made in 2002 in terms of incorporation because there has been a dramatically changing arms export industry in which there are inter-dependencies. I do not think, as an absolute matter of policy, that to cut ourselves off from that would be in the interests of our defence industry or our armed forces.

Q144 Richard Burden: You have been very clear that you would not want to go down the road of an arms embargo against Israel because it would potentially rule out sales of arms and components that would be legitimate, perhaps for self-defence. Does the UK Government take the same view on arms exports directly or indirectly to the Palestinians?

Bill Rammell: We are not dealing with a nation state in the same way and we actually—

Q145 Richard Burden: That is hardly their fault, but—

Bill Rammell: No, and we are doing our level best to get to the situation where we can have a viable Palestinian state, but I think I am right in saying that

at the moment, because it is not a nation state in the same way, it would not be eligible for armed exports in the same way as other states.

Mr Massey: That is my understanding. It is fair to say that we have made exports that have gone to the Palestinian Authority, armoured vehicles for use by the government, for example; so there are exports that are going in to the Palestinian Authority, but I suspect your question is: are we exporting offensive arms?

Q146 Richard Burden: No, defensive arms, for civilian purposes and elsewhere.

Mr Massey: In that sense, we are doing what you are asking.

Q147 Richard Burden: One thing that would, presumably, be quite often defensive—and I do not know if Israel has approached Britain for this—is if, say, Israel applied for a licence for an anti-tank weapon, that might be granted on the grounds of attack and you need anti-tank weapons to stop it. In principle that could be a weapon that could be supplied to the Palestinians.

Bill Rammell: We are really in the realms of the theoretical here. I am not sure that the civilian authorities within the Palestinian territories would apply for a tank—

Q148 Richard Burden: As far as I know, they have not.

Bill Rammell: For civilian purposes there are some sales that take place.

Q149 Sir John Stanley: An important point of clarification of your previous answer, Minister: you said that you were entirely satisfied that at the time of the F16 head-up displays and components licences for those were granted, you were satisfied that the EU consolidated criteria were met. You will be aware that we received from Ian Pearson's officials an amendment to the letter which he originally wrote to the Committee on 19 February, and in that amended letter, which was conveyed in an e-mail of 12 March from Mr David Johnson at BERR to our then clerk, the text was amended to read as follows: "At the evidence session I stated on the basis of advice I had received that no export licences for F16 head-up display and other equipment to Israel had been granted since 2002. While this is correct, I would like to clarify that this refers to licences for the export of F16 HUD components direct (to Israel) for use in Israel. Since that date there have been a small number of licences granted for these goods where, although not going direct to Israel, we were aware that Israel was the ultimate end-user." The question I have for you is, first, will you provide the Committee with the details of the "small number of licences granted" since 2002 for F16 head-up displays with regard indirectly to Israel, when the Government knew that Israel was the ultimate end-user, including the dates when those licences were granted. Can you confirm for the Committee that at the time of those dates, when

those licences were granted, in each and every case you were satisfied that EU consolidated criteria had been complied with?

Bill Rammell: We will confirm it in writing. The answer is “yes” to both. We will certainly provide you with that detailed information.³ Secondly, I know from my ongoing practice as a Minister that this is the case, but obviously in preparing for this Committee I have gone through this in great detail with officials and I am very confident that at the time that each of those sales was undertaken, the judgment was that they were in accordance with the arms export criteria. I will confirm that in writing.

Q150 John Battle: At our last Committee meeting in March, I pursued the question of embargoes as opposed to individual licences with Sri Lanka, and I was a bit disappointed by the evidence of the Export Group for Aerospace and Defence, because they made the remark that if Western democracies were to place embargoes on places like Sri Lanka, then all they would do, because they had not got their own indigenous production, is go elsewhere to countries that might not be friendly to us. I thought that that was a most unsatisfactory answer. I was rather more encouraged by your answer in the House of Commons in February, where you assured the House, and the country really, that since the breaking of the cease-fire in January 2008 that the UK has not issued any licences for lethal goods or any other military goods that would prolong or aggravate the internal conflict in Sri Lanka. Since February, since March, and until today, the situation has magnified and is much worse. As I pointed out at the last Committee meeting, there is no proper press reporting of what is going on, but there are rumours of thousands of people being slaughtered in the Tamil enclave as we sit here. In the rest of your reply you said you did not think the situation in Sri Lanka would be improved by the introduction of an embargo on defence equipment. In my time as a foreign minister we did—and you have given a very coherent case for this—case-by-case judgments, but we also had embargoes on certain countries to send a very clear political and indeed commercial message to those countries that we wanted them to act differently. Has the time not come for you to think about not only imposing our own embargo on Sri Lanka, but joining with colleagues in the UN and the EU now to impose an arms embargo on Sri Lanka now?

Bill Rammell: I very much share your concern about the current situation in Sri Lanka, both in terms of the internal conflict and the associated human rights concerns. We have just been talking about Gaza, where there were genuine humanitarian concerns. If you look at it in number terms, the situation in Sri Lanka is probably greater and a real cause for concern. I do not judge. You make judgments based on the situation at the time; you do not make judgments for ever and a day. I do not judge at the moment that an embargo would give us greater leverage with the Sri Lankan Government and the

LTTE, because it is a two-sided process, to get the kind of peaceful outcome and cease-fire that we have been looking for. One of the other problems, both with trying to get a UN Security Council resolution or an embargo is that, bluntly, we would fail in doing that. I know some people argue that you should absolutely state your conviction regardless of the outcome you will achieve. I think that if we went to the Security Council at the moment and sought to get, for example, a Security Council statement, and failed, that would make the situation of ordinary people on the ground in Sri Lanka even worse, because the pressure on the authorities and the LTTE to change their conduct would be less.

Q151 John Battle: I am not sure that I completely accept that, given the role of the Chinese and the Indians, and the fact that the Indians could probably be the most influential, but are in a difficult position because of the election at the moment. I accept the difficulties at the UN, but could you also refer to the EU, because someone somewhere has to start sending pretty heavy signals of pressure? Who can put pressure on Sri Lanka? Otherwise, our Government is wasting its time, frankly, sending an envoy, Des Browne, to negotiate at the UN and the Sri Lankan authorities to try and obtain some leverage on the government to make some difference. If he is out there as a lone ranger it is not going to be very helpful. What more can we do internationally?

Bill Rammell: Just because I underlined the difficulties of getting international co-ordinated action, do not for a minute imagine we are not trying to achieve that. I think the statement that the Foreign Secretary agreed with Secretary Clinton in January or February, calling for a cease-fire, was a very positive step forward. The fact that we had a statement through the UN in support has been positive, and statements from the European Union. We are in discussions with the Indian Government about the pressure they can bring to bear. I think the situation in Sri Lanka is extraordinarily concerning. We are exploring every avenue to try and bring about a cease-fire. I happen to think the appointment of Des Browne as special envoy by the Prime Minister was a serious attempt to broker some engagement with the Sri Lankan Government, and I regret the fact that as yet the Sri Lankan Government has not responded to that, but we are going to keep at it.

Q152 John Battle: I am still left in doubt whether there are any circumstances in which we will bring about embargoes on any country! I want to move away from what the Export Group for Aerospace and Defence is saying because we do have embargoes on some countries. Can you envisage that in the future we will impose no more embargoes?

Bill Rammell: No, there are countries where we have embargoes. The judgment you have to make when you go for an embargo is that you have reached the end of the diplomatic road and you have no other levers at your disposal. Once you go down that road,

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let us not delude ourselves that in some senses you lose the leverage because they say “you are not engaging with us at all” and the drawbridge comes up. You can use that card, but I do not want to be in a situation of using an embargo because it demonstrates you have lost a lot of influence.

Q153 Mike Gapes: I want to raise a question about why we take such a tough line on the Israelis, but since 1997 we seem to have taken a very lax line on the Sri Lankans. There is a very important document we received from Safer World, which lists components, communications equipment, armoured vehicles, naval guns, naval equipment, sold to, exported to the Sri Lankan Government every year from 1997 onwards. It lists the kinds of things that they have been using, not just in the last few weeks, but over several years in their conflict with the organisation LTTE. It is quite clear from reading this that even if we had an embargo now the horse has bolted! I welcome the fact that in 2008 we said that exports would not be continued, but in 2006, according to this Safer World document, when the truce broke down and hostilities began to escalate, we were still exporting air guns, aircraft military communications equipment, armoured all-wheel drive vehicles, components for general purpose machine guns, components for machine guns, components for military air engines, components for semi-automatic pistols, small arms ammunition, components for combat aircraft. I could go through the same for other years. There has been a lack of focus on this conflict, and you yourself accepted that casualties in Sri Lanka have been greater than anything that has happened in Gaza, and the international community, partly because the Sri Lankan Government does not allow journalists in and also that there are human rights abuses in Sri Lanka, has not been focusing on this conflict and has not been for years. In retrospect would you now say that perhaps we should have been much more strict with Sri Lanka in the last decade so that they would not have been able to use equipment that was exported from this country for use in their internal conflict?

Bill Rammell: Again, we make judgments on a case-by-case basis. On the basis of the information at the time—those are rigorously looked at, and those sales were judged to be in accordance with the criteria. I would say it, would I not, but I do not think it is a fair criticism of the stance the Government has taken, as a country, in respect of Sri Lanka, and that is partly because of that historical relationship. However, it is a fair critique of the international community that not enough focus has taken place on what has been happening in Sri Lanka. That is partly because of that historical relationship. However, it is a fair critique of the international community that not enough focus has taken place on what has been happening in Sri Lanka. For the record, not just since 2008 but since the beginning of 2007 there have been very few licences approved for Sri Lanka, and for several years we have not supplied the Sri Lankan armed forces with lethal material. I think that demonstrates that our procedures and our

criteria have been working, but do we need a resolution to an appalling conflict that is taking place in Sri Lanka as urgently as possible? Yes. Are we doing everything we possibly can at the moment to try and bring that about as well?

Q154 Mike Gapes: Would you not at least accept that whilst we have tightened up the procedures with regard to Sri Lanka in the last few years, we did not have such tight procedures with regard to Sri Lanka in the last five, six, or seven years?

Bill Rammell: I honestly would not accept that criticism, because you make the judgment based on the evidence that is available at the time, based on what is happening on the ground. You are referring to changes that have taken place since those incidents took place. If you went back through history, bluntly we would not sell arms to anybody because of what has happened in the past. You base it on the evidence available.

Q155 Mike Gapes: Is it not true that knowing that there was this ongoing conflict, which has been going on for 20-odd years, and knowing that the cease-fire and the agreement that was supposedly in place were very, very weak and eroding, and knowing that we were providing equipment that could be used, and has been used in recent years, that we should have been more careful about it in the past?

Bill Rammell: States have a legitimate right to proportionate self-defence. Taking account of that and looking at all the available evidence of what is happening on the ground, you do not judge that a sale will breach any one of your criteria, then in those circumstances it is legitimate for a sale to take place. Had we, based upon what has been happening in Sri Lanka in recent times, similarly made judgments about those sales and disapproved lethal sales, then yes we have, and that has been the right thing to do.

Q156 Mr Borrow: Can we move on to changes in the guidelines for the UK Suppliers' Group, in regard to the issue of India. As I understand it, the UK Suppliers' Group had a policy that said you had to sign the non-proliferation treaty in order to be involved in exporting nuclear materials, and also that you had to have a comprehensive agreement with the International Atomic Energy Authority. Those guidelines were changed to allow exports to India, and that was in the absence of a comprehensive agreement with the International Atomic Energy Authority, although there is an agreement of some sort in place. That could have been halted, as I understand it, if the UK had objected to the change in the guidelines. Did the UK Government consider objecting to those changes in guidelines?

Bill Rammell: As soon as this deal was mooted we made a judgment in the broadest context about whether we thought it was a beneficial change, and from the beginning we supported this change. It will make a contribution, both in energy and climate security terms; and particularly it is a mechanism, bearing in mind our long-standing belief and policy

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commitment that we wanted India to sign up to the non-proliferation treaty and for all sorts of reasons India has chosen not to do that, effectively this is a means of drawing India in to the broader non-proliferation regime. In return for that we have delivered some significant advantages that the Indian Government has undertaken voluntarily. For example, India has committed to sign and adhere to additional protocol with respect to their civil nuclear facilities, refraining from transfers of enrichment and reprocessing technologies to states that do not have them, instituting a national export control system capable of effectively controlling transfers, continuing particularly its moratorium on nuclear testing and its readiness to work with others towards a fissile material cut-off treaty. All of those are things that we wanted to happen for a long period of time, and by looking at this practically and pragmatically we have managed to bring them about through this mechanism.

Q157 Mr Borrow: To what extent are those agreements specific to the current government in India, and to what extent would they carry forward to a government of a different complexion in India?

Bill Rammell: Even in respect of international treaties, future governments' hands are not bound, and you can renegotiate.

Ms Adamson: I would add on that that the membership of the Nuclear Supplies Group itself has agreed to trade under certain conditions, that is the condition under which the exemption was granted; so it could be for the members of the Nuclear Supplies Group themselves to say, "You are not meeting the commitments that you set up before." I think the NSG itself and the members thereof have the power to say, "You are not living up to your commitments."

Q158 Mr Borrow: Can you understand that many people would see the accommodation that was made for India as a sign very much that India is a powerful player, and therefore that special consideration was given to India that would not have been given to a country that was not considered of such importance internationally? Would that seem to set a precedent that if you are powerful enough or important enough you can change the rules, or the rules will be changed to accommodate you?

Bill Rammell: I would look at it differently. We have wanted, for years, to get India to sign up to the NPT as a non-nuclear weapon state, and to adhere to the non-proliferation regimes. That has not happened. You could continue down that road and if a proposal is on the table that effectively drags India in, within that broader non-proliferation regime, I think that is a deal worth doing.

Q159 Mr Borrow: Finally, Minister, I understand that new criteria are currently being considered by the Nuclear Supplies Group. To what extent are you confident that were those new criteria to be agreed, that there would not be a risk of nuclear exports to countries outside the non-proliferation treaty countries?

Bill Rammell: I am very confident of that because the whole of our focus, both through that process and through the IAEA process is to seek to do everything possible to stop the spread of nuclear weapon technology.

Q160 Malcolm Bruce: Minister, the UK Government has argued strongly the case for an international arms treaty, although there have obviously been hiccups along the way. My understanding is that the General Assembly has set up a series of meetings, six one-week meetings starting in March, with the next one in July. Can you give us an indication of what has happened in those meetings and what the preparations are for the next one?

Bill Rammell: You know that we have led the way in calling for an arms trade treaty, and if we can get it, and get it in the way we want, that can be a significant step forward for populations of peoples whose lives are terrorised and made unstable by the trade in such weapons. Through the European Union we are funding a series of regional seminars in West Africa, starting in April, to build support for the arms trade treaty. We have had the first meeting of what is called the Open-Ended Working Group, and the second one will take place in July.

Q161 Malcolm Bruce: Are those meetings in Africa a UK-Government initiative?

Bill Rammell: European Union.

Q162 Malcolm Bruce: They are separate from the OEWG but feeding into it?

Bill Rammell: That is right. We are working through the Open-Ended Working Group and bilaterally with countries across the world to try and garner support for the ATT. We launched this process back in September. We then had an event back in October or November where we brought the Diplomatic Corps together at the Foreign Office to seek additionally, on top of what we were doing in different countries, to try and get the message across.

Q163 Malcolm Bruce: NGOs and many others, obviously as a principle would support what the Government is trying to achieve, and I do not think there is any disagreement on that front; but they are a little sceptical as to what will be determined in the end, given the number of countries that are reluctant to get involved or not support it. The suggestion is that the treaty might include the Conventional Weaponry for UN Register of Conventional Arms and small arms and light weapons, and this is regarded as a rather low threshold; so from the UK Government's point of view would you support this seven-plus-one treaty, or do you have a higher aspiration? I am not asking you to reveal your negotiating hand, but it is important to indicate how high you are aiming, and your view of the danger of getting to what might be regarded as the lowest common denominator.

Bill Rammell: I think that is an absolutely legitimate concern, and I understand where it is coming from. The reality that the Government politics and

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certainly international negotiations are the art of the possible and you have to pursue this with partners, but we most certainly do not want a weak treaty and will do everything in our power—and I do have a difficulty without revealing a negotiating hand—to ensure we set the threshold as high as possible. If, at the end of the day, we get a weak treaty that does not make a material difference, I would regard that as a failure.

Q164 Malcolm Bruce: It is worse than that, is it not, because it provides cover for continuing trade?

Bill Rammell: Yes.

Q165 Malcolm Bruce: In December 2008—and the date is important of course—at the UN Assembly meeting the US voted against and 19 countries abstained. Obviously, there has been a change of administration in the US, and some of the rhetoric has also changed, but perhaps you are in a better position than I am to say whether you feel there is a substantively different approach coming from the United States? Obviously, voting against the working group is a pretty destructive position. Have they shown any indication of being prepared to engage, or any change of tone, and what effect might that have on the other 19 who were reluctant?

Bill Rammell: I think I would say it is work in progress. If you go to the first meeting of the Open-Ended Working Group the US delegate was far more constructive than had previously been the case—and this was a delegate under the Obama administration compared to the Bush administration. Whereas previously the response—and we were talking about this yesterday—had been, “no, no, no”, the response instead was, “let us be realistic; what is achievable; how can we do this?” That is just a straw in the wind, as it were, but I do regard that in tonal terms as a constructive change. The Foreign Secretary discussed it with Secretary of State Clinton. We are pursuing this at official level and I will be in Washington the week after next to discuss it with my counterpart. This is going to be a tough challenge, but we do have a significant degree of support. The merits of the case are extremely strong. When I hosted the event back in November at the Foreign Office what was interesting was that on the platform I was not only joined by NGOs but I was joined by representatives of British arms export manufacturers, who can actually see that if we get this right it not only stops the illegitimate arms trade but it provides a proper platform for legitimate arms trade. We have a very strong argument to make, and I am hopeful that we can make progress.

Q166 Malcolm Bruce: Are the United States likely to be engaged on anything more than seven-plus-one, the point being that you can use all kinds of other equipment, which is not within the seven-plus-one but nevertheless is potentially very destructive? I appreciate that you are in a negotiating position, but at the moment they are not prepared to engage in any treaty. Is it possible to have a treaty that has real

reach without the United States; and is there not the danger that if the United States engage, they drag the bar down rather than raise it up?

Bill Rammell: I will bring Jo in, but I would just say that the response from the US delegate at the Open-Ended Working Group I regard as constructive.

Q167 Malcolm Bruce: So they are attending the Working Group, even though they voted against it being set up?

Bill Rammell: Yes, and I welcome that fact. As I say, the tone of the comments was not “no, no, no,” it was, “let us be realistic; what can we achieve?”

Ms Adamson: I was at the meeting in New York and the delegate saved his intervention until the last day, and the fact of engaging had many delegates round the room saying, “Wow, that is a real change.” The very fact of engagement is a big shift, but what you are finding in Washington is that the new administration has got a big agenda; it has got CTBT, FMCT and all the other things to work through its position on, so the fact that we do not yet have a very worked-through position back from the US is more indicative of other things that they are juggling with and getting officials into state departments. I personally was really struck by the change in tone from the delegate at that meeting, but you are right that we have now got to dig below what would be beyond engagement.

Q168 Malcolm Bruce: If the United States is engaging, that is obviously good news. Are there any other states that would be a cause for concern? In other words, if we solve one problem does that just bring us into conflict elsewhere?

Bill Rammell: The answer to that is “yes”.

Q169 Malcolm Bruce: Obviously, we know who they are but—

Bill Rammell: But I am not sure that parading a list of those we need to do work with helps us.

Q170 Malcolm Bruce: Is there any positive change in other areas?

Ms Adamson: If the Americans are interested, that changes the dynamics a little bit anyway, certainly among the P5, I would say.

Q171 Malcolm Bruce: Russia and China we are talking about.

Ms Adamson: We have been banging our heads against the wall last year, but if you have this opening with the US being more positive and engaging, and thinking how we can make a treaty happen, rather than never, then the others look more interested automatically.

Bill Rammell: Just one more positive straw in the wind with respect to the United States is the Arms Trafficking Treaty, in respect of guns to drug cartels, which President Obama has proposed. There is not an exact read-across, but it shows an openness to these international legal instruments that was not there in the past.

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Q172 Mike Gapes: Can I begin with President Obama's recent speech in Prague about a nuclear-free world and a complete marked shift of approach to the Bush administration: what is our Government's assessment of that speech, and particularly on the question of the Fissile Material Cut-Off Treaty, which was briefly mentioned by Jo?

Bill Rammell: I think it is very encouraging. I think both the re-commitment to the start to the process, the reductions in the huge arsenals from both the United States and Russia, is a very positive step, and there is a willingness to look seriously at a Fissile Material Cut-Off Treaty on the part of the US. I said before to you that we have led the way in terms of nuclear disarmament—a 50% reduction over a decade. Bluntly, we need others to go further, and the indications from the Obama administration are very positive.

Q173 Mike Gapes: As you know, we have the non-proliferation review conference next year. The European Union had a meeting in December about what are called “new lines of action to combat proliferation of weapons of mass destruction”. I understand that the Government is supposed to bring forward proposals on the follow-up to that meeting. What action are we planning to take to ensure that our country meets the target of achieving the objectives of the new EU lines of action by 2010?

Bill Rammell: We are currently working towards the creation of our national implementation plan in relation to the new lines of action, and that plan is due this summer, so we can hit the 2010—

Q174 Mr Borrow: When you say “summer” does that mean July or October?

Ms Adamson: We have said we should try and have something towards the end of June. We have got together with officials from other Government departments and worked on the plan. Given that our own target is June, it is not late summer, it is more before summer!

Bill Rammell: To add to that—and again I would say it, would I not—we would regard it as part of the leading pack on implementation on these issues. The whole point of the new lines of action is to ensure that every European Union state is up to that standard. That is why, in addition to the six-monthly strategy progress report, we have asked for a frank analysis of EU achievements against the new lines of action, so we can look at what progress is being made throughout Europe.

Q175 Mike Gapes: Are the French on board with us on this, as the other nuclear weapon state within the EU?

Bill Rammell: That is certainly my understanding.

Ms Adamson: There was a seminar in Brussels last month, and the French were pretty active participants at the seminar. They have done quite a lot of internal reviews of their entire WMD structures across government, so they had quite an impressive plan, saying, “We have already done the following”—so my sense was “yes”.

Q176 Peter Luff: There is always the difficult question of dual use. Can we look at the European situation. Ian Pearson told us that there was a commission proposed on dual use being considered by the Council working group. Where have those decisions got to?

Bill Rammell: This is the re-cast or amendment of the EU Dual Use Regulation. That has now been completed. The re-cast will go to the Council of Ministers on 5 May. There is then a publication period and it will come in to force 90 days after that publication.

Q177 Peter Luff: So you know what change will come out of it. In particular is the UK going to be able to implement new brokering and transit controls to comply with UN Security Council Resolution 1540?

Bill Rammell: Yes, it is proposed to extend the coverage of the regulation to transit trans-shipment, which effectively gives customs officers the additional powers to open consignments to ensure that they are actually what they say they are.

Q178 Peter Luff: Are there any implications for domestic legislation here?

Bill Rammell: It is an EU regulation, and in terms of best practice we are at the leading edge of this anyway.

Q179 Peter Luff: I am going to ask you now two mutually contradictory questions, I appreciate. There are two quite separate concerns about dual use. The first is what we hear from the NGOs and indeed from defence manufacturers about levels of compliance in the dual use sector. They point to, “A sector of what should be a regulated industry operating wholly or outside the regulatory regime, which is clearly unacceptable.” What do you feel about that?

Bill Rammell: I do not think that is the case, but, look, there is a balance to be struck between the regulation you put in place and the way that that not only deals with a problem but then impacts upon legitimate trade. I think we have got the balance right, but it is something that we keep constantly under review, and there is a whole series of areas—for example, as the Export Control Act has been reviewed, where we have looked at it and received representations, and made changes to the processes.

Q180 Peter Luff: One NGO has said to us that they think at present given that the constituent elements of a so-called dirty bomb are most likely found on the dual use control list, the greatest important effort has to be focused on the greatest perceived threat. Do you think that is a fair comment?

Bill Rammell: No, I do not.

Q181 Peter Luff: Actually, you are making it easier to ask my second question, which becomes less mutually contradictory in this circumstance, because I have the opposite concern. We had an interesting letter from Ian Pearson telling us about tighter policies towards Iran, and saying that with

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regard to specific companies it can be seen from the Iran list on the ECO web site that licences have been refused to end users in Iran where previously they have been granted, and a further tranche of companies was added to the Iran list on 26 February this year. What concerns me—I have a constituency case, as you may guess, behind this—is a company in the petrochemical sector, which has traditionally supplied to Iran. Interestingly, it has had problems getting to Iraq as well, which is rather strange—but that is another matter and that is not for this list today. It is now finding that there is a long period over which the export licences are being considered—they are taking too long to get the answer “no”, in a way getting “no” quickly—but that is more a question for BERR than for you, I appreciate. What really concerns me is that they are very clear that they are getting “no” to all this equipment and they are basically giving up on the Iran market, where there are huge gas and oilfields waiting there to be exploited. That would be all right if European competitors were taking a similar policy, but it is quite clear that Iran will instead get its equipment from Germany. That really does rather upset me. Are you really sure there is a coherence of European policy specifically in relation to dual-use equipment for Iran?

Bill Rammell: We are certainly seeking to achieve that. It is a two-way street. I have certainly been lobbied by ambassadors of other European states saying that in respect of their manufacturers we are not doing enough. I do not believe that that is the case, and I make no apology for saying that in respect of Iran’s intentions to develop a nuclear weapons capability, that that is an extraordinary concern. That is why I welcome the commitment that President Obama has made to engage directly with the Iranian regime, but to maximise our chances of that proving successful we need to be much tougher on the sanctions front. I put my hands up: the United Kingdom has been at the forefront of making that case.

Q182 Peter Luff: I feel slightly aggrieved that my constituents lose their jobs, and people in Stuttgart will get them instead.

Bill Rammell: I, and other Ministers, have lobbied very hard elsewhere in Europe to ensure that we have a level playing-field. If you look at the way we apply, right the way across the board on these issues, where we can get it we want co-ordinated European action, so you do not get under-cutting with other states coming in and taking a competitive advantage.

Q183 Peter Luff: I may write to you about this.

Bill Rammell: I would be happy to talk about it.

Q184 Malcolm Bruce: My constituency interest is with the oil and gas industry, with major suppliers there. In the downturn in the North Sea, it is quite likely that suppliers of equipment will be looking for export markets, and as you will be well aware, a lot of those are in somewhat volatile places. What assurance can we have—and it is a two-way process—that they will be properly monitored but at

the same time they will not be disrupted, because very often that is how they are going to fill the gap during a downturn? It is equally clear that they need to be aware that if they are moving into newer markets, they may not be fully aware of all the dual use implications.

Bill Rammell: Sure. In respect of Iran, we are talking about a particular case. What I think is incumbent upon us across departments within Government is to ensure that we get the message out very clearly about what is acceptable and what is not acceptable, and that as far as possible we are giving accurate information to exporters so that they know where and how they can go about doing their business.

Q185 Richard Burden: In December of last year the EU agreed its Directive for the simplification of defence product transfers within the EU. That is due to come in this year. Do you see problems for the UK in the implementation of that harmonised licensing regime?

Bill Rammell: No. I think it has been a very positive outcome. There were concerns, and certainly the European Scrutiny Committee flagged this up to us and we took on board those concerns about potential loss for national discretion, the extension of Community competence and potential for limitations of inter-governmental co-operation through the negotiations that took place particularly in December. We managed to resolve those and the European Parliament adopted the directive on 16 December, and that will proceed for adoption at a future Council of Ministers meeting very shortly.

Q186 Richard Burden: For it to work from now on, though, it will obviously require all EU states involved to handle the regulations in a consistent way. Are you confident that that will be the case? Are there any areas of concern, and how will that be monitored?

Bill Rammell: It will certainly be monitored by the Commission and nationally by individual governments. The Directive certainly permits us to operate the regime very close to the current one because, for example, we have long moved towards a simplified licensing system within our operations, so I do not think we have anything to fear from this. We need to ensure—and the Commission will take a role in that—that that is the way it is applied across the European Union.

Q187 Sir John Stanley: Minister, I am sure that you would be as appalled as all members of the Committee would be if it were the case that IEDs being used by the Taliban in Afghanistan, resulting in the killing and maiming of our service personnel were found to contain British-made components. I trust it was drawn to your attention an article that appeared in the *Independent* on 21 February under the heading *Taliban using British devices to make bombs*. The article read as follows: “Explosive devices made in Britain are being used by the Taliban to carry out bomb attacks on UK forces in Afghanistan, it emerged yesterday. A British explosives officer is said to have made the startling

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claim during a briefing to Foreign Secretary, David Miliband, as he was on a visit to Afghanistan this week. The officer informed the minister that British-made components had been discovered in the remnants of bombs used by the Taliban.” Minister, will you confirm to the Committee that a British explosives officer did indeed brief the Foreign Secretary, as reported?

Bill Rammell: No, I am not able to do that. I am genuinely not aware of the report that you are referring to. I would just add the caveat that there are, on a weekly basis, reports that end up in newspapers, particularly relating to foreign affairs, where you delve beneath the surface, and they are not accurate. Nevertheless, I am not aware. I will go away from this meeting and find out the facts and figures and come back to you in writing as quickly as possible.⁴

Q188 Sir John Stanley: We would certainly like to know whether such a briefing was given to the Foreign Secretary, and in the terms referred to in the report. Assuming that this report is not totally fictional, and that it has basically a reasonable degree of factual accuracy, could you also tell the Committee, Minister, what action the British Government will be taking, what steps it has taken since the briefing the Foreign Secretary was given to identify the British company or the British individuals that have been responsible for manufacturing these parts; how these parts came to be exported out of the UK and by what route; and what steps the British Government is taking to ensure as far as it possibly can, using all the resources available to it, that British manufactured parts under no circumstances ever end up in Taliban IEDs, killing and maiming our service personnel?

Bill Rammell: With respect, Chair, there is a whole series of premises there that I am not going to affirm to today. I will get to the bottom of this and I will write to you with a detailed response. However, were it to be the case—and I do not know whether it is—that British components had been exported to arm the Taliban, that would be totally and utterly unacceptable. It would be a breach of our arms exports criteria, and we would need in those circumstances to do everything in our power to stop it reoccurring. As I say, I have not seen the article. It would not be the first time that an article had appeared that was not accurate, but nevertheless I will get to the bottom of it and I will write back to you.

Q189 Sir John Stanley: Minister, I have to say that if I had been doing your ministerial job and such an article turned up in my daily press cuttings, my goodness I would expect my officials to make certain it did turn up—this was on February 21, and on that day say I want the full background to this briefing and exactly what the Foreign Secretary was told and what we are going to do about it. I am disturbed, frankly, that this article has not been brought to your attention.

Bill Rammell: I am being frank with you. The press cuttings are like that on a daily basis. I have not seen it and it was not drawn to my attention. Nevertheless you have raised it with me and I will get to the bottom of it and get back to you urgently.

Q190 John Battle: Can I ask you about the restrictions on re-exports because there was a case in 2007, a classic case of India and Burma and helicopters from the EU. At that time, the Foreign Secretary, Margaret Beckett, said she was minded to consider adding a re-export clause to contracts, but since that time the Minister in person in January before this Committee said he was not minded to, and refused to consider a policy of re-export conditions on licences; yet the impression we would get is that where the EU has put in “no re-export without permission conditions”, they get a better hearing from India than we do. Would it not be wise for us to reconsider this position to see if we could do something to get a grip on re-exporting of equipment that we sell to people, which then they pass on?

Bill Rammell: Firstly, on the facts of the case with respect to India, my understanding is that in the first instance there were two British Norman Islander aircraft that were over 25 years old, and had reached the end of their effective life—

Q191 John Battle: Ours?

Bill Rammell: Yes. They were gifted to Burma. The second and more serious allegation involved a potential export of a military helicopter, including UK components from India to Burma. We were extraordinarily concerned about that and approached the Indians who provided us with categorical assurances that there was no intention to supply to Burma, and I do not believe there has been any subsequent suggestion that that took place. The way that our system works is that you take account of the risk of re-export at the time of the application. That is one of the factors that is taken account of. If there is a risk that it will end up through re-export where it should not, then the sale is not approved. I know there is a long-standing argument, and I know this Committee has made the case for it in the past in terms of a re-export clause in export licences. I think the fundamental difficulty with that is determining to whom that would apply and against whom any action would be taken. If it is the exporter, then you are asking the exporters to do something that is beyond their control. If it is the overseas customer, then we have a real problem with legal jurisdiction.

Q192 John Battle: How do we reconcile that with the EU position, because the EU is actually putting on that condition of “no export” in fact without conditions?

Bill Rammell: That is not my understanding.

Mr Massey: No, that is not the case. I think that is a misunderstanding. There are certain states within the EU that have a “no re-export” clause placed in their legislation. When I talk to my colleagues sitting around the COARM table in Brussels and say to any of them, “Okay, guys, this is all very well—when was

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the last time you tested it?” they all said, “We have never actually put it to the test”. Then I ask them, “Do you think it is enforceable?” and there is then much staring at their toecaps. The reality is that they have this legislation there, but in my experience none of them have any confidence that if they went to apply it, it would make any difference. They do not believe that it is enforceable—so it is fine words. This is the problem we have.

Q193 John Battle: It is individual states.

Mr Massey: Yes, individual states, not the EU. I think the problem we also have with the Indian helicopters is that when the story ran it gave the impression that this export had already taken place, and that was not the case. When we inquired, the Indians said: “Quite categorically, we have not made any exports, and we have no intention to do so.” From our perspective that was the end of the story.

Q194 John Battle: It is not the individual case so much as the principle of controlling the re-exports, but you are suggesting the EU has not got the position—it is individual states. However, you are still not minded to sharpen up our procedures?

Bill Rammell: If it would really sharpen up, then I would be prepared to look at it, but I am just not convinced, particularly because of the issue of legal jurisdiction. Let us take your example. Say the Indian case to Burma had taken place; we would not have a cat in hell’s chance of legally enforcing that within Burma. It would be there as a fig leaf, and I do not think it would make a material difference.

Q195 Chairman: If the contract specified that India, for example, could not re-export to a country subject to sanctions, I accept that enforcing that decision might be problematic, but if India understood perfectly well that no further arms export licences would be granted if they breached that contract with us, do you not think that would provide a significant deterrent to re-export to a country subject to an embargo?

Bill Rammell: But we have that deterrent implicit within our own controls at the moment, in that if a country engages in that practice, that will be taken down and used in evidence in any future arms sale to that country; so I think you achieve the same end without having—the absence of jurisdictional capability to deal with it.

Q196 Chairman: So your phrase “used in evidence” means it would have that effect? People realise this, do they? Is it absolutely clear? Are there any cases where you have had to remind countries that if they were to re-export they would be in breach of our expectations?

Bill Rammell: No, but it is absolutely part of the assessment process that is undertaken that when you make a judgment about the sale to that country, you also take into account the potential for re-export.

Q197 Chairman: Is it UK policy that if a country to which we exported arms were to re-export to another country subject to a UN or EU arms embargo, that that would be the last time an export licence was granted to them?

Bill Rammell: Again, because it is judged—I am not ducking it—on a case-by-case basis, I am not sure I can be that emphatic. It would certainly be assessed as part of the process. I can check back and write to you, but it would be very difficult for a sale to go ahead once that had been identified.⁵

Q198 Mr Jenkin: In regard to extraterritorial trade controls and the representations that the Committee has received from NGOs regarding anti-vehicle land mines, rather topically following Sir John’s point: the third review conference included a joint declaration, which the United Kingdom signed in 2006, aimed at preventing the transfer of AVMs to certain end-users. But the FCO website suggests that the export of AVMs is only under the heading of policy restriction rather than under the category B controls. Why is that the case?

Bill Rammell: Cock-up, not conspiracy. It should not have been on the FCO website, and that has been amended. It was a genuine mistake. I think you are right in describing, because there was not an international consensus on this issue in terms of reclassification—we went ahead with 19 other states and made a series of commitments, for example for preventing transfers other than to authorised agents, to prevent transfers that do not need stated detectability and active life standards, and to put in place tighter verification and documentation requirements. That is what we are proceeding to try and undertake, but I take it on the chin, that that should not have been described on the FCO website in the way that it was, and it has been removed.

Q199 Mr Jenkin: It is in category B, is it?

Bill Rammell: No, it is not. The reason for that is that category B occurs where there is an international consensus about the degree of concern. Not only does that not exist; but explicitly we did not achieve that. That is why we have gone down the road of trying to take individual actions in concert with 19 other states. However, I do not shut the door on category B listing, if we could achieve it at a later stage; but because there is not that international consensus, we have not achieved it.

Q200 Mr Jenkin: Which are the countries not in the consensus?

Mr Massey: I have not got a list, but we can get one.⁶

Q201 Mr Jenkin: Does it include other EU countries?

Mr Massey: Yes.

Q202 Mr Jenkin: So other EU countries are actively selling anti-vehicle land mines.

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Bill Rammell: We achieved internationally the consensus on anti-personnel land mines, and because it is similar technology and there are similar concerns, in principle we would like to stop the sale of anti-vehicle land mines. We are not in a position to be able to do that at the moment, but I will clarify to you which countries are within the group and which are not.

Q203 Chairman: Why can they not go in category A?

Mr Massey: We have got exactly the same problem as category B; we still do not have an internationally agreed definition of what we think they are.

Q204 Chairman: --- where they are, then.

Mr Massey: Yes, we have a declaration.

Q205 Chairman: We are talking about our export controls, are we not? What is there to stop us putting anti-vehicle land mines in either A or B?

Bill Rammell: Look, you could, but I said previously we try, because we are dealing with competitiveness and industrial concerns, not to create an un-level playing-field, and that is why we have gone down the route we have. We have made a number of specific commitments that I think clean up and police the export of anti-vehicle land mines. However, I do not rule out for ever and a day that we might move to category B listing, but that would have to involve some agreement and consensus with international partners, which is not there at the moment.

Q206 Chairman: We very much welcome the moves the Government has made in relation to extraterritorial controls, as you know, Minister, and there are some areas where we still think more could be done—and this is one of them. In a sense it seems a little odd to say, “The UK cannot do this because of international negotiations.” We could further apply extraterritorial controls and could apply it to anti-vehicle land mines if we wanted to, as you rightly say. Which category they would be put in is a little arbitrary, is it not?

Bill Rammell: Except that if you look in practice at the commitments we have made with 19 other nations, that achieves what people want us to achieve. We are moving forward on that and trying to deliver. I am not sure at the moment that category B listing would provide anything additional to that.

Q207 Mr Jenkin: Why not put it in category B?

Bill Rammell: Because if you undermine the principle that you list category B or category A on the basis of international consensus and heightened concern, if you breach that principle I think you lead to a number of unintended consequences.

Q208 Mr Jenkin: So it is not that we are now issuing licences for the export of anti-vehicle land mines, but we would not be issuing if it were under category B? It makes no material difference.

Bill Rammell: That is my understanding.

Mr Massey: When we talk about licensing of anti-vehicle land mines, we are only aware of one licence since November 2006, which was an export to Sweden where the AVMs were actually going to be disposed of. I do not think we are talking about a major problem in terms of export control from the UK.

Q209 Chairman: I am sure the Committee will give that further consideration. Minister, can I ask a final question about restricted material that the Committee receives, for example following your colleague Ian Pearson’s evidence earlier in the year, one of the follow-up letters had a restricted section concerning head-up display units and F16 fighter jets. At the time many of us could not understand why the information was restricted. Our clerk then had negotiations with BERR and it was partly derestricted. There have been one or two examples like this. My personal view is that the Government is very open about these things, and you have been very open and frank with us today; but even my charity gets tested when I look at these documents, and for the life of me I cannot understand why certain things are restricted in the first place, then we have a quiet moan about it, and hey-ho bits are quickly derestricted. This is not the best way to proceed, is it, Minister?

Bill Rammell: No. I take that on the chin. In preparing for this evidence session I discussed it with officials, and it is in nobody’s interests for items to end up on a restricted basis where, frankly, with some minor amendments they could end up on a non-restricted basis. I have instructed officials to view communications with your Committee on that basis for the future. Does that mean I can guarantee in all circumstances that something will not be restricted? No, it does not, but the bias of justification or the threshold for justification within the department will be set much higher to communicate with you in restricted terms.

Q210 Chairman: We obviously appreciate the need for restricted information and we deal with restricted information that is made available to the Committee. At no time has that restriction over years and years and years ever been abused. We respect that restriction. I do not think I need to press the point that our view is that, in the past, departments have been a little over-cautious.

Bill Rammell: I think you are making a very fair point, and I would hope that in the future you will see a change in practice.

Chairman: Minister, unless any colleagues have a final question—there are other interesting things happening today as well as this meeting—can I thank you and your colleagues very much indeed. We are very grateful and look forward to the written responses to one or two questions, which you kindly promised. We know they will be in a derestricted form, so thank you very much indeed.

Written evidence

Memorandum from the Department for Business, Enterprise & Regulatory Reform

Please see the attached Statutory Instrument (SI) that was laid before Parliament, and accompanying guidance that was published today. The legislation will come into force on 1 October 2008.

The only significant difference between this Order and the draft that I sent to the Committee on 30 May is the addition of extra text to define cluster munitions for the purpose of including them in Category A of the new trade control structure, and thus applying the most stringent controls to them. I explained in my last letter, that we had to do some late work to make sure that this legislation reflected the commitments made in the Dublin negotiations, but I am pleased to report that we have been able to do so, thus applying Category A status to all cluster munitions as defined in Dublin.

We have also changed the drafting style of the SI by moving the amendments to the Trade in Goods (Control) Order 2003 to a schedule.

On the guidance side, there have been a few changes of detail to deal with issues raised by other stakeholders; principally to clarify what we classify as the giving of “consideration”, and what supporting end user documentation is acceptable for trade control purposes.

9 July 2008

Memorandum from Rt Hon Malcolm Wicks MP, then Minister of State at the Department for Business, Enterprise & Regulatory Reform

As you will recall some issues arose during my appearance before the Committees on Arms Export Controls on 19 May which I promised to follow up in writing. I am now in a position to provide information on these issues as follows:

ZIMBABWE

In my letter to the Committees dated 22 May 2008 I stated that HMRC, as the enforcement body for export controls, are fully aware of the alleged involvement of a UK company in a shipment of arms to Zimbabwe. Subsequently the Foreign and Commonwealth Office were reassured by the Chinese authorities directly that the original arms shipment destined for Zimbabwe was en route back to China and had not been offloaded or rerouted to Zimbabwe by other means.

In this context, Sir John Stanley requested both during the evidence session and afterwards, that I write to the Committees and explain how current trade controls apply to trading to Zimbabwe. I can confirm that, because Zimbabwe is an embargoed destination, the current trade controls would apply to controlled activities (as set out in the Trade in Controlled Goods (Embargoed Destinations) Order 2004), whether these are carried out from within the UK; or by “United Kingdom persons” anywhere in the world. The term “United Kingdom person” is defined in the Export Control Act 2002 as a United Kingdom national, a Scottish partnership or a body incorporated under the law of any part of the United Kingdom. The Embargoed Destinations Order prohibits directly or indirectly supplying or delivering, agreeing to supply or deliver; or doing any act calculated to promote the supply or delivery of any controlled goods to any person or place in an embargoed destination without an appropriate licence. Unlike the other trade control Orders, there are no exemptions in the Embargoed Destinations Order for those whose sole involvement is in transportation services, financing or financial services, insurance or reinsurance services or general advertising and promotion.

Therefore in determining whether a breach has occurred in the case of the alleged supply of arms to Zimbabwe, the test would be whether the trading or “any act calculated” were carried out either from within the UK, or by a UK person anywhere in the world. The key issue would therefore be the nature of the involvement of any UK person. I should however stress that that is not to say that there is evidence of such involvement.

ECGD PROCEDURES

I was also asked by Mike Gapes, whether the Export Credits Guarantee Department checks for the potential for bribery and corruption when assessing applications. Having consulted officials on this matter I am now able to provide you with a document showing key aspects of the ECGD’s anti-bribery and corruption procedures. It is attached at annex A for the Committees’ attention and I hope you find it useful.

THE OECD REVIEW

I was asked by Marsha Singh, whether the OECD review of the UK is any kind of indication that we have been systematically failing in areas of anti-corruption and bribery. I do not accept that this is the case.

The current OECD review of the UK is an established part of a routine procedure whereby all signatories to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions are required to undergo detailed examination of their implementation and enforcement of anti-bribery policies, as part of the peer review process. Japan, Luxembourg and Ireland have all been through, or are going through, similar exercises. Future supplementary reviews have also been agreed for Chile and Turkey. The current supplementary or "Phase 2 bis" review is not an investigation into the Government's handling of the BAE/Saudi case, but a wider examination of UK laws, procedures, systems and resources focused on combating foreign bribery.

Annex A**KEY ASPECTS OF ECGD'S ANTI-BRIBERY AND CORRUPTION PROCEDURES**

These:

- Require applicants to provide copies to ECGD of their codes of conduct and to confirm that they have applied them in tendering for the award of the contract for which ECGD's support is sought;
- Require applicants to provide the name of any Agent involved in obtaining the contract, the amount payable to the Agent and where it is to be paid, and the nature of the services to be provided by the Agent;
- Require applicants to declare that neither they nor any of their directors have admitted to, or been convicted of, engaging in any form of bribery or corruption;
- Require applicants to disclose whether they, or anyone acting on their behalf, is under charge in a UK court for bribery of a foreign public official;
- Require each applicant to make reasonable enquiries concerning any of its group companies, agents or consortium partners who, in each case, are involved in the contract for which ECGD's support is sought and to confirm that, on the basis of those reasonable enquiries, the applicant has no cause to believe that any of those parties, or any of their directors, has admitted to, or been convicted of, engaging in any corrupt activity;
- Require each applicant to confirm that neither the applicant nor anyone acting on the applicant's behalf has engaged in corrupt activity in relation to the contract for which ECGD's support is sought;
- Enable ECGD to obtain information with a view to ascertaining whether any improper payments involving agents have been made;
- Give powers to ECGD to audit the accuracy of representations relating to the issue of bribery and corruption made to it in application forms and the performance of contracts which it has supported;
- Remind applicants of their obligations to comply with UK anti-corruption legislation; and
- Remind applicants that ECGD will refer all allegations of bribery, corruption or money laundering to the appropriate authorities.

11 July 2008

Memorandum from Rt Hon Malcolm Wicks MP, then Minister of State at the Department for Business, Enterprise & Regulatory Reform

In your letter to me of 12 June you asked for an assurance that BERR would provide at least two months for the Committees to consider the third tranche of changes for the Review of Export Controls. I am sorry not to have replied sooner, but as you know we have been finalising the second tranche changes and preparing for publication of our further response.

I am very grateful for the Committee's input into the Review process so far, and am keen to give it as much time as possible to provide input into the next stages. However, as you will appreciate, preparing and introducing new legislation is no easy task, and can be time consuming, partly because of the process that needs to be followed. We are also producing the third tranche order as a consolidation order, which we think will be helpful for users, but is not without complication because it involves more detailed consideration of the whole of the existing legislation rather than the particular areas of policy where amendment is required. We also need to make sure that we allow enough time after consulting the Committees to consider any comments it has on the drafts before finalising them.

With that in mind, we calculate that we will be able to get the final draft orders and guidance to the Committees in order to give it one month to comment on them. Any more than this might jeopardise our very tight timetable for laying them before Parliament in time for them to come into effect in April 2009 as planned. In order to enable the Committees to plan its meetings and discussions in advance, we estimate that this will fall in the period mid September to mid October. We would however provide the drafts earlier if at all possible. We would also aim to give the Committees preliminary drafts earlier; this might involve providing various elements of the orders and guidance on a piecemeal basis as and when they can be produced if the Committees would find this helpful. We would give this material to other external stakeholders at the same time as the Committees.

I hope that the Committees can accept this arrangement, so that we can bring the next set of changes into effect at the earliest possible date. We would of course keep the Committees closely in touch with any developments on the timetable during the drafting process.

22 July 2008

Memorandum from Mr Vernon Coaker MP, then Parliamentary Under Secretary of State at the Home Office

REPORTS FROM THE BUSINESS AND ENTERPRISE, DEFENCE, FOREIGN AFFAIRS AND INTERNATIONAL DEVELOPMENT COMMITTEES: SESSION 2007–08

Annual Report on Strategic Export Controls

In their report of 17 July 2008, the Committees on Arms Export Control recommended that within six weeks of the publication of the Report the Home Office supply a memorandum responding to the matters raised on the import of arms in their Report last year. (Paragraph 78)

A letter on this matter was sent to John Barrett MP on 2 April 2007 when he was a member of the Committee and I should explain that officials were under the impression that a copy of this letter had been subsequently relayed to the Committee in a response to a request for further information. I regret to say that we failed to pick up on the fact that this appears not to have happened and would wish to apologise for this misunderstanding.

As the Committee will be aware, firearms import, monitoring and export is within the competence of a number of Government Departments. Anyone wishing to bring prohibited firearms into Great Britain must have an import licence in accordance with the policy laid down by the Department of Business, Enterprise and Regulatory Reform but they must also hold the Secretary of State's authority under section 5 of the Firearms Act 1968 in order to possess those firearms once they are in this country.

Prohibited weapons are subject to a more stringent control than any other firearm and authority to possess or deal in such weapons is granted only if very good reason is shown. Extensive checks are made before a section 5 authority is issued by the Home Office to ensure there will be no risk to public safety. The police make enquiries into the background and *bona fides* of applicants and ensure that tight security is in place, and the Home Office insists on seeing evidence of a legitimate commercial need to possess the firearms. Where granted, section 5 authorities are tightly drawn, specifying where and how the firearms must be stored and transported. The police and Customs conduct checks on holders to verify that imported weapons are entered onto the register of transactions which all firearms dealers are required by law to maintain and to ensure they comply with the terms and conditions of their authority.

A firearm is deactivated when it has been rendered incapable of firing "*any shot, bullet or other missile*". It is then considered no longer to be a firearm and therefore no longer subject to control. A firearm is presumed to be deactivated if it has been stamped and certified by one of the two Proof Houses as conforming to deactivation standards set by the Home Office. This is an evidential provision only (under section 8 of the Firearms (Amendment) Act 1988) and does not preclude other forms of deactivation provided the outcome is no longer a firearm. However, a Proof House certificate has become the widely accepted system for showing that a firearm has been properly deactivated and that it can be possessed and traded lawfully. In practice, a dealer is required to continue to record anything which is not deactivated to these standards as a real firearm.

Home Office standards for deactivation were originally compiled in 1989 in consultation with the Forensic Science Service and the gun trade. Following some instances of automatic and self-loading guns being reactivated the standards were revised in 1995 to the current, more stringent requirements. It is generally accepted that these new standards have proved to be very effective in preventing re-activation.

I know the Government has already responded to the second part of your recommendation, concerning the import of 200,000 assault rifles, but I wanted to add that the Home Office keeps a close eye on the importation of large volumes of prohibited weapons and will consider very carefully any evidence coming to light which might justify revocation of a particular section 5 authority. We are not aware of any

transactions in recent years where the dealers concerned have not held the necessary import licences and section 5 authorities. The police have indicated that they are satisfied that the firearms are being stored securely.

27 August 2008

Memorandum from the Department for Business, Enterprise & Regulatory Reform

Malcolm Wicks' letter of 22 July to Dr Berry said that we hoped to send the Committee the first drafts of the third tranche of the new legislation between mid September and mid October. I am pleased to be able to enclose the first extracts of these now. We have worked closely with NGO and industry stakeholders on their technical aspects.

They cover the following three areas as announced in the Government's further response:

- *Trade controls*: defining light weapons and including them in Category B; moving long range missiles from Category A into Category B;
- *Transport*: controlling the sole provision of transport in relation to Category B goods;
- *Transit and Transshipment*: amending the legislation so that licences will always be required for Category A goods transiting or transshipping the UK; and so that licences will be required for Category B goods for a specified list of destinations of concern; and
- *Receipt of fee or commission*: clarifying the definitions.

To assist the Committee in its consideration, a brief explanatory note, together with the relevant extracts from the draft legislation, is attached for each of these four areas. However, please do not hesitate to contact us if the Committee requires any additional information or clarification.

We anticipate that we will be able to circulate a full first draft of the new consolidated Order in its entirety towards the middle of this month. We will of course send this as soon as we can. At that time, we will clarify exactly when we will need the Committee's final comments in order to enable us to lay the Order so that it comes into effect on 6 April next year, but we will probably need them by the middle of October.

9 September 2008

EXPLANATORY NOTE 1: TRADE CONTROLS

ATTACHMENT 1: ARTICLES 19 TO 24; NEW DRAFTING APPROACH TO TRADE CONTROLS

We have followed a simplified drafting approach for the new trade controls, based on the approach currently used for "Restricted Goods". Rather than list all activities that constitute trading, the draft sets out, for each Category of goods, that supplying or delivering, agreeing to supply or deliver, or doing "any act calculated" to promote supply or delivery are all controlled, except where exceptions (set out in the text that follows) apply. There are then exceptions listed for Category B and C goods, but none for Category A. We hope that this approach makes the legislation more transparent and user friendly, but will of course be interested in your feedback on this new structure.

ATTACHMENT 1: SCHEDULE 1: DEFINITION OF LIGHT WEAPONS WITHIN CATEGORY B; RE-CLASSIFICATION OF LONG RANGE MISSILES

This attachment lists the goods covered by Categories A and B. Category A retains the drafting of the Trade in Goods (Categories of Controlled Goods) Order 2008, except that long range missiles have been moved to Category B.

Category B has been expanded to cover both small arms and light weapon by cross referring to the relevant Military List entries.

Articles 11(c) (i) to (ii) and 13 (a) to (b) operate on the basis of a two stage test to determine whether a weapon is a light weapon. The first test asks traders to determine how many people the weapon was designed to be operated or fired by; the second, whether it is standalone. This reflects our discussions with industry, which indicated that there was no effective way to define light weapons solely by reference to the number of people operating them, but that another important factor was whether or not the weapon in question was designed for incorporation into a weapons platform. The weapon will only meet the light weapons definition if it is designed for operation by three or less people, and is not designed to be incorporated into a weapons platform. What is important is the number of people needed to operate the weapon itself, not the platform: we should not for example, be seeking to control weapons designed for a fighter aircraft simply because that aircraft only needs a crew of three to fly it.

ATTACHMENT 1: EXCERPT OF 1ST DRAFT OF LEGISLATION ON TRADE CONTROLS PART 1 TRADE CONTROLS

PART 1

TRADE CONTROLS

Embargoed destinations

- 19—(1) This article applies to—
- (a) persons carrying out activities in the United Kingdom; and
 - (b) United Kingdom persons.
- (2) Subject to articles [24] and [251*], no person to whom this article applies shall directly or indirectly—
- (a) supply or deliver;
 - (b) agree to supply or deliver; or
 - (c) do any act calculated to promote the supply or delivery of any goods subject to trade controls [to any person or place in an embargoed destination].

Category A goods

- 20—(1) This article applies to—
- (a) persons carrying out activities in the United Kingdom; and
 - (b) United Kingdom persons.
- (2) Subject to articles [23, 24] and [25], no person to whom this article applies shall directly or indirectly—
- (a) supply or deliver;
 - (b) agree to supply or deliver; or
 - (c) do any act calculated to promote the supply or delivery of any category A goods, where that person knows or has reason to believe that such action or actions will, or may, result in the removal of those goods from one third country to another third country.

Category B goods

- 21—(1) This article applies to—
- (a) persons carrying out activities in the United Kingdom; and
 - (b) United Kingdom persons.
- (2) Subject to paragraphs (3), (4) and (7) and to articles [24] and [25], no person to whom this article applies shall directly or indirectly—
- (a) supply or deliver;
 - (b) agree to supply or deliver; or
 - (c) do any act calculated to promote the supply or delivery of any category B goods, where that person knows or has reason to believe that such action or actions will, or may, result in the removal of those goods from one third country to another third country.
- (3) Nothing in this article shall be taken to prohibit the provision of—
- (a) financing or financial services;
 - (b) insurance or reinsurance services; or
 - (c) general advertising or promotion services by a person whose only involvement in the activities described in paragraph (2) is to provide or agree to provide such services.
- (4) A person (“the transporter”) whose only involvement in the activities described in paragraph (2) is to provide or agree to provide transportation services in relation to category B goods (“the relevant goods”) only contravenes the prohibition in this article if paragraph (5) or (6) applies.
- (5) This paragraph applies if the transporter arranges, otherwise than in the course of employment, the removal of the relevant goods from one third country to another third country.
- (6) This paragraph applies if the transporter otherwise than—
- (a) in the course of providing services to another person—
 - (i) to whom this article applies; and
 - (ii) who has agreed to provide transportation services in relation to the relevant goods; or
 - (b) in the course of employment removes or agrees to remove the relevant goods from one third country to another third country.

- (7) Nothing in this article shall be taken to prohibit any contract promotion activity that is carried out—
- (a) otherwise than for payment; or
 - (b) in the course of employment.

Category C goods

22—(1) Subject to paragraphs (2) and (3) and to articles [23, 24] and [25], no person shall directly or indirectly—

- (a) agree to supply or deliver; or
 - (b) do any act calculated to promote the supply or delivery of any category C goods, where that person knows or has reason to believe that such action or actions will, or may, result in the removal of those goods from one third country to another third country.
- (2) Nothing in this article shall be taken to prohibit the provision of—
- (a) transportation services;
 - (b) financing or financial services;
 - (c) insurance or reinsurance services; or
 - (d) general advertising or promotion services by a person whose only involvement in the activities described in paragraph (1) is to provide or agree to provide such services.
- (3) Nothing in this article shall be taken to prohibit any contract promotion activity that is carried out—
- (a) otherwise than for payment; or
 - (b) in the course of employment.

Exception for goods controlled by the torture Regulation

23 Nothing in article [20] or [22] shall be taken to prohibit activities related to the movement of the following goods within the customs territory—

- (a) [list of goods controlled in torture Regulation.]

Exception for activities carried out in the Isle of Man

24 Nothing in this Part shall be taken to prohibit activities carried out in the Isle of Man.

* Article 25 is not reproduced here, but deals with licensing

LISTINGS OF GOODS COVERED BY CATEGORIES A AND B OF THE TRADE CONTROLS

SCHEDULE 1

Article 2

GOODS SUBJECT TO STRICTER TRADE CONTROLS

Note; In this Schedule, defined terms are printed in quotation marks.

Definitions

In this Schedule:

“cluster munitions” means conventional munitions designed to disperse or release “explosive submunitions”;

“explosive bomblets” means conventional munitions, weighing less than 20 kilograms each, which are not self propelled and which, in order to perform their task, are specially designed to be dispersed or released by a dispenser affixed to an aircraft, and are designed to function by detonating an explosive charge prior to, on or after impact;

“explosive submunitions” means conventional munitions, weighing less than 20 kilograms each, which in order to perform their task are dispersed or released by another conventional munition and are designed to function by detonating an explosive charge prior to, on or after impact;

“ordinary handcuffs” means handcuffs which have an overall dimension including chain, measured from the outer edge of one cuff to the outer edge of the other cuff, between 150 and 240mm when locked and have not been modified to cause physical pain or suffering;

“production” has the same meaning as in Schedule 2 [ie, the definition in the current Orders];

“a self-deactivating feature” is one which automatically renders a munition inoperable by means of the irreversible exhaustion of a component (eg a battery) that is essential to the operation of the munition;

“a self-destruction mechanism” is an incorporated, automatically-functioning mechanism which is in addition to the primary initiating mechanism of a munition and which secures the destruction of the munition into which it is incorporated.

PART 1

CATEGORY A GOODS

Certain Security and Para-Military Police Equipment

1. Goods designed for the execution of human beings, as follows—
 - (a) Gallows and guillotines;
 - (b) Electric chairs;
 - (c) Air-tight vaults made of eg steel and glass, designed for the purpose of execution of human beings by the administration of lethal gas or substance;
 - (d) Automatic drug injection systems designed for the purpose of execution of human beings by the administration of a lethal chemical substance.
2. Restraints specially designed for restraining human beings, as follows—
 - (a) Leg-irons, gangchains, shackles and individual cuffs or shackle bracelets except those that are “ordinary handcuffs”;
 - (b) Restraint chairs unless designed for disabled persons;
 - (c) Shackle boards;
 - (d) Thumb-cuffs and thumb-screws, including serrated thumb-cuffs;
 - (e) Electric shock belts.
3. Portable devices designed or modified for the purpose of riot control or self-protection by the administration of an electric shock (eg, electric-shock batons, electric-shock shields, stun-guns and electric-shock dart-guns).
4. Components specially designed or modified for the devices in paragraph 3.
5. Hand-held, spiked batons.

Cluster munitions, explosive submunitions and explosive bomblets

6. “Cluster munitions” other than those munitions described at paragraph 10.
7. “Explosive submunitions” other than those submunitions described at paragraph 10.
8. “Explosive bomblets”.
9. Components specially designed for “cluster munitions”, “explosive submunitions” or “explosive bomblets”.
10. Paragraphs 6 and 7 do not include the following conventional munitions:
 - (a) a munition or submunition designed to dispense flares, smoke, pyrotechnics or chaff; or a munition designed exclusively for an air defence role;
 - (b) a munition or submunition designed to produce electrical or electronic effects;
 - (c) a munition that has all of the following characteristics:
 - (i) each munition contains fewer than ten “explosive submunitions”;
 - (ii) each “explosive submunition” weighs more than four kilograms;
 - (iii) each “explosive submunition” is designed to detect and engage a single target object;
 - (iv) each “explosive submunition” is equipped with an electronic “self-destruction mechanism”;
 - (v) each “explosive submunition” is equipped with an electronic “self-deactivating feature”.

PART 2

CATEGORY B GOODS

Small arms and light weapons within ML1 and ML2

11. “Goods” specified in entry MLI or ML2 in Schedule 2 other than—
 - (a) [“goods” specified in entry ML2.b. in that Schedule];
 - (b) mortars with a calibre of 100mm or more;
 - (c) weapons that are—
 - (i) designed to be operated or fired by a crew consisting of more than three individuals;

or

- (ii) designed to be incorporated in an “aircraft”, “vehicle” or “vessel”;
- (d) accessories for the “goods” specified in sub-paragraphs (a) to (c).

Ammunition for small arms and light weapons within ML1 and ML2

- 12. Ammunition for weapons falling within paragraph 11.

Light weapons within ML4

13. Equipment specified in entry ML4.b. in Schedule 2 that is specially designed for [firing or launching] rockets, grenades, missiles or other explosive devices but is not—

- (a) designed to be operated or fired by a crew consisting of more than three individuals;
- (b) designed to be incorporated in an “aircraft”, “vehicle” or “vessel”.

Ammunition for light weapons within ML4

- 14. Rockets, grenades, missiles and other explosive devices that are—
 - (a) specified in entry ML4 in Schedule 2; and
 - (b) capable of being fired or launched from equipment falling within paragraph 13.

Hand grenades

- 15. Grenades specified in entry ML4 in Schedule 2 that are designed to be thrown.

MANPADS, missiles for them, associated equipment and their specially designed components.

- 16. To the extent they do not fall within paragraph 13 or 14, the following “goods”—
 - (a) man-portable air defence systems (MANPADS), as follows:
 - (i) surface-to-air missile systems designed to be man-portable and operated and fired by a single individual;
 - (ii) surface-to-air missile systems designed to be operated and fired by more than one individual acting as a crew and portable by several individuals;
 - (b) missiles for MANPADS;
 - (c) “production” equipment specially designed for MANPADS;
 - (d) field test equipment specially designed for MANPADS;
 - (e) specialised training equipment and simulators for MANPADS.

Long-range missiles

- 17. Missiles capable of a range of 300km or more that fall within Schedule 2. Components for “goods” within this Part.
- 18. Components specially designed for “goods” falling within any of paragraphs 11 to 17.

EXPLANATORY NOTE 2: CONTROLS ON TRANSPORT OR CATEGORY B GOODS

ATTACHMENT 2, ARTICLE 21(4) TO (6)

The Further Response, stated “In order to keep the burden proportionate to the risk, we need to do further work with stakeholders to ensure that we keep outside the scope of the control those activities that are of no concern. In broad terms, the intention would be to catch those who have direct involvement in transferring or arranging the transfer of Category B goods between two countries overseas where they know or have reason to believe that they are Category B goods”.

Article 21(4) to (6) aims to control the activities of the UK person who is most closely connected to the overseas entity which wants the goods moved, other than where that UK person is acting as an employee. Thus:

- where a UK person or business engages directly with the overseas person who requires Category B goods to be moved, their actions are controlled;
- UK transporters who supply their transport services to a non-UK concern prior to their onward supply to the customer are also controlled; but
- UK sub-contractors to a UK concern will not be controlled (there is no need to do so, since the person who they supply will be controlled in any event); and
- we will not control the activities of UK employees going about routine duties, for example driving trucks, loading goods, or doing paperwork which would ultimately contribute to the provision of transport by their employer, if they do not themselves have involvement with the overseas entity seeking to move the goods outside the course of their employment.

The draft is structured as follows:

- Article 21(4) states that transportation services are controlled only in the circumstances described at Article 21(5) or 21(6);
- Article 21(5) then controls the activities of UK freight forwarders and other main providers who actually arrange the movement of the goods in question (but not the employees of such companies in the normal course of their employment);
- Article 21(6) explains that where transporters provide their services to another UK person or person operating in the UK (ie “another person to whom this article applies”) who in turn has agreed to transport the goods, their activities are not controlled. However, where they supply their services to a non-UK person operating outside the UK, this is controlled, other than when they do so in the normal course of their employment (in this way, the services of self-employed pilots, drivers etc contracted to an overseas entity which wants goods to be moved are controlled, but not the individual actions of UK individuals employed by overseas entities).

ATTACHMENT 2: EXCERPT OF 1ST DRAFT OF LEGISLATION ON TRADE CONTROLS; CONTROLS ON THE TRANSPORT OF CATEGORY B GOODS

PART 3

TRADE CONTROLS

Category B goods

21—(1) This article applies to—

- persons carrying out activities in the United Kingdom; and
- United Kingdom persons.

(2) Subject to paragraphs (3), (4) and (7) and to articles [241 and [251*, no person to whom this article applies shall directly or indirectly—

- (a) supply or deliver;
- (b) agree to supply or deliver; or
- (c) do any act calculated to promote the supply or delivery of any category B goods, where that person knows or has reason to believe that such action or actions will, or may, result in the removal of those goods from one third country to another third country.

(3) Nothing in this article shall be taken to prohibit the provision of—

- (a) financing or financial services;
- (b) insurance or reinsurance services; or
- (c) general advertising or promotion services by a person whose only involvement in the activities described in paragraph (2) is to provide or agree to provide such services.

(4) A person (“the transporter”) whose only involvement in the activities described in paragraph (2) is to provide or agree to provide transportation services in relation to category B goods (“the relevant goods”) only contravenes the prohibition in this article if paragraph (5) or (6) applies.

(5) This paragraph applies if the transporter arranges, otherwise than in the course of employment, the removal of the relevant goods from one third country to another third country.

(6) This paragraph applies if the transporter otherwise than—

- (a) in the course of providing services to another person—
 - (i) to whom this article applies; and
 - (ii) who has agreed to provide transportation services in relation to the relevant goods; or
- (b) in the course of employment removes or agrees to remove the relevant goods from one third country to another third country.

(7) Nothing in this article shall be taken to prohibit any contract promotion activity that is carried out—

- (a) otherwise than for payment; or
- (b) in the course of employment.

*Article 25 is not reproduced here, but deals with licensing

EXPLANATORY NOTE 3: NEW CONTROLS ON TRANSIT AND TRANSHIPMENT
ATTACHMENT 3; ARTICLE 17 AND SCHEDULE 4

Article 17(2) needs to be read in conjunction with Schedule 4. Article 17(2)(b) removes all Category A goods from the exception, thus ensuring that they always need a licence; Article 17(2) (f) removes all Category B goods from the exception for the specified destinations of concern listed at Part 4 of Schedule 4. This ensures that they need a licence when they are in transit to those destinations. The rest of Article 17(2) replicates existing measures and their country coverage. Article 17(3) retains the conditions that must be met if the exemption is to be used.

This provides a three tier structure for transshipment destinations, based on relative risk. Category A goods require a transshipment licence for any destination; Category B goods require a transshipment licence for all the countries which require a licence for Category C goods, plus an extra list of 47 countries of specific Category B concern; Category C goods (ie all other goods on the Military List) require a licence only for a shorter list of 22 countries, including all those subject to embargo. The destination exclusion list for Category B goods has been compiled, following consultations between government departments, specifically on the basis of countries that cause concern for the goods in question (predominantly Small Arms and Light Weapons), either as a destination or for reasons of potential diversion. The combination of Parts 1 to 4 of Schedule I results in a total list of 69 countries. This mirrors the list of countries that will be excluded as destinations from our new Small Arms OGTCL, which will come into force on 1 October 2008, to coincide with the second tranche of legislation taking legal effect.

ATTACHMENT 3—EXCERPT FROM 1ST DRAFT LEGISLATION—TRANSIT AND TRANSHIPMENT**Transit exception**

17—(8) Subject to paragraph (2), nothing in [list relevant articles] shall be taken to prohibit the exportation of any goods which are goods in transit provided that the conditions in paragraph (3) are met.

(9) Paragraph (1) does not apply to—

- (a) anti-personnel landmines and components specially designed for them;
- (b) goods falling within Part I of Schedule 1;
- (c) equipment, software or technology falling within entry ML18, ML21 or ML22 in Schedule 2, specifically related to [anti-personnel landmines] or goods falling within Part 1 of Schedule 1;
- (d) goods being exported to a destination in Part 1 of Schedule 4;
- (e) military goods being exported to any country or destination specified in Part 2 or 3 of Schedule 4;
- (f) goods falling within Part 2 of Schedule 1 being exported to any country or destination specified in Part 4 of Schedule 4.

(10) The conditions are that—

- (a) the goods in question remain on board a vessel or aircraft for the entire period that they remain in the United Kingdom or are goods on a through bill of lading or through air way bill and in any event are exported within 30 days of their importation;
- (b) the destination of the goods in question following exportation from the United Kingdom has been determined in the country from which they were originally exported prior to their original exportation in connection with the transaction which has given rise to transit or transshipment and has not been changed prior to their exportation from the United Kingdom, or the goods are being returned to that country; and
- (c) the goods in question were exported from that country in accordance with any laws or regulations relating to the exportation of goods applying therein at the time of exportation of the goods.

SCHEDULE 2

Articles 2 and 17

COUNTRIES AND DESTINATIONS SUBJECT TO STRICTER EXPORT OR TRADE CONTROLS

PART 1

EMBARGOED AND NO EXCEPTION FOR TRANSIT

Democratic People's Republic of Korea

Iran

PART 2

EMBARGOED AND SUBJECT TO TRANSIT CONTROL FOR MILITARY GOODS

Armenia

Azerbaijan

Burma (Myanmar)

Democratic Republic of the Congo

Ivory Coast

Lebanon

Sudan

Uzbekistan

Zimbabwe

PART 3

SUBJECT TO TRANSIT CONTROL FOR MILITARY GOODS

Afghanistan

Argentina

Burundi

China (People's Republic)

Iraq

Liberia

Rwanda

Sierra Leone

Somalia

Tanzania

Uganda

PART 4

SUBJECT TO TRANSIT CONTROL FOR CATEGORY B GOODS

Albania

Belarus

Benin

Bosnia/Herzegovina

Burkina Faso

Cape Verde

Central African Republic

Chad

Colombia

Dubai

East Timor

Eritrea

Ethiopia

Gambia

Georgia

Ghana

Guinea

Guinea Bissau

Hong Kong Special Administrative Region

Jamaica

Kenya

Krygyzstan

Libya

Macao Special Administrative Region

Mali

Mauritania

Moldova
 Montenegro
 Morocco
 Nepal
 Niger
 Nigeria
 Oman
 Pakistan
 Russia
 Senegal
 Serbia
 Sri Lanka
 Syria
 Taiwan
 Tajikistan
 Togo
 Trinidad & Tobago
 Turkmenistan
 Ukraine
 Venezuela
 Yemen

EXPLANATORY NOTE 4: CLARIFICATION OF THE DEFINITIONS SURROUNDING THE RECEIPT OF FEES OR COMMISSIONS

ATTACHMENT 4: ARTICLES 21(7) AND 22 (3) AND ARTICLE 3 (INTERPRETATION):

The Further Response concluded that “there is not a case for removing the provision, and that there are risks associated with doing so. However, given that there does appear to be some uncertainty over exactly what constitutes “commission or other consideration”, we will amend the wording of the legislation to clarify this”.

Articles 21(7) below (in respect of Category B goods) and 22 (3) (in respect of Category C goods) are designed to achieve this by describing the relevant activities as “contract promotion activity” in Article 3 (Interpretation). Parts (a) and (b) of Articles 21(7) and 22 (3) set out the circumstances in which “contract promotion activity” is not controlled.

The exception no longer depends on whether the activity was carried out “in return for a fee, commission or other consideration”, but whether it was carried out “for payment”. We have made this change firstly, because the term “consideration” was not well understood, and secondly, because the previous formulation of legislation did not specifically cite the situation in which a person might be paid periodic fees or a retainer not related to any one act. In this new draft, “payment” is therefore defined very broadly in Article 3 (“a payment in money or money’s worth or in kind whether referable to a particular act or made from time to time by way of retainer or otherwise”). If “payment”, in this broad sense, has been received, then the control applies. The control will (as now) not apply to various activities where no “payment” changes hands, such as where a UK business which cannot supply the requested goods passes on details of potential suppliers to the person making the enquiry; or—in the context of transport—where a UK provider who is approached to move goods between two overseas countries simply redirects the enquirer to another overseas provider who, for logistical reasons, is better placed to pick up the business.

The second test, set out under Articles 21(7)(b) and 22(3)(b), exempts contract promotion activity carried out “in the course of employment”. This is a necessary balance to the broad definition of payment as explained above. Since the new definition includes payments made “from time to time”, it would have arguably encompassed salaries paid to UK employees carrying out various inconsequential acts which ultimately contribute to a movement between two overseas countries (eg preparing invoices, loading vehicles, putting customers in touch with suppliers and so on) without this compensating text.

ATTACHMENT 4: EXCERPT OF 1ST DRAFT OF LEGISLATION ON TRADE CONTROLS

PART 5

TRADE CONTROLS

Category B goods

21—(1) This article applies to—

- (a) persons carrying out activities in the United Kingdom; and
- (b) United Kingdom persons.

(2) Subject to paragraphs (3), (4) and (7) and to articles [24] and [251*], no person to whom this article applies shall directly or indirectly—

- (a) supply or deliver;
- (b) agree to supply or deliver; or
- (c) do any act calculated to promote the supply or delivery of any category B goods, where that person knows or has reason to believe that such action or actions will, or may, result in the removal of those goods from one third country to another third country.

(3) Nothing in this article shall be taken to prohibit the provision of—

- (a) financing or financial services;
- (b) insurance or reinsurance services; or
- (c) general advertising or promotion services

by a person whose only involvement in the activities described in paragraph (2) is to provide or agree to provide such services.

(4) A person (“the transporter”) whose only involvement in the activities described in paragraph (2) is to provide or agree to provide transportation services in relation to category B goods (“the relevant goods”) only contravenes the prohibition in this article if paragraph (5) or (6) applies.

(5) This paragraph applies if the transporter arranges, otherwise than in the course of employment, the removal of the relevant goods from one third country to another third country.

(6) This paragraph applies if the transporter otherwise than—

- (a) in the course of providing services to another person—
 - (ii) to whom this article applies; and
 - (iii) who has agreed to provide transportation services in relation to the relevant goods; or
- (d) in the course of employment removes or agrees to remove the relevant goods from one third country to another third country.

(7) Nothing in this article shall be taken to prohibit any contract promotion activity that is carried out—

- (a) otherwise than for payment; or
- (b) in the course of employment.

*Article 25 is not reproduced here, but deals with licensing

Category C goods

22—(1) Subject to paragraphs (2) and (3) and to articles [23, 24] and [25], no person shall directly or indirectly—

- (a) agree to supply or deliver; or
- (b) do any act calculated to promote the supply or delivery of any category C goods, where that person knows or has reason to believe that such action or actions will, or may, result in the removal of those goods from one third country to another third country.

(2) Nothing in this article shall be taken to prohibit the provision of—

- (a) transportation services;
- (b) financing or financial services;
- (c) insurance or reinsurance services; or
- (d) general advertising or promotion services by a person whose only involvement in the activities described in paragraph (1) is to provide or agree to provide such services.

(11) Nothing in this article shall be taken to prohibit any contract promotion activity that is carried out—

- (a) otherwise than for payment; or
- (b) in the course of employment.

EXCERPT FROM 1ST DRAFT LEGISLATION—LISTING OF DEFINED TERMS IN THE INTERPRETATION SECTION

STATUTORY INSTRUMENTS

2009 No. 0000

CUSTOMS

The Export Control Order 2009

Made 00th January 2009

Laid before Parliament 00th January 2009

Coming into force 6th April 2009

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972¹ in relation to—

- (c) measures relating to trade in dual-use items, including the transmission of software or technology in intangible form;² and
- (d) matters relating to trade in certain goods, including technical assistance, which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.³

It appears to the Secretary of State that it is expedient for the references to Council Regulation (EC) No 1334/2000,⁴ Council Regulation (EC) No 1236/2005⁵ and Article 3 of Council Regulation (EEC) No 2913/92⁶ to be construed as references to those instruments and that provision as amended from time to time.

[To the extent that this Order regulates the communication of information in the ordinary course of scientific research, the Secretary of State, having considered the reasons for the relevant controls and the need to respect the freedom to carry on the relevant activities, has determined that such regulation is necessary.]

The Secretary of State, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, by paragraph 1A of Schedule 2 to that Act⁷ and by sections 1, 2, 3, 4, 5 and 7 of the Export Control Act 2002,⁸ makes the following Order:

PART 6

INTRODUCTORY

Citation and commencement

19. This Order may be cited as the Export Control Order 2009 and shall come into force on 6th April 2009.

Interpretation

20.—(1) In this Order, the following expressions have the meanings given below, save where an expression is also defined in a Schedule where it has, for the purposes of that Schedule, that meaning—

“acquire” means buy, hire, borrow or accept as a gift and cognate expressions shall be construed accordingly;

“aircraft” means a fixed wing, swivel wing, rotary wing, tilt rotor or tilt wing vehicle or helicopter*;

“category A goods” means goods specified in Part I of Schedule I that are outside the United Kingdom and the Isle of Man [or are in transit];

“category B goods” means goods specified in Part 2 of Schedule 1 that are outside the United Kingdom and the Isle of Man [or are in transit];

“category C goods” means—

- (a) military goods other than goods specified in Schedule 1; and
- (b) portable devices for the purpose of riot control or self-protection by the administration or dissemination of an incapacitating chemical substance

that are outside the United Kingdom and the Isle of Man [or are in transit];

“CEMA” means the Customs and Excise Management Act 1979⁹*;

¹ 1972 c. 68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. SI), section 27(1).

² S.I. 2000/1813.

³ S.I. 2006/1461.

⁴ OJ No L 159, 30.6.2000, p1; relevant amending instruments are Council Regulation (EC) No 2432/2001 (OJ No L 338, 20.12.2001, p1) and Council Regulation (EC) No 1183/2007 (OJ No L 271, 22.10.2007, p1).

⁵ OJ No L 200, 30.7.2005, p 1.

⁶ OJ No L 159, 30.6.2000, p 1.

⁷ Paragraph IA of Schedule 2 was inserted by the Legislative and Regulatory Reform Act 2006, section 28.

⁸ 2002 c. 28.

⁹ 1979 c.2.

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“the Community General Export Authorisation” means the authorisation constituted by Article 6(1) of and Annex II to the dual-use Regulation*;

“competent authority” [definition outstanding.]*;

“contract promotion activity” means any act calculated to promote the arrangement or negotiation of a contract for the acquisition, disposal or movement of goods or any agreement to do such an act;

“country” [includes territory];

“customs and excise Acts” has the same meaning as in section 1 of CEMA;

“the customs territory” means the customs territory described in Article 3 of Council Regulation (EEC) No 2913/92 as amended from time to time*;

“dispose of” means sell, let on hire, lend or give as a gift and cognate expressions shall be construed accordingly;

“dual-use” in relation to goods, software or technology, means usable for both civil and military purposes*;

“the dual-use Regulation” means Council Regulation (EC) No 1334/2000 as amended from time to time*;

“embargoed destination” means a country listed in Part I or 2 of Schedule 4;

“exportation” shall be construed as follows—

(c) unless the context otherwise requires, it only includes removal from the United Kingdom to a destination outside the United Kingdom and the Isle of Man;

(d) it includes shipment as stores;

(e) in relation to a vessel, vehicle, submersible vehicle or aircraft, it includes taking it out of the United Kingdom, notwithstanding that it is conveying goods or passengers and whether or not it is moving under its own power

and cognate expressions shall be construed accordingly*;

“financial services” includes financing;

“general advertising services” includes general promotion services;

“goods” means tangible goods[, both used and unused,] and, [except in the definitions of category A goods, category B goods and category C goods, includes otherwise uncontrolled goods on which software or technology is recorded.];

“goods subject to trade controls” means category A goods, category B goods and category C goods.

“importation” in relation to a vessel, vehicle, submersible vehicle or aircraft includes taking it out of the United Kingdom, notwithstanding that it is conveying goods or passengers and whether or not it is moving under its own power and cognate expressions shall be construed accordingly;

“insurance services” includes reinsurance services;

“licence” means a licence granted by the Secretary of State;

“microprogramme” means a sequence of elementary instructions, maintained in a special storage, the execution of which is initiated by the introduction of its reference instruction into an instruction register;

“military” in relation to goods, software and technology, means listed in Schedule 2;

“normal commercial journey” means a journey providing transport services in the ordinary course of business;

“payment” includes a payment in money or money’s worth or in kind whether referable to a particular act or made from time to time by way of retainer or otherwise;

“prescribed sum” and “proper” have the same meanings as in CEMA;

“programme” means a sequence of instructions to carry out a process in, or convertible into, a form executable by an electronic computer;

“in the public domain” means available without restriction upon further dissemination (no account being taken of restrictions arising solely from copyright);

“registered user” means [];

“scheduled journey” means one of a series of journeys which are undertaken between the same two places and which together amount to a systematic service operated in such a manner that its benefits are available to members of the public from time to time seeking to take advantage of it;

“shipment” (and cognate expressions) and “stores” have the same meanings as in CEMA;

“software” means one or more programmes or microprogrammes fixed in any tangible medium of expression;

“surface effect vehicle” means any air cushion vehicle (whether side wall or skirted) and any vehicle using the wing-in-ground effect for positive lift;

“technical assistance” means any technical support related to repairs, development, manufacture, assembly, testing, use, maintenance or any other technical service;

“technology” means information (including but not limited to information comprised in software and documents such as blueprints, manuals, diagrams and designs) that is capable of use in connection with the development, production or use of any goods;

“a third country” means any country that is not the United Kingdom or the Isle of Man except that, for the purposes of Part 4 of this Order, goods that are goods in transit are considered to be located in a third country;

“the torture Regulation” means Council Regulation (EC) No 1236/2005 as amended from time to time*;

“transfer”, in relation to any software or technology, means the transfer by electronic or non-electronic means (or any combination of electronic and non-electronic means) from a person or place within the United Kingdom, except in articles [1 and [to the extent that those articles make provision in respect of transfers other than from a person or place within the United Kingdom, [and cognate expressions shall be construed accordingly]*;

“transfer by electronic means”, in relation to software or technology, means transmission by facsimile, telephone or other electronic media (except that oral transmission of technology by telephone is included only where the technology is contained in a document the relevant part of which is read out over the telephone, or is described over the telephone in such a way as to achieve substantially the same result as if it had been so read);

“transfer by non-electronic means”, in relation to any software or technology, means disclosure of software or technology by any means (or combination of means), including oral communication, other than as the exportation of goods or the transfer by any electronic means; “in transit” [means imported into the United Kingdom for transit or transshipment].

“transit or transshipment” means transit through the United Kingdom or transshipment with a view to re-exportation of the goods in question or transshipment of those goods for use as stores;

“UK controlled” in relation to dual-use goods, software and technology, means listed in relation to dual-use goods, software and technology, means listed in Schedule 3;

“vehicle” includes a railway carriage;

“vessel” includes any ship, surface effect vehicle, vessel of small waterplane area or hydrofoil, and the hull or part of the hull of a vessel;

“WMD purposes” means 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.

(2) Any reference in this Order to time after an event is a reference to a period of that length of time beginning on the day of that event.

Memorandum from Rt Hon Malcolm Wicks MP, then Minister of State at the Department for Business, Enterprise & Regulatory Reform

SEARCHABLE DATABASE

The Committees have, in their latest Report, asked us to set out the timetable, functionality and operating arrangements for the searchable database.

I am pleased to be able to tell the Committees that we have now started development work on the database. Because it will link to the SPIRE licence processing system, this needed to await SPIRE development and implementation, as well as allowing SPIRE to bed in. The concept has proved more complex technically than initially envisaged and it is not yet possible to confirm exactly when the database will be launched, but we hope this will be in the first half of next year.

Full details of the functionality and operation of the database will emerge in the development process, and I will update the Committees on this early in 2009. However, I would like to reassure the Committees that, as stated in the Government’s response to its 2007 recommendation, there will be no loss of functionality or data: the searchable database will provide licensing information to the same degree of detail as currently provided in the Quarterly Reports, but will allow users to produce bespoke reports to meet their needs, for example to produce reports of aggregated details of licensing activity for non-standard time periods, or to sort data by categories of equipment to see destinations to which that category had been licensed.

I hope you will agree that this is a very significant step forward in transparency. Closer to the date of launch, my officials would be pleased to demonstrate the searchable database to the Committees.

15 September 2008

Memorandum from the Department for Business, Enterprise & Regulatory Reform

On 9 September 2008, I sent you the first extracts of the draft legislation for the third tranche of review changes. I am now pleased to be able to send the Committee the full first draft of the new consolidated Order.

The new Order consolidates:

- (a) the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003;¹⁰
- (b) the Trade in Goods (Control) Order 2003;¹¹
- (c) the Trade in Controlled Goods (Embargoed Destinations) Order 2004;¹²
- (d) the Technical Assistance Control Regulations 2006.¹³

It incorporates the extracts which the Committee has already received. Those extracts put into effect the third tranche changes, namely in the areas of trade controls, transport, transit and transshipment and receipt of fee or commission. I would be grateful if the Committee could now consider whether the draft Order fulfils the policy commitments that were made in the Government Further Response in these areas, and whether the new consolidation does so in a clear and user-friendly way. Please let me have any comments by Friday 24 October. This will enable us to make any necessary changes before we lay the Order later this year.

In reading the draft Order the Committee should note that:

- There may be some further minor changes to the drafting of the Order to deal with issues arising from the consolidation, but these will largely be aimed at ensuring there has been no inadvertent change in the law. We will let you know should there be any substantial changes.
- There are gaps in the Schedules to the draft Order (for example, the military and dual-use lists). There will be no change in these areas and for that reason we are not seeking the Committee's comments.

24 September 2008

Memorandum from the Department for Business, Enterprise & Regulatory Reform

You will recall that I wrote to you on 9 July 2008, to advise that the Government had laid the second tranche of export control legislation on that date. I am now writing to advise you that the amendments to The Trade in Goods (Control) Order 2003 and The Trade in Controlled Goods (Embargoed Destinations) Order 2004, have come into effect today, 1 October 2008, when The Trade in Goods (Categories of Controlled Goods) Order 2008 takes effect.

This legislation fulfils commitments previously announced in the Government's initial response to the public consultation on the 2007 review of export controls. The legislation:

- introduces a more nuanced, three tiered structure for trade controls consisting of Category "A", "B" and "C" goods, replacing the "controlled" and "restricted" categories.
 - applies fully extra-territorial controls on "United Kingdom persons" anywhere in the world trading in small arms and Man Portable Air Defence Systems (MANPADs), by placing them in Category B
 - introduces the strictest possible controls on cluster munitions, by placing them in Category A. This controls both extra-territorial trading by "United Kingdom persons" and trading within the UK, plus the full range of support activities—eg the sole provision of transportation services, financing or financial services, insurance or reinsurance services and general advertising or promotion services.
 - extends controls to the trading of non-military explosive goods to embargoed destinations.
-

¹⁰ S.I. 2003/2764.

¹¹ S.I. 2003/2765.

¹² S.I. 2004/318.

¹³ S.I. 2006/1719.

The Statutory Instrument and explanatory note can be viewed on the Office of Public Sector Information website (http://www.opsi.gov.uk/si/si2008/pdf/uksi_20081805_en.pdf).

1 October 2008

Memorandum from Ian Pearson MP, then Economic and Business Minister at the Department for Business, Enterprise & Regulatory Reform

Thank you for your letter of 16 October, and for your congratulations on my appointment at BERR. I, too, look forward to working closely with the Committees and building on the constructive working relationship that we enjoyed under Malcolm Wicks.

Let me start by reassuring you that there has not been a serious deterioration in the time taken to process SIEL applications. A direct comparison of the figures quoted in the Robert Goodwill answer and those quoted in recent Quarterly Reports is misleading, because the figures were not calculated on the same basis. The Export Control Organisation (ECO) uses the median, rather than the average figure for processing performance in the Quarterly and Annual Reports. This is because average figures can be skewed by a small number of very difficult applications that have taken a long time to be processed, and therefore do not give a true impression of performance.

The figure used in the response to Robert Goodwill MP was the longer average figure (20 days). At the end of September 2008, the median processing time for 2008 to date stood at 13 days, as against the average processing time of 20 days. This is a good performance and well within target. It should also be noted that the ECO handled 30% more applications for the year to date at the end of September 2008 than it did for the same period in 2007. As an example, in September 2008, 1,289 applications were processed, with 900 of these making the target of 20 working days.

In October 2008, 1324 applications were processed with 1011 (76%) making the 20 working day target. If this trend continues, it is likely that the ECO will have processed almost 13,000 applications by the end of the year and more cases will have been processed on target than in any preceding year.

I hope this is helpful.

11 November 2008

Memorandum from the Foreign & Commonwealth Office

Following the Government's agreement in December 2003 to provide the committees on Arms Export Controls (CAEC) with details of all military gifts made under the Conflict Prevention Pools and Stabilisation Aid Fund (formerly the Global and Africa Conflict Prevention Pools), we have identified that the UK government made gifts of military equipment to the total value of £1,969,050 (during the period April to September 2008), and the attached table provides a breakdown of this equipment.

The Conflict Prevention Pool (CPP) was set up in April 2008 as a successor to the Global and Africa Conflict Prevention Pools. The CPP is jointly managed by the FCO, Ministry of Defence (MOD) and Department for International Development (DFID) and is intended to deliver long-term conflict prevention activity through regional programmes. Activity is focused on where the UK can have its biggest impact, through thematic programmes which identify cross-cutting conflict prevention issues. All work funded by the CPP is intended to help achieve the Public Service Agreement on Conflict. From 2008-11, £269 million of funding will be available with £73 million of funding available in 2008-09.

Separately I am also attaching the UK's Annual Declaration to the Hague Code of Conduct against Ballistic Missile Proliferation for 2008 here for your information.¹⁴ There have been no changes since our last interim return in April.

18 December 2008

Memorandum from the Export Group for Aerospace & Defence

If we may, we would like to submit to the Committee, for their consideration, the following comments:

1. The past year has seen very many welcome developments in both the UK and international export control arena:

- (a) The International Arms Trade Treaty (ATT) has now successfully negotiated its way closer towards the possibility of becoming fact—HMG is to be warmly congratulated for this, and their on-going efforts in this regard;

¹⁴ Not printed.

- (b) HM Revenue & Customs' "Clearance Hub" has been bedding down, and UK Industry has been getting used to how it works, and how to work with it;
- (c) The ECO has been completing its review of the Export Control Act 2002, which was undertaken in 2007, and has been introducing the new regulations which have been deemed to be necessary, arising from the comments received as a result of the consultations. We believe that the ECO is to be warmly commended for the open and transparent way in which it has undertaken the review—whilst we, in Industry, might not have agreed with all of the proposed changes and the way that they have been introduced, the ECO has clearly gone out of its way to try to frame and implement new regulations which are proportional to the perceived threat;
- (d) The SPIRE system has gone from success to success, and very few adverse comments about it have been received from anyone in UK Industry;
- (e) Such has been the success of SPIRE that the Defence Export Services Policy (DESP) branch at UK MoD has been looking at ways in which companies can use the SPIRE system for the submission of 680 applications;
- (f) The EU has been seeking to identify ways in which it can simplify the bureaucracy involved in cross-border transfers between its Member States, which (hopefully) will make the system more manageable and simpler, and result in less nugatory effort on the part of both the Governments and the exporters;
- (g) The USA has been seeking to enhance the speed of license processing for its own ITAR system, and been making small (but welcome) steps to reduce the bureaucracy involved.

2. We believe that Her Majesty's Government's stated commitment to non-proliferation efforts is highly laudable, and, indeed, is utterly essential, especially at this time with a growing perception of increased threat to us all, mostly from non-state actors. However, conversely, Industry continues to experience (sometimes extreme) practical difficulties in getting signed End-User Undertakings (EUUs) out of our own UK MoD, to satisfy the export control authorities of other sovereign nation states.

Amongst the many comments from Members that we have received on this issue have been:

"Whilst I was at a previous company we frequently had issues on this. The standard position from UK MoD was that they do not sign end-user certificates. Our standard position was "Ok, we will sell it to someone else who will. We will, of course, let the Daily Telegraph and the Guardian know." They usually got it signed, but it was a little like pulling molars out!!"

and

"As others have commented we too have come across issues with EUU's and also varying degrees of what HMG will sign and not. We have also encountered a situation where we requested an EUU from our overseas customer who refused to sign on the basis that they had spoken to a contact in the IPT (UK MoD) who advised they did not need to sign!! We have stuck to our guns on this and consequently have stopped shipments. After a long battle with the customer, we now think we have convinced them to complete the EUU!! So nice and helpful of UK MoD to re-enforce the position on EUU requirements in the UK!"

Therefore, our own (less well informed) Government officials are setting a highly hypocritical example to other sovereign nations, and it would be nice if those at UK MoD were as happy to be prepared to sign EUUs as those employed within the Export Control Organisation (and elsewhere) are thorough and diligent in scrutinizing the EUUs that are presented to them! Whilst we understand the arguments of principle added by the UK MoD, the fact is that this does not offer a very good example to others.

3. The tragic humanitarian crisis arising from the currently on-going Israeli military activity against Gaza has resulted in totally understandable calls (yet again) for the imposition of some form of "arms" embargo, either unilaterally by the UK, or in co-operation with our EU Member States.

Perusal of information that is in the public domain (see: <http://www.fco.gov.uk/en/about-the-fco/publications/publications/annual-reports/export-controls1>), reveals that the British Government already very often refuses export licence applications for Israel (see below), and does not seem to need to have a formal "arms" embargo in place to be able to do so:

1997—1 SIEL was refused

1998—2 SIELs were refused

2000—3 SIELs were refused, 3 more were revoked, and 1 OIEL was refused with another 2 being revoked

2001—31 SIELs were refused, and 2 OIELs were refused, with a further 12 being revoked

2002—84 SIELs were refused, and 1 OIEL was refused, with a further 6 being revoked

2003—26 SIELs were refused

2004—15 SIELs were refused, and 1 more was revoked

2005—11 SIELs were refused

2006—22 SIELs were refused

2007—25 SIELs were refused

Thus, the UK Government actually has the power to refuse export licences for Israel, even without a formal “arms” embargo being in place, and has never demonstrated any reluctance to do so in the past. Indeed, UK export licence applications for Israel (certainly since 2001) have seen a VERY high rate of refusal, which we strongly believe must be at least comparable to those of other EU Member States.

If HMG has followed and replicated past practice (which we are certain will be the case), we can be totally confident that, even without formally announcing an “arms” embargo, the British Government will currently be subjecting all export licence applications for the supply of controlled items/technology to Israel to such close, careful and detailed scrutiny that the practical result will be that no export or trade control licences will be being approved for the country for the foreseeable future, and certainly not until well after current operations in Gaza have ceased.

One complication, of course, to the current debate, is that the published figures from the British Government are, in fact, somewhat misleading for the average layman, and it must be pointed out that the UK is NOT a major supplier of military materiel to the Israeli Defence Forces.

Whilst the official figures do, indeed, show that a steady number of UK export licences have been approved for the export of materiel to Israel, not all of these will be for items for use by the Israelis themselves, and a very considerable proportion of these export licences (after very robust end-use assessment by British Government officials) undoubtedly cover controlled goods going for incorporation into items that Israeli companies supply on to customers elsewhere, including back here to the UK, and the actual values of UK exports to Israel of items for use by the Israeli Defence Forces will be much lower than might be perceived to be the case.

Israeli companies are significant exporters of defence and security materiel, in their own right, and are, indeed, at the cutting edge of certain key technological capabilities, such as in the area of Unmanned Aerial Vehicles (UAVs), which are required by Armed Forces around the World, including our own.

A British embargo could, therefore, achieve very little, and could, conceivably, see a similar approach applied by Israel to the UK, in retaliation. As Israel supplies the UK Armed Forces with some cutting-edge equipment, such as the UAV technology for Watchkeeper, the potential repercussions arising from the adoption of such proposals for the introduction of a formal embargo need to be VERY carefully thought through by UK politicians. We are certain that anything which might impede the UK MoD’s ability to acquire World-leading technology, simply because it comes from Israel, but, instead, to have to purchase alternative (and potentially inferior) equipment from elsewhere, as has been proposed by some, would not go down well with our own Armed Forces out in the field! Anything which might impede on our own Armed Forces’ ability to be able to access world-leading war-fighting capabilities/technology is to be avoided, we believe.

4. Prima facie, it remains worrying that the Defence Industry, which accounts for approximately 2% of UK GDP, continues to account for over 60% of export licences. At the very least, this lends strong support to the (very considerable) anecdotal evidence that there is significant non-compliance in the dual-use sector.

5. In this regard, it must be understood that the constituent elements of a so-called “dirty bomb” are, for the most part, more likely to be found on the dual-use control list than on the military list. Therefore, at present the greatest enforcement effort does not appear to be focused on the greatest perceived threat. Enforcement is, though, not the first stage in the export control process; more significant is the need to ensure that exporters of licensable items are actually working within the export control system, in the first instance.

6. This non-compliance is not that which is often encountered by the relevant agencies, that of a mostly law-abiding and compliant exporter making an honest mistake or a technical breach of licence conditions; rather it is a sector of what should be a regulated Industry operating wholly outside of the regulatory regime.

7. The difficulties of bringing these companies into the compliant community are well recognized, both by Government and Industry; however, the risk of not doing so is that an easy market for proliferators is created, in addition to an “uneven playing field” commercially, where compliant companies alone carry the overhead of the Regulations, and the non-compliant compete at a commercial advantage, at a time of acute financial stress.

8. For the foregoing reasons, we believe that HMG must put in much greater effort (and resource) into enhancing the effectiveness of the UK’s export controls relating to the dual-use sector, as this is clearly the area of greatest potential concern in this arena; if only HMG could be clearly perceived to be doing this just as vigorously as it is in the conventional sector (eg the Military List), then there would be far fewer concerns.

9. We were delighted to read recently about the fact that Mr Colin Stott and Mr Simon Knowles, directors of Organic Intermediates Limited, based near Liverpool (which went into liquidation in August 2004), have become the first people to be prosecuted under the Chemical Weapons Act, and been fined for breaching rules designed to halt the spread of weapons of mass destruction (WMD). We look forward eagerly to hearing and reading more about other similar successful prosecutions that HMG may pursue in the future.

10. Currently, global efforts at counter-proliferation just do not work, as they cannot actually prevent proliferation, but, at best, can merely delay it and mildly inconvenience the potential customers, whilst they scour around the World for an alternative source of supply. Business has gone global, whilst regulatory regimes are still implemented at the national level; this basic fact must be seen to be what it is: a fundamental weakness in the global counter-proliferation system. Therefore, on this basis, it really does not matter how much more effective we make our own system, unless these efforts and systems are replicated by other nations. With that in mind, we applaud HMG for its outreach activities in other countries, but believe that much more of this needs to be done in this regard.

11. Again, we believe that HMG is to be congratulated for its efforts to promote the proposed International Arms Trade Treaty, which does offer considerable potential benefits, although, contrary to the overly-enthusiastic pronouncements of some in the NGO lobby, we do not perceive this, alone, as being a panacea, in itself. Under the ATT, we would want to see total transparency on what has been approved for export by other nations. For a truly effective ATT to be introduced, there must be provision of capacity-building outreach assistance to other signatories, by HMG, and other nations who have effective and robust export control systems of their own. For the ATT to succeed, there needs to be greater clarity on definitional issues, to minimise the burden on legitimate Industry and to make the systems and procedures more robust. These are the views which we will be feeding into HMG, as the international discussions on an ATT continue.

12. We acknowledge the comments of the Committee in its latest report, about their own perceptions on the arguments in favour of giving full extraterritoriality across the board for all Military List goods. However, we would ask the Committee to consider this issue very carefully: the potential impact for UK nationals employed by perfectly legitimate and responsible overseas firms (such as Boeing, EADS, Lockheed Martin, Raytheon and Thales, etc, etc, etc) could be very great, despite the fact that they must undoubtedly very greatly outnumber those (potentially globally very few) UK traffickers and brokers whose irresponsible activities we all want to catch and curtail. Without a clear and concise definition of what HMG regards as being “trade” which is licensable, many perfectly responsible activities undertaken on behalf of these legitimate companies would be caught.

This proposed universal coverage would require the establishment of a vetting system within a global company that would require it to establish and maintain a system/process to review the citizenship data of all employees (in Boeing’s case, alone, that would equate to some 150,000+ employees in more than 70 countries) globally in order to identify any UK nationals who are conducting covered activities for covered products. Apart from issues relative to potential violations of human rights (ie equal opportunity, etc.) as such may exist in the more than 90 countries where such companies conduct business operations, the process/system would have to have the capability to monitor continually the activities of these persons over the life of their employment as a special class of employee. These people and their management would have to be made aware of the requirements, training would have to be developed and deployed for this specific purpose and administered on an on-going basis. There would need to be persons assigned the responsibility for administering and monitoring this activity and for obtaining and administering the required licenses and record-keeping functions, etc.

Avoiding for the moment any discussion of cost of legal bills to address the various issues in setting this up globally, all in all the annual cost of administering this one requirement could run easily into the millions each for companies such as Boeing, EADS, Lockheed Martin, Raytheon and Thales. Now, from an entirely pragmatic point of view, what would likely happen in this circumstance is that these companies (and many others) would examine the risk itself, ie violation of UK trafficking and brokering regulations, and would then examine the alternative mitigation strategies and take the least cost/best solution. To our thinking there is really only one acceptable solution available to the non-UK based company (like Boeing), and that is to ensure that no UK national is ever in a position to violate the regulations. This would have very serious potential implications for the future employment of UK nationals. Now if the object of the proposed regulation is to capture illicit activities, this approach does nothing...it merely means that UK nationals would not participate in any legal transactions: illegal transactions, however, would be likely to continue in view of the well known difficulties of successfully pursuing extraterritorial prosecutions.

In a similar vein, British transport companies operating overseas and, perhaps more especially, British employees of foreign transport companies will become liable to extra-territorial trade controls on certain military list categories under impending legislative changes. Not only does this endanger the employment of UK nationals overseas, but it also threatens to have the effect of removing the willingness of UK carriers to undertake the carriage of any such military articles.

UK transport companies already have a first rate reputation worldwide for both security and compliance under other regulatory regimes, so it would be a disproportionate and counter-productive move to burden them with further controls, at least when considering their operations outside the UK.

We need to bear in mind that the introduction of a new law takes up enormous amounts of civil service and ministerial time and cost to establish new statutory regulations. It can also impact legitimate Industry both in UK, and elsewhere, with huge compliance time and costs and resource needs by introducing yet another audit compliance scheme to world Industry. Extension of the law would also place an additional burden on an already under-resourced HM Revenue & Customs, which cannot seemingly adequately police the existing structure, and introduces a potential burden on the UK prosecution services and the UK court

system, who will, no doubt, have significant difficulty in securing substantive evidence guaranteed to effect successful prosecutions. Failure to bring successful targeted prosecutions will bring public contempt on both the new and existing export/trade control law—and make ongoing compliance even more difficult than it already is.

Therefore, reflecting these concerns, we (EGAD) have been involved in on-going, constructive, in-depth discussions with a number of Non-Governmental Organisations (NGOs) about ways in which the UK could frame, adopt and effectively implement an all-embracing, fully extraterritorial trade control system across the whole range of the Military List, which would have a lesser (or even negligible) impact on the commercial activities of responsible overseas firms, whilst being more effectively targeted at those whose activities we all want to catch and curtail.

We hope that the above comments may be of interest to the Committee.

16 January 2009

Memorandum from the Campaign Against Arms Trade

1. The Campaign Against Arms Trade (CAAT) is working for the reduction and ultimate abolition of the international arms trade, together with progressive demilitarisation within arms-producing countries.

2. More than a decade has now passed since the Labour government first introduced arms export criteria in July 1997. These have had negligible effect on the UK's military exports, leading to the conclusion that export controls allow Government to create the appearance of restraint whilst drawing attention away from the dominant policy which is to support the arms companies in their bid to sell to virtually anyone.

3. This overriding Government policy of support for the arms trade has led to it continuing to propagate the myth of economic benefit, the allocation to military exports of a wholly disproportionate amount of the resources of United Kingdom Trade & Investment (UKTI) and the Export Credits Guarantee Department (ECGD), the continuance of sales to Saudi Arabia and Israel even though these undermine other stated foreign policy objectives and the failure to be tough on corruption.

4. In addition, this prioritisation of support for commercial companies can partly explain the failure of Government to tackle the growing problem of corporate mercenaries, or, as they are more politely known, private military and security companies. Whilst the broader issue here might be more appropriately dealt with elsewhere, developments are rendered even less transparent by the export licensing process.

“GOOD FOR ECONOMY” MYTH REPEATED

5. The four Secretaries of State, in their Foreword to the 2007 Annual Report, say that: “As highlighted in the Government's Defence Industrial Strategy, the manufacture and export of defence equipment ... makes an important contribution to our economy.” As CAAT has pointed out to your Committees in submissions in earlier years, this is not the case. Military industry is heavily subsidised, especially through export credits and research and development spending.

6. In fact, the Defence Industrial Strategy, published in 2005, actually says: “Arguments for supporting defence exports in terms of wider economic costs and benefits eg the balance of payments, are sometimes also advanced. A group of independent and MoD economists (M Chalmers, N Davies, K Hartley and C Wilkinson—*The Economic Costs and Benefits of UK Defence Exports*. York University Centre for Defence Economics, 2001) examined these, by considering the implications of a 50% reduction in UK defence exports. They concluded that the “economic costs of reducing defence exports are relatively small and largely one off...as a consequence the balance of argument about defence exports should depend mainly on non-economic considerations.”

7. The desire for exports can also influence purchases for the UK's armed services, making them more costly. In 2003 the RAF bought BAE Systems (BAE) Hawk trainer aircraft without open competition, largely to persuade the Indian government to buy the Hawks for its air force. The Treasury did not believe the Hawks offered value for money.

8. The subsidies and preferential treatment given to arms deals, and the Government mindset which always gives priority to military-industrial solutions to problems, means that tackling urgent threats such as climate change receive a lower priority. If a substantial proportion of the money that is put into arms were to be invested in alternative technologies, it would be likely to create more jobs and better long-term employment prospects. It would also remove those threats to global security engendered through arms deals as well as improving security through an increase in the effort towards combating climate change.

9. It is also likely that giving priority to tackling climate change would encourage more students to study science and engineering. From conversations with students, it seems that a good number are put off such subjects since much of the employment for which their degree would qualify them is in the destructive military field to which they have ethical objections.

10. Quentin Davies MP, Defence Equipment Minister, has questioned the idea that producing military equipment is the way to stimulate the economy. He told the Defence Committee on 16th December 2008 that: “.. to use your money for maximum impact you need to spend it on goods and services which are labour-intensive rather than capital intensive in their manufacture so that the benefits flow through into pay packets rather than into rewards for providers of capital—banks and shareholders and so forth who would inevitably have a very high propensity to save and a low propensity to consume. Ideally you need these wages to flow through to people who are relatively low-paid. This is not the case with defence; defence is capital-intensive rather than labour-intensive.” Another factor was “quite a high leakage into imports in defence, inevitably, and that is not the case, for example, if you are repainting schools or putting new roofs on schools.”

11. It is also worth noting that, in some of the deals most trumpeted by the UK government, the bulk of the assembly is likely to take place in the buyer country. India is buying 66 Hawk aircraft. BAE is building 24 of these in the UK whilst the remaining 42 are being manufactured under licence in India by Bangalore’s Hindustan Aeronautics Limited. Likewise, of the 72 Eurofighter Typhoons sold by BAE to Saudi Arabia, the first 24 will be built in Warton, Lancashire, but the remaining 48 are likely to be assembled in Saudi Arabia. This is good neither for jobs in the UK, nor for countering proliferation.

12. CAAT thinks that, unless it can produce evidence to the contrary from economists independent of the arms industry, it is misleading for any member of the Government to espouse the myth that arms exports are important to the UK economy.

UKTI DEFENCE AND SECURITY ORGANISATION

13. As the Foreword to the 2007 Annual Report points out, responsibility for the promotion of military exports passed from the Ministry of Defence (MoD) to UK Trade & Investment (UKTI), which is responsible both to the Foreign and Commonwealth Office (FCO) and the Department for Business, Enterprise and Regulatory Reform (DBERR).

14. Part of the preferential treatment given by the Government to arms companies is illustrated by the disproportionate support UKTI gives to military exports. These make up about 1.5% of total UK exports with arms export employment accounting for 0.2% of the UK workforce and just 2% of manufacturing employment. Yet UKTI DSO has a staff of 170, as against a total of 129 staff covering all industries in the Sectors Group which undertakes UKTI’s other industry-specific trade promotion. Even if ethical questions are put to one side, there can be no justification of such disproportionate support for one industry.

15. One of the tasks UKTI DSO has taken on from the MoD’s former Defence Export Services Organisation is the organisation of the UK presence at arms fairs where buyers and sellers of any country can meet and arrange deals. One recent example of this was the November 2008 International Defence Exhibition and Seminar in Pakistan which was billed as showcasing “a wide variety of technology, ranging from equipment used in third world countries to the most sophisticated systems from the West.” These arms fairs continue to give lie to any pretence that the UK has a responsible arms export policy.

ECGD

16. The Annual Reports of the Export Credits Guarantee Department (ECGD) show that, yet again, one business benefits more than any other—the arms business. Even though arms account for just 1.5% of total UK exports, in 2006-7, 42% of all export credits were for military goods and, in 2007-8, the figure was even higher, 57%. This export credit support is given for very few deals. In the earlier year, the whole 42% was accounted for by BAE’s arms sales to Saudi Arabia. At £750million this was also by far and away the ECGD’s biggest liability in 2007-8, with VT Shipbuilding International’s Offshore Patrol Vessels to Trinidad & Tobago coming second.

17. The 2008 report of the Organisation for Economic Cooperation and Development (OECD) anti-bribery working group says that the Serious Fraud Office (SFO) gave the ECGD evidence regarding allegations involving misrepresentations made by BAE when the insurance cover was obtained. It expressed serious concern that nothing was done by the ECGD to follow up this up.

18. Instead, the ECGD provided cover to BAE Systems (Operations) Ltd with a single contract of indemnity in respect of all the BAE business with Saudi Arabia. This comprised the residue of Al Yamamah (now called the Saudi British Defence Co-operation Programme) and the new Salam Project for the Eurofighter Typhoon aircraft. The application for cover to include the Salam Project was made in June 2006, with the contract of cover entered into on 12th September 2006. The cover with respect to the SBDGP was terminated on 1st September 2008.

19. As the Government noted in its response to your Committees’ last report, the ECGD is due to report on its anti-bribery and corruptions procedures in 2009. CAAT hopes that report will be studied by parliamentarians and any unanswered questions about the ECGD’s support for BAE’s Saudi deals pursued.

SAUDI ARABIA

20. The problems that arise when a government tries to promote arms exports as well as control them are nowhere more obvious than in the case of BAE's sales to Saudi Arabia.

21. The current situation is that Air Defence Variant Tornados supplied under the Al Yamamah contracts of the mid-1980's are being replaced by 72 Eurofighter Typhoon aircraft under the Project Salam. This was agreed in outline between the UK and Saudi governments in December 2005 with a more detailed contract signed in September 2007. The UK MoD complements this with a contract with its main contractor, BAE.

22. The remaining Saudi Tornados are not being replaced, but will continue to be upgraded and serviced under what is now called Saudi British Defence Co-operation Programme (SBDGP). Whilst the original Al Yamamah purchases were paid for in oil, both Project Salam and the SBDGP are now being paid for out of the Saudi Defence Budget.

23. These sales are co-ordinated by the Ministry of Defence Saudi Armed Forces Project within the MoD. It has 200 employees in the UK and Saudi Arabia. These are UK civil servants and military personnel whose salaries are paid for by the Saudi government—whose human rights record makes it a “country of concern” for the FCO—to work on a project which benefits a private company.

24. Your Committees, in the “Scrutiny of Arms Export Controls (2008)”, paragraph 121, recommend that the Government should consider how it could improve the transparency of the Salam Project and that the Public Accounts Committee should think of publishing all the reports to it from the National Audit Office in respect of it. CAAT was pleased by this recommendation and disappointed, though hardly surprised, by the Government's response. It seems that, once again, despite the reiteration of the commitment to being as transparent as possible made by the Secretaries of State in the Foreword to the 2007 Annual Report, the need to appease the Saudi government's desire for secrecy takes precedence.

25. The unwavering support given to BAE-Saudi deals and the ending of the SFO inquiry led to a damning report, about as strong as it could be given the diplomatic language used, from the OECD Working Group on Bribery. It criticised the lack of progress on anti-corruption legislation, the failure to consider alternatives to pulling the investigation and the delay in responding to the United States' request for Mutual Legal Assistance with regard to its Department of Justice investigation into Al Yamamah.

26. The backing given by successive UK governments to BAE, and its predecessor companies, has meant that succour has been given to the autocratic Saudi regime and global efforts to eradicate corruption have been undermined. It has brought into question the integrity of UK business more generally.

ISRAEL

27. The failure of the UK government to implement a full arms embargo on Israel at a time when that country's armed forces are again on the offensive, with little or no regard for human life, is shameful. In recent years the UK has licensed arms exports to Israel worth between £10million and £25million a year. The figures available for 2008 show that, only half way through the year, the sale of arms costing over £24 million had already been approved (figures for the second two quarters have not yet been published).

28. In addition, components, including those for Apache helicopters and F-16 aircraft, have been supplied to US companies for incorporation into equipment destined for the Israeli armed forces.

29. On 12th January 2009, the Foreign Secretary, David Miliband MP, told the House of Commons that export licences were not granted if there was “a clear risk that armaments would be used for internal repression or external aggression”. However, once the equipment has been supplied to Israel, it is just not credible to believe that it is isolated from other equipment and has not been used in Lebanon, Gaza and the West Bank. The onus is on UK government to show that UK-supplied equipment has not been so used. The only way to be sure that UK equipment is not so used is for the UK government to immediately stop licensing exports either directly or for incorporation in third countries. Such an embargo would also convey the message that actions of the Israeli armed forces are unacceptable.

30. The situation with regards to Israel is yet further evidence that the UK government puts the commercial interests of the arms companies before humanitarian concerns. The UK's own “Consolidated EU and National Arms Export Licensing Criteria” are supposed to assess the impact on regional peace, security and stability and the human rights record of the recipient.

31. However, in July 2002, the UK government approved the export of components for F-16 fighters being made by the US company Lockheed Martin and sold to Israel. Then Foreign Secretary Jack Straw justified the sales saying: “The Government has judged that the UK's security and defence relationship with the US is fundamental to the UK's national security ... Defence collaboration with the US is also key to maintaining a strong defence industrial capacity.” He went on “Any interruption to the supply of these components would have serious implications for the UK's defence relations with the United States.” The commercial relationship between BAE and US companies such as Lockheed Martin was judged more important than the lives of Palestinians then, and for the UK government remains so today.

CORRUPTION

32. Although it stopped its investigation into the BAE Saudi arms deals in December 2006, ostensibly on the grounds of national security, the SFO continues to investigate allegations of corruption regarding BAE deals with six other countries. One of them is the Czech Republic, which in 2001 bought BAE Saab Gripen fighters for £1.1 billion in a deal that was later cancelled. At the end of October 2008, the SFO interviewed the Viennese Count Mensdorff-Pouilley and Julian Scopes, a former Ministry of Defence civil servant, now working for BAE and recently appointed as head of its Indian operation.

33. Later, in December 2008, the Swiss authorities gave the SFO, which wanted help over 1 million Euro payments going through companies in the British Virgin Islands and Panama, access to bank files.

34. At the end of November 2008 a judge in Pretoria issued search warrants, allowing the South African police to raid the offices of BAE and two individuals in connection with allegations regarding the sale of military aircraft to South Africa in the late 1990's and early 2000's. The warrants said there was a "reasonable suspicion" that BAE had made payment to agents "to seek to obtain undue advantage over its competitors in the bidding process".

35. Despite all these investigations, the UK government continues its "business as usual" approach in its support for BAE arms sales overseas. By doing so, it undermines the credibility its demands on other governments to wipe out corruption.

36. CAAT supports your Committees' recommendation, made in your last report, that as a first step the Export Control Organisation require those applying for export licences to provide an anti-corruption declaration. It is disappointing that the Government is not immediately implementing this recommendation as it would complement the other transparency and governance initiatives whilst not being dependent on them.

LICENSING EXPORTS TO PRIVATE MILITARY AND SECURITY COMPANIES

37. Interpreting information about export licences remains problematic, especially as it is not possible to know whether the equipment is going to the armed forces of the recipient, a media organisation or national park. Of particular concern to CAAT is that there is no indication when equipment is being exported to a private military and security company (PMSC). There does not seem to be any way of monitoring which companies have been acquiring equipment from the UK, possibly building considerable stocks.

38. As the number and activities of PMSCs continues to grow, the Quarterly Reports need to reflect this by making transfers to such companies transparent. The Reports should list the licences issued by company, saying in each case in which country it is to be used.

39. It is CAAT's understanding that if such a company wants to move UK-supplied equipment from, for instance, Iraq to Afghanistan, it needs a Trade Control Licence. However, it currently appears to be impossible for interested parties to monitor this, further undermining claims to transparency.

16 January 2009

**Memorandum from Ian Pearson MP, then Economic and Business Minister at the
Department for Business, Enterprise & Regulatory Reform**

As you will recall some issues arose during my appearance before the Committees on 21 January which I promised to follow up in writing. My officials are still liaising with colleagues in the Foreign and Commonwealth Office on some of those issues and where this is the case I am afraid I am unable to provide a full response at this stage. This includes whether K-supplied equipment may have been used by the Israeli Defence Forces during the recent conflict in Gaza and a response to your question on the Israeli blockade of Gaza. In addition, due to the sensitive nature of the information, I will be sending you shortly a separate "confidential" response in response to the Committees' request for examples of where the Government has changed its licensing policy. I am, however, now in a position to provide information on the following issues:

HEAD-UP DISPLAY EQUIPMENT

At the evidence session I stated, on the basis of advice that I had received, that no export licences for F-16 Head-Up Display (HUD) equipment to Israel had been granted since 2002.

While this is correct, I would like to clarify that this refers to licences for the export of F-16 HUD components direct to Israel, for use in Israel. Since that date there have been a small number of licences granted for these goods where, although not going direct to Israel, we were aware that Israel was the ultimate end-user.

I was asked by Sir John Stanley whether F-16s used over Gaza incorporated British Head-Up Displays. I am unable at the present time to provide this information because it is still under investigation, but I will respond on that separately as soon as I can.

INVOLVEMENT OF A UK COMPANY IN THE EXPORT OF UAV ENGINES TO ISRAEL

I was asked by Mike Gapes for more information on British made UAV engines. I can confirm that export licences have only been granted for the UK Company mentioned to supply UAV engines to Israel for incorporation into complete UAVs which were then re-exported to other countries.

The reports in the national press about the UK Company refer to the Israeli armed forces using a AR80-1010 engine. This is a 60 horsepower rotary engine and a version of it is indeed made in the UK. It is capable of powering the Hermes 450 as used by the Israeli armed forces, and also powering other UAVs used by the armed forces of many other nations, including our own UK “Watchkeeper” program. Versions of it may have been exported from the UK to other destinations, but none have been licensed for export to or via Israel by this company at least since March 1999. This is the date our database can be relied upon to provide accurate data. Those licensed for export to Israel (and then re-exported) were the AR 682, a different variant with 125 horse power. Our database supports what the company have told us. In view of the sensitivity of these exports, we have very strict systems in place under which, at the time of application, documentary evidence has to be provided (from the customer of the Israeli concern) of the intention to re-export. If exporters deliberately supply false information or make a false declaration when applying for a licence, they are committing an offence and would be liable for prosecution. Where this is the case any licence issued is void.

The UK exporter has advised us that Elbit, its parent company (an Israeli defence manufacturer) attached prestige to the engines supplied from the UK and, for those reasons, the term “UEL” has become a designator of a type of engine, rather than an indicator that it was UK manufactured. This might explain the confusion: it is therefore possible that engines used by the Israeli armed forces would be referred to as “UEL” even though they would have been made in Israel itself.

ISRAEL’S BLOCKADE OF GAZA

I am aware that the Committees are due a response to the question they raised on Israel’s blockade of Gaza. My officials are still liaising with FCO on this, and I apologise for the delay in responding.

CHANGE IN LICENSING POLICY FOR AN END USER/DESTINATION

A separate “confidential” response will be sent on this issue.

RE-EXPORT CLAUSES

Sir John Stanley referred to a previous recommendation of the Committees that: “the Government make export licences for supplies to licensed production facilities or subsidiaries subject to a condition in the export contract preventing re-export to a destination subject to UN or EU embargo.”

I was asked to set out why this approach might cause us difficulties.

It is of course, perfectly possible to include a condition in an export licence that requires the exporter to require the importer—any importer—no to re-export to a destination subject to an embargo. The question is what purpose would that serve. Would any value added by such condition be sufficient to justify imposing it?

First of all, we need to consider the legal powers we have at present. Sir John referred to the importance of having a power to revoke licences in situations where a licensed production facility is sending arms to an embargoed destination. We agree, and we already have a power to revoke licenses in our secondary legislation. We do not therefore need to provide for this in licence conditions. If we had evidence that an exporter was sending military equipment or technology to a licensed production facility that was using it to breach an arms embargo, we would have the power to revoke the licence. The impact of doing so would be limited if the goods had already been sent, but we would always factor that information into subsequent licensing decisions.

If we were to make exporters enter into contractual obligations with their overseas licensed production facilities to stipulate that onward exports would not breach arms embargoes, it would not take us any further forward. We would have another administrative burden for exporters, and another aspect for compliance officers to check. But in reality, we would still lack any further power to stop equipment from the licensed production facility reaching sensitive destinations. Perhaps the exporter would take active steps to ensure it knew what the licensed production facility was doing and to enforce the contractual obligations — we could oblige it to do so in the licence conditions or perhaps even require that the contract allow us to enforce the obligation in the exporter’s place. However, stating that something should happen in a contract is no guarantee that it will happen, and we would usually only become aware of breaches after the equipment in question had been exported. By that time, it would be too late to apply for an injunction to stop the export. We might not even be granted an injunction in the UK, because the relevant supply contract might not be subject to UK law or the jurisdiction of UK courts. Furthermore there would be no guarantee that any injunction would be enforceable in the country of the licensed production facility. So taking legal action to enforce a breached contract could not prevent an undesirable export and our real world powers would be limited to those we already possess.

For these reasons we continue to prefer to base our approach on thorough pre-licensing assessment rather than on licence conditions that are of questionable value.

19 February 2009

**Memorandum from Rt Hon Stephen Timms MP, Financial Secretary at HM Treasury,
and Ian Pearson MP, then Economic and Business Minister at the Department for Business,
Enterprise & Regulatory Reform**

STRATEGIC EXPORT CONTROL: ROLE OF CIVIL PENALTIES

You will recall that in response to recommendation 21 of the most recent annual report of the Committee for Arms Export Control, the Government committed to responding on its policy regarding civil penalties. We are now able to set out our position on this matter.

In looking at the case for civil penalties, it was vital that BERR, as the Department that operates the licensing system and owns the export control legislation, and HMRC, which enforces that legislation and takes action against breaches, work closely together at official and Ministerial level. Both Ian Pearson and I have considered these issues carefully and have concluded that there is a clear case for introducing civil penalties in the field of strategic export control.

As you know we have taken steps to increase the range of compliance and enforcement tools available to us. These steps are beginning to bear fruit but, nevertheless, we have concluded that there remains a case for civil penalties, not to replace any existing measures, but to supplement them. In particular, they could have value in cases of non-compliance with individual rather than open licences; where the frontier based seizure and restoration powers of HMRC cannot be used, (such as trade control cases, electronic transfers and situations where the goods have already left the UK); or for other breaches for which they offer a quicker and less costly means of sanction than full criminal prosecution of offenders. Key to this is that they are less resource intensive to administer than criminal penalties and require a lower level of proof.

You will, however, appreciate that more detailed work will need to be done before they can be introduced, and this will necessarily take time. This is for two main reasons. Firstly, primary legislation will be needed, and it will be necessary to find time in a challenging Parliamentary schedule. Secondly, in line with standard practice for Departments who use civil penalties, there will need to be time to establish an independent tribunal to deal with appeals. From previous exercises, we know that the work associated with this, such as tribunal staff recruitment, training in export control issues and the delivery of the necessary guidance, can be expected to take roughly a year after the introduction of primary legislation.

Notwithstanding these potential hurdles, I hope that you will be reassured that our two Departments are working together to take forward the introduction of civil penalties for strategic export control. We will provide a further update later this year, at which time we should be able to give you more information about potential implementation timescales.

23 February 2009

**Joint Memorandum from the Department for Business, Enterprise & Regulatory Reform
and the Foreign and Commonwealth Office**

CONSOLIDATED GOVERNMENT RESPONSE CM 7485

Recommendation 3: Responses from COARM Member States to UK questionnaire— Government will send the Committees a copy separately. (FCO lead)

Please find report attached (Annex A)¹⁵

Recommendations 5 and 6: Extra-territorial controls —

This has been covered in the Government's End of Year Response. The response is available on the Department for Business Enterprise and Regulatory Reform (BERR) website, <http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/legislation/export-control-act-2002/review/index.html>

Recommendation 7: Category B, transport and ancillary services—

This has been covered in the Government's End of Year Response. The response is available on the Department for Business Enterprise and Regulatory Reform (BERR) website, <http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/legislation/export-control-act-2002/review/index.html>

Recommendation 21 : Civil Penalties for breach of export controls—

We will write to the Committees at a later date.

¹⁵ Not printed.

Recommendation 28: Resources—

The Government will provide this information in the next annual report.

Recommendation 29 : Annual Report best practice—

The Government has reviewed annual reports published by other countries and has identified several examples of best practice that we will adapt and introduce in the next and future annual reports.

Recommendation 30 : Searchable database—

We wrote to the CAEC in September 2008. We will provide a further update in late February or early March 2009.

Recommendation 33 : Ivory Coast—

We stand ready to provide the committee with a briefing in confidence, if still required

QUARTERLY REPORT FOR JANUARY TO MARCH 2008 SEPTEMBER 2008

Israel: SIELs for components for helmet mounted display equipment (including incorporation SIELs), components for submarines and equipment for the use of weapon sights; the Committees request a note on the Israeli naval and land blockage of Gaza and whether the Government is prepared to export arms that can be used to enforce the blockade;

The Committees on Arms Export Controls (CAEC) have requested a note on the Israeli naval and land blockade of Gaza and whether the Government is prepared to export arms to enforce the blockade?

The Gaza Strip (“Gaza”) forms part of the Occupied Palestinian Territories. The United Kingdom and many other states regard Israel as the occupying power, despite Israel’s unilateral disengagement from Gaza in September 2005. Israel disputes this. Israel has imposed a mixture of land and maritime restrictions on movement in and out of Gaza. These restrictions have tended to be tightened or relaxed in line with the state of peace negotiations and the Israeli assessment of the level of security threat.

RESTRICTIONS IN TERRITORIAL WATERS

Israel retains control of Gaza’s territorial waters. Under the Interim Agreement of 1995 between Israel and the Palestine Liberation Organization (also known as “Oslo II”), the waters off Gaza were divided into Maritime Activity Zones, within which certain fishing activity was permitted. The maritime zones were limited to 20 nautical miles from the coast of Gaza. The Agreement sets out that the Israeli Navy has authority to sail throughout the zones and to take any necessary measures against illegal activity. Israel does not permit any shipping to sail from Gaza to ports in a third country or vice-versa. Although, the Israelis initially drew back from stopping some of the recent protest ships, before enforcing the full blockade.

The Israeli argument is that the restrictions are in place to protect Israel from terrorist attacks and to prevent smuggling of weapons and other goods into the Gaza Strip. In April 2006, Israel unilaterally reduced the outer fishing limit to 10 nautical miles. In June 2006, the Israeli soldier Gilad Shalit was kidnapped and is still being held by Hamas. In October 2006, Israel reduced the fishing limit to six nautical miles. More recently there have been reports of Gazan fishing vessels being challenged and turned back between four and six nautical miles from shore. In the absence of a statement from the Israelis it would appear that they have now unilaterally set the fishing limit at four nautical miles. The justification given by the Israelis for this tightening of the restrictions on maritime activity is that, in addition to the previously stated aim of preventing arms being smuggled into Gaza, it also stops Shalit from being smuggled out of Gaza. The Israeli Navy has issued an advisory notice warning all foreign vessels to remain clear of the designated maritime zone (the full 20 nautical mile zone). Since the recent conflict reports from the UN in Gaza suggest that fishing boats are as tightly controlled as before.

RESTRICTIONS ON LAND

In terms of restrictions imposed by Israel in Gaza on land borders, Israel began imposing restrictions on movement between Gaza and Israel at the outbreak of the first intifada in 1987. These restrictions were eased after the signing of the Oslo accords in 1994 but were tightened again when the second “Al Aqsa” intifada began in 2000. The election of Hamas in January 2006, the kidnap of Gilad Shalit in June 2006 and the Hamas take-over of Gaza in June 2007 led to further restrictions on the movement of goods and people between Gaza and Israel. There are currently five crossing points between Gaza and Israel and one between Gaza and Egypt. The extent to which these crossing points are in operation varies on a day to day basis. In general for the past two years the crossing points have been open only for humanitarian supplies, medical cases, a very small number of Palestinians holding special permits, diplomats and some foreign journalists and some fuel shipments. They are frequently completely closed, most often in response to rocket attacks on Israel launched from within Gaza, and occasionally as the result of direct attacks by Palestinian militants against the crossings. For example a major attack was launched on the Kerem Shalom crossing in April 2008 and Hamas have also attacked the Nahal Oz fuel terminal.

We have serious concerns about the Israeli restrictions on the flow of goods and people into and out of Gaza and the impact they have on the lives of Gazans. We have consistently called on the militant groups to stop all acts of violence against Israel and for the Israeli government to lift the restrictions at the land crossings to allow the movement of people, humanitarian supplies and commercial goods. Although there is no permanent physical Israeli presence in Gaza, given the significant control that Israel has over Gaza's borders, airspace and territorial waters, Israel retains obligations under the Fourth Geneva Convention as an occupying power. Under the Fourth Geneva Convention, Israel is obliged to ensure the supply of food and medicine to the civilian population of the occupied territory, and to facilitate access for and the distribution of relief supplies if needed by the population of the occupied territory.

HMG assesses whether there is a clear risk of the use of proposed exports to the Israeli Navy for internal repression or external aggression on a case by case basis, as the Criteria require us to do. Equipment which is being exported to a platform that specifically assists the enforcement of restrictions on Gaza beyond those agreed in the Interim Agreement of 1995 would require an individual assessment of the threat, the impact and proportionality of the restrictions at the time of the application, as well as individual consideration against Criteria 2 and 3.

We are continually reviewing the situation and will of course take into consideration the recent Gaza conflict when assessing licence applications. Our Defence Attaché and embassy staff in Tel Aviv continue to monitor the behaviour of the IDF and the prevailing circumstances on the ground.

SIE2007/002083, 1522 and 1221 (arms components and ammunition for private companies in Iraq). It is noted that these export licences cover goods supplied to private companies. The Committees would be grateful for a note explaining the level of control and supervision which the UK Government has over these companies and the responsibility that it takes for their actions and use of the goods supplied.

HMG uses Private Military and Security Contractors (PMSCs) to provide security for our diplomatic posts and for civilian officials in Iraq. As such, they play an important role in enabling us to achieve our objectives in Iraq. A number of instruments are already available to counter potentially illegal or unethical activity by PMSCs. These include export controls, legislation on arms brokering, United Nations arms embargos, the criminal law and international humanitarian and human rights laws. For PMSC's registered in or operating from the United Kingdom, a broader examination of the issues is currently underway, both inside and outside the industry, to assess the options for their regulation of operations overseas, including Iraq.

24 February 2009

Memorandum from the UK Working Group on Arms ¹⁶

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- Introduction
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¹⁶ The UK Working Group on Arms comprises Amnesty UK, Landmine Action, Omega Research Foundation, Oxfam GB and Saferworld.

European Issues:

- Common Position
- Intra-community transfers
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SUMMARY OF RECOMMENDATIONS

The Government should continue to explore ways of extending the range of Military List equipment to which extraterritorial brokering controls are applied.

Anti Vehicle Landmines should be classed as Category B goods at the earliest opportunity. The decision not to include them runs counter to the UK's existing commitments in this area; they have been clearly identified as categories of heightened international concern and the UK Government is at the forefront of efforts to reduce proliferation risks associated with these types of mines.

The Government should revisit the possibility of extending controls on trading in Category C goods to the arrangement or carrying out of transportation once it has had the opportunity to assess the impact of the new transportation controls on Category B goods

The controls on transit/transshipment should be redrafted to:

- State clearly that all subsequent and final destinations of the items in question are relevant in determining the need for a licence;
- Require stronger documentary evidence of the legality of the consignment in the original exporting country and of its ultimate legal end-use.

The destinations covered by the Open General Transshipment Licence need to be drawn more tightly and subject to ongoing review and assessment.

The Government should pursue a torture end-use control as a matter of urgency, through the EU if possible, but unilaterally if progress is blocked in the EU.

The Government should pursue an expansion of the EU Military End-Use Control to both complete items and components which the exporter knows are intended for use in listed destinations by the military, police or security forces, or has been informed by the Government that the goods are or may be so used, where there is a clear risk that the items or finished goods might be used for internal repression, breaches of human rights, or against UK forces or those of allies.

The Government should:

- introduce a system of post-export controls, including more specific contractual limitations on end-use and re-export, and provision for end-use monitoring;
- work with others to develop a forgery-proof internationally standardised end-user and delivery-verification certification process;
- provide details to the CAEC regarding the number of end-user checks carried out by overseas posts each year, the number of physical post-export checks undertaken, the reasons for them and their outcomes.

British companies that wish to license the production of weapons overseas should first have to apply to the UK Government for authorisation.

The UK Government should explore and establish ways of regulating exports from overseas subsidiaries of UK companies, for example on a UK parent company where it can be proved to hold de facto control over the subsidiary. At a minimum, these controls should apply to exports from subsidiary companies to embargoed destinations.

The Government should withdraw the Open General Trade Control Licence (small arms) and more strictly limit the range of destinations covered by open general licences in general.

The UKWG recommends that the CAEC:

- Examines all relevant export licences issued for components for Unmanned Aerial Vehicles (UAVs) to Israel to ascertain whether or not the Government has issued licences for UAV engines for use by the Israeli Defence Forces (IDF);
- Ascertain the status of end-use assurances contained within these licences, especially stipulations that components for UAVs are not to be used in aircraft operated by the IDF;
- Investigates what end-use monitoring the UK Government has undertaken to ensure that no UK engines are incorporated into any UAVs currently operated by the IDF;
- Identifies what alternative engines are being used in these UAVs by the IDF and whether these have been developed or enhanced with the assistance of UK technology and/or components.

UK national strategic export control reports should specify the type of end-user of equipment covered by each licence, and any excluded end-users (such as certain end-users in embargoed destinations), unless there is a specific, compelling reason for withholding such information.

The UK Government should introduce a system of civil penalties for export control violations.

The Government should also initiate a viability study into the creation of a single regulatory agency, drawing together the personnel, experience and authority of the Export Control Organisation (ECO) and the controlled-goods section of HMRC, to create a unified organisation for the compliance and enforcement of export controls.

The UKWG recommends that the CAEC revisit the question of the import of tens of thousands of assault rifles from Bosnia Herzegovina, Croatia and China, and ask the Government to fully account for these weapons, and to establish how many of these weapons have been exported, to which destinations and how many still remain within the UK. The CAEC should also investigate whether or not these weapons have formed part of either UK or US government-sponsored weapons supplies to forces in Iraq and Afghanistan.

The Government should consider all import licences for Military List goods against the consolidated criteria on a case-by-case basis and import licences for such goods should automatically be circulated to relevant export licensing officials within the ECO. Details of import licences should be included in the Government's annual and quarterly reports on strategic exports.

Clear procedures should be drawn up by the Government to ensure that all relevant government departments (the Home Office and local Police firearms units, Import Licensing, the ECO and Her Majesty's Revenue & Customs) are co-ordinating effectively in cases such as these. A central database of imported weaponry, particularly SALW, should be established to enable relevant government departments to trace and monitor all firearms movements into, within and from the UK.

EU Member States should as a matter of urgency ensure their national legislation is in compliance with the requirements of the Common Position.

EU Member States should commence as soon as possible a further review of the EU arms transfer control regime, focusing on:

- Improving convergence of export licensing decision-making and policies;
- Improving post-export controls; and
- Addressing challenges posed by the internationalisation of arms production.

The UK Government should insist that the eventual review of the EU Directive on the intra-community transfer of defence-related products should include an analysis of its impact on transfer controls, with particular attention paid to the consequences of the certification process on the unauthorised export of defence equipment.

The UK should work with its EU partners to develop a prioritised, well-resourced and comprehensive EU arms transfer control outreach strategy for 2010 and beyond.

The UK and its ATT allies should make an explicit public commitment to establish by 2011 an ATT founded on core principles of international human rights, humanitarian law and sustainable development and covering all aspects of international arms transfers, including import, export, leasing, gifts and aid, transit, transshipment, overseas production and arms brokering activities.

The UK should respond to the change in the US administration by increasing its engagement on the ATT with the US at the political level and through contacts among officials, and by encouraging the UK defence industry to engage their US counterparts.

The Wassenaar Arrangement military list should be utilised as the basis for the equipment covered by an ATT, as it is comprehensive, multilateral, enjoys the support of a majority of arms exporting states, and is an agreed international standard for the classification of conventional weapons.

INTRODUCTION

1. This year's submission from UKWG looks at developments at domestic, EU and international levels. Firstly, we deal with the ECA review process, considering in particular further changes that the UKWG feels the Government should make to strengthen domestic export controls. We also examine several domestic issues which are outside the scope of the ECA review process, namely:

- Use of open general licences (OGLs).
- Enforcement.
- Imports.

2. We then consider developments at the EU level: the adoption of the EU Common Position defining common rules governing the control of exports of military technology and equipment; the EU Directive on the intra-community transfers of defence-related products; and EU outreach efforts. Lastly, we turn to the Arms Trade Treaty, with an overview of progress in 2008 and priorities for 2009.

UK ECA REVIEW

3. The UKWG congratulates the Government on the way the ECA Review process has been managed. There has been a welcome willingness on the part of the Export Control Organisation (ECO) to engage in a meaningful and sustained consultation with stakeholders (most notably to our knowledge with ourselves and the Export Group for Aerospace & Defence (EGAD)), which is perhaps best demonstrated by the fact that a number of the changes to legislation have come about as a direct consequence of the discussions held among Government, industry and NGOs. Nonetheless, the UKWG believes there are a number of further changes that the Government could and should be implementing.

TRADE CONTROLS

4. The UKWG welcomes the shift from the former two-tier system of trade controls to a more sophisticated three-tier system, a change first proposed following discussions between the UKWG and EGAD.

5. The new system categorises military list equipment as follows:

- Category A—where the goods or destination concerned are such that a transfer would never be approved apart from in exceptional circumstances, and to which full extraterritorial controls are applied on all trading and trading-related activities
- Category B—where the goods may be legitimately traded but are of a particularly sensitive nature, and to which extraterritorial controls are applied but over a narrower range of trading-related activities.
- Category C—all other military lists goods, to which extraterritorial trading controls are not applied.

6. Within this framework, we regard it appropriate that so far the following goods are included in category B:

- Small arms and light weapons (SALW) within ML1 and ML2, and accessories and ammunition therefor;
- Light weapons within ML4 and ammunition therefor;
- Hand grenades;
- MANPADS, missiles for them, associated equipment and their specially designed components;
- Long-range missiles; and
- Components for all those goods listed above.

7. The UKWG would like to see the range of goods included in category B extended further, and is in ongoing discussions with EGAD in an effort to find a mutually agreeable formula by which this might be achieved. Should agreement be reached, we will forward to the CAEC a relevant supplementary memorandum.

8. The Government should continue to explore ways of extending the range of Military List equipment to which extraterritorial brokering controls are applied.

ANTI-VEHICLE LANDMINES

9. The UKWG is convinced, however, that the Government should as a matter of urgency extend the range of goods included in category B to include Anti-Vehicle Landmines (AVMs).

10. The Joint Declaration on AVMs following the 3rd Review Conference of the Convention on Certain Conventional Weapons (CCW) in November 2006, which the UK has signed, includes specific commitments to preventing the transfer of AVMs to certain end-users.¹⁷ While we recognise that the Joint Declaration was issued following a failure to adopt by consensus a new legally-binding protocol on AVMs, the Foreign & Commonwealth Office (FCO) currently lists the November 2006 Declaration on AVMs as an export control “policy restriction” on its website.¹⁸

11. The Government apparently regards a 15-year transition period as necessary to implement some of the Declaration’s commitments regarding the use of AVMs. We see no compelling argument, however, why the commitments relating to their transfer should not be immediately implemented.

12. We also find it hard to accept the argument that “Category B is reserved for goods that have been identified through international consensus as being of heightened concern”, and that because “anti-vehicle landmines have not been identified as such at this time”, they are not to be included in Category B.¹⁹ For

¹⁷ States agree to: “prevent the transfer of any anti-vehicle mine (a) to any recipient other than a State or State agency authorized to receive it; (b) if it does not meet the detectability and active life standards set out in this declaration, except for the purpose of destruction or for development of and training in mine detection, mine clearance, or mine destruction techniques; (c) to any State that has not stated the same policy that is set out in this declaration; and (d) without an end-user certificate.”

¹⁸ Export restrictions applying to all Countries, Foreign & Commonwealth Office website, <http://www.fco.gov.uk/en/business-trade/export-controls-sanctions/restrictions-to-all-countries/>

¹⁹ Letter from the ECO to the UKWG, 18 December 2008.

example, the UK has rightly committed to prohibiting their use and transfer of cluster munitions despite some notable governments remaining opposed to their prohibition and they have accordingly been placed in Category A.

13. Placing AVMs in Category B would assist efforts to meet the commitments contained in the 2006 Declaration. Meeting such commitments for a Category C item would be impossible, as Category C goods are subject to a range of more liberal trade control measures, including inclusion in the Category C Open General Trade Control Licence (OGTCL). The Category C OGTCL makes it perfectly lawful for a UK trader to arrange a shipment of AVMs from, for example, Cyprus (a non-signatory to the 2006 Declaration) to a non-state consignee in Chad (established by the UN Panel of Experts on Sudan as a diversion point for arms to parties fighting in Darfur),²⁰ without any prior or case-by-case Government scrutiny.

14. In addition to the UK's explicit commitments under the 2006 Declaration, consideration should be given to the compelling humanitarian and security arguments for stricter controls on the brokering and transport of AVMs to which we alluded above.

These include:

- Their serious potential humanitarian consequences;²¹
- Their widespread utility in improvised explosive devices, including against civilians and UK forces in Iraq and Afghanistan;²² and
- The ease with which they can be transported.

15. These concerns are directly comparable to those relating to SALW, and we see no reason why AVMs should be excepted.

16. AVMs should be included within Category B at the earliest opportunity. The decision not to include them runs counter to the UK's existing commitments in this area; they have been clearly identified as categories of heightened international concern and the UK Government is at the forefront of efforts to reduce proliferation risks associated with these types of mines.

TRANSPORTATION

17. The provision of transport of Category B goods by persons carrying out their activities in the UK, or by UK persons wherever located will now be subject to control. In effect, this means that for control purposes, arranging or carrying out the transportation of Category A or B goods will be regarded in the same light as brokering them. This is something for which the UKWG has long argued, and which we duly welcome.

18. In discussions with Government, a potential problem with the new controls was identified: distinguishing between those with meaningful managerial responsibility and those engaged in lower-level routine administrative or logistical tasks. It was agreed that while the controls should apply to management activities, it would seem unreasonable to apply them to, for example, a forklift driver at an overseas airport. The Government suggested using open licences as a way around this problem. The UKWG accepts that this could prove an acceptable solution; however our general existing concerns over the eligibility, implementation, enforcement of open licences, as well as the ease with which they can be changed in future, are valid in this context (for more on this, see below). The Government has chosen not to extend controls on trading in Category C goods to the arrangement or carrying out of transportation.

19. The Government should revisit the possibility of extending the new transportation controls to Category C items once it has the opportunity to assess the impact of the new transportation controls.

TRANSIT–TRANSHIPMENT

20. The Government has gone some way to improving the existing controls on transit–transhipment.

21. Under the new system, the more sensitive the goods and–or the more sensitive the destination, the more likely it is that the transit will require a licence. For example, all Category A goods transiting the UK require a licence; all Category B goods to a list of 49 countries require a licence.

²⁰ S/2008/647, Report of the Panel of Experts established pursuant to Resolution 1591 (2005) concerning the Sudan, 11 November 2008, pp. 61–63.

²¹ See Landmine Action (2006) Anti-vehicle mines: understanding the impact and managing the risk, for documentation of humanitarian impact in a number of contexts, [www.landmineaction.org/resources/AVMs%20Understanding%20the%20impact%20and%20managing%20the%20risk\(1\).pdf](http://www.landmineaction.org/resources/AVMs%20Understanding%20the%20impact%20and%20managing%20the%20risk(1).pdf). In addition to hampering civilian vehicle movements, severely impeding the delivery of aid, and other humanitarian impacts, research conducted by Landmine Action in collaboration with Loughborough University found that civilians in everyday activities exerted forces on the ground in excess of the activation thresholds of many anti-vehicle mines. See Landmine Action, *Civilian Footsteps: Forces Exerted on the Ground by Civilians During Everyday Activities*, May 2001, www.landmineaction.org/resources/civilian_footsteps.pdf.

²² See, for instance, anti-vehicle landmines rigged as detonators for recovered IEDs in Iraq, www.defenselink.mil/news/Nov2005/20051109115418_1iraqb1-20051109.jpg.

22. For other less-sensitive cases, an Open General Transshipment Licence (OGTL) has been introduced which provides for multiple, unlimited transits without prior or case-by-case Government scrutiny on the basis once again of the type of equipment and on condition that the destination country is not one of 50 states named in a schedule to the licence. For those transits not eligible for the OGTL, a trader may apply for an individual transshipment licence.

23. While this at first glance appears complicated, with effective guidance from the ECO and Her Majesty's Revenue & Customs (HMRC), and if transit actors are willing to engage properly with the system, it should be relatively easy to determine whether a licence is required and, if so, which type.

24. However, the UKWG believes a number of potential problems remain with the regime.

25. These include the fact that the principals involved in a transit–transshipment are likely to be based outside the UK and thus are more likely to lack detailed knowledge of the UK system. There is also a plethora of transit systems in use in different countries, frequent difficulty in finding out how these different systems work, frequent confusion over which party to a shipment is responsible for ensuring compliance with transit regulations, and a widespread lack of enforcement of transit rules. All these factors encourage non-compliance with the transit controls.

26. Beyond the risk that the relevant actors will not engage with the system, the UKWG is concerned that certain elements of the transit–transshipment controls need to be rethought.

27. The list of destinations eligible for use of the OGTL is too broad, and there is no indication of how often or on what basis it will be subject to review.²³

28. We are concerned that the conditions which avoid the need to apply for a transshipment licence completely are too permissive. No documentation is required to prove the legality of the transfer in the country of original export, nor need any documentary proof of end-use be provided.

29. Finally, neither the Control Order nor the OGTL make it entirely clear whether “exportation of goods” refers to the movement of goods only to their next destination or whether this includes their ultimate destination. The former meaning could allow goods to transit to an intermediate destination without a transit–transshipment licence, yet still be destined for an embargoed destination. It should thus be stated explicitly that “export” in this context refers to the final and all post-UK intermediate destinations of the goods in question.

30. The controls on transit–transshipment should be redrafted to:

- State clearly that all subsequent and final destinations of the items in question are relevant in determining the need for a licence.
- Require stronger documentary evidence of the legality of the consignment in the original exporting country and of its ultimate legal end-use.

31. The destinations covered by the Open General Transshipment Licence need to be drawn more tightly and subject to ongoing review and assessment.

TORTURE END-USE CONTROL

32. The UKWG applauds the UK Government's work to develop support for an EU-level end-use control on equipment suspected to be destined for use in torture and ill-treatment; and also its swift addition of “sting sticks” to the Category A goods list. We strongly support this flexibility in response to the emergence of new technologies and items of concern, and the pursuit of a workable catch-all. We also believe that a workable torture end-use control might present a valuable preliminary model for the kind of military–security–police end-use control which the UKWG has advocated in previous submissions to the CAEC.

33. The UKWG hopes that progress is made on the torture end-use control within the EU during 2009. If, however, such a catch-all is rejected by EU partners, it should still be introduced unilaterally at a UK level, and we welcome the Government's statement that it will consider doing so unilaterally.²⁴

34. The Government should pursue a torture end-use control as a matter of urgency, through the EU if possible, but unilaterally if progress is blocked in the EU.

²³ The list of destinations “embargoed and subject to transit control for military goods” do not include all countries subject to UN, EU or OSCE embargo, some of which (China, Liberia, Somalia, Iraq) have instead been placed in the list of destinations “subject to Transit Control for military goods”. More significantly, several destinations of concern are not included in the list of destinations “subject to Transit Control for Category B goods”. Thus West African countries such as Ghana and Guinea Bissau are included, but not Angola, Cameroon or Congo (Brazzaville). Haiti, where armed violence involving small arms continues to be an enormous humanitarian problem, is not included. Dubai is included, but not other emirates in the UAE, despite other emirates such as Sharjah being identified as equally prevalent transit points for arms transfers to undesirable end-users.

²⁴ Strategic Export Controls: HMG's Annual Report for 2006, Quarterly Reports for 2007, Licensing Policy and Parliamentary Scrutiny—Response of the Secretaries of State for Defence, Foreign and Commonwealth Affairs, International Development and Business, Enterprise and Regulatory Reform (Cm 7485, November 2007).

MILITARY END-USE CONTROL

35. The UKWG welcomes the Government's stated intention to seek an expansion of the EU Military End-Use Control beyond its current coverage of non-listed goods intended for the use in or production of listed goods to be supplied to certain destinations.

36. The Government has stated that this would allow governments to require licences for non-controlled goods "which the exporter knows are intended for use in listed destinations by the military, police or security forces, or has been informed by the Government that the goods are or may be so used, where there is a clear risk that the goods might be used for internal repression, breaches of human rights, or against UK forces or those of allies".²⁵

37. These discussions are highly important to the conceptual framing of export controls in the future, placing increasing focus on the use of equipment rather than purely on its technical specifications. We are therefore disappointed that such discussions have not yet been initiated by the Government, despite announcing in February 2007 its intention to develop EU policy in this area.

38. We also welcome the fact that this end-use control is envisaged to extend beyond embargoed destinations. However, at present the Government has stated that it intends to seek this expansion to control non-listed "complete equipment".²⁶ We are not convinced that such a measure would prevent some of the transfers detailed below, involving the export of significant components or unfinished vehicle kits.

39. While a list-based system is an important cornerstone of most transfer control regimes, the UKWG believes that the ultimate purpose of transfer controls must be to prevent certain types of activity or consequences, rather than simply to control particular technologies.

40. End-use catch-all controls not attached to a specific list can help avoid loopholes whereby items not included on control lists are beyond regulatory reach in cases where they are to be supplied to clearly undesirable end-users or end-uses

41. The UKWG have provided DBERR and the CAEC with examples in recent years of uncontrolled UK-made parts and components for military and security equipment—and in some cases complete finished goods—being used in regions of instability and by human rights abusers.

42. Two further cases emerged during 2008 which once again illustrate the vital importance of a workable military–security–police end-use catch-all control in:

preventing the transfer of some non-listed UK-origin equipment to military end-users in embargoed destinations; and

controlling the transfer of non-listed components ultimately posing grave threats to both civilians and UK forces, including those in regions of current conflict such as Iraq and Afghanistan.

43. *Land Rover vehicles used by Azeri military*

Members of the UKWG have in the past reported in detail on exports of Land Rover "Defender" vehicles, or "Defender" components or vehicle kits, which have been supplied to parties to conflicts in embargoed countries (such as Sudan in 2006-7);²⁷ or to overseas production partners in Turkey, where they have been converted into military vehicles and subsequently supplied to forces engaged in grave human rights abuses (as in Uzbekistan in 2005).²⁸ The current "catch all" clause within the EC Dual-Use Regulation is severely limited in its ability to regulate transfers either of complete non-listed items to embargoed destinations; or non-listed components or kits destined for sensitive but non-embargoed destinations, or re-exported from non-embargoed destinations.²⁹

44. This pattern appears to have continued. On 23 June 2008, a military parade in Azerbaijan revealed that the Azeri army had a number of military Land Rover "Defender" vehicles.³⁰ Since 1992 Azerbaijan has been subject to an OSCE arms embargo due to fighting with Armenia in the Nagorno-Karabakh region.³¹ The UK Government states that it continues to adhere to the OSCE embargo.³²

²⁵ *Ibid.*

²⁶ DBERR, Review of Export Control Legislation (2007)—Government's End of Year Response (December 2008), p.6.

²⁷ "Sudan: Arms continuing to fuel serious human rights violations in Darfur", Amnesty International (AFR 54/019/2007); Submission on the review of the UK Export Control Act to the Committees on Arms Export Controls from Amnesty International UK, the Omega Research Foundation and Saferworld (March 2008).

²⁸ Memorandum from the UKWG to Quadripartite Committee, 2005-6 session.

²⁹ Article 4(2) of Council Regulation (EC) 1334/2000 requires exporters to seek export licences for non-licensable goods "if the exporter has been informed by the authorities ... that the items in question are or may be intended, in their entirety or in part, for ... incorporation into military items listed in the military list of Member States" and the "country of destination is subject to an arms embargo decided by a common position or joint action adopted by the Council or a decision of the OSCE".

³⁰ Photographs at www.militaryphotos.net/forums/showthread.php?t=137251&page=3 (accessed 2 Sept 2008).

³¹ Organisation on Security and Co-operation in Europe, Committee of Senior Officials, Journal No. 2, Annex 1, Seventh Committee on Senior Officials meeting, Prague, 27–28 February 1992 (text at www.sipri.org/contents/expcon/cscazabarm.html).

³² "Armenia/Azerbaijan: Deadly Fighting Erupts In Nagorno-Karabakh", Radio Free Europe, 4 March 2008 (text at www.caucas.com/home_eng/depeches.php?idp=1896). Written Ministerial statement on "Azerbaijan and Armenia (Arms Embargo)" by Douglas Alexander MP, 29 November 2005.

45. The UK has reported issuing only one export licence to Azerbaijan since 1997 which might cover such military utility vehicles, “for humanitarian end-use ... de-mining equipment” in 2003. As in the cases above, the vehicles or vehicle kits may have been exported from the UK and assembled in another country for onward export, or may have arrived via another end-user.³³ In any event the photographs clearly demonstrate that military utility vehicles or vehicle chassis of UK origin are being used by military forces in another embargoed destination; and that a number of routes exist through which such exports can lawfully have taken place.

46. *UK traders allegedly involved in transfer of electronic components for Improvised Explosive Devices (IEDs) in Iraq*

IEDs constitute a major threat to civilians in armed conflicts in Iraq, Afghanistan, Colombia,³⁴ Sri Lanka and elsewhere. IEDs are often positioned on roads and in areas used by civilians, and sometimes positioned to deliberately target civilians.³⁵ They also constitute a major threat to UK forces operating in Iraq and Afghanistan.

47. In September 2008, eight companies and eight men, including two British nationals, were indicted in a Florida court for allegedly conspiring to export goods from the US in violation of the US’s Economic Administration Regulations (EAR).³⁶ The defendants allegedly conspired to supply to Iran, via the UK, Malaysia and Dubai, a range of instruments and electronic components. Some of these goods were of the kind used in the construction of IEDs: the indictment was reportedly the result of an investigation launched after the same electronic micro-controller³⁷ as those allegedly exported by some of the defendants was found in IEDs recovered in Iraq.³⁸

48. In contrast to end-use-based elements of US law, UK law would not prevent the export of inclinometers or many other of these components to Iraq, Iran or elsewhere, unless it was known or suspected that they were:

- destined for weapons of mass destruction, or
- destined for the production of a standard military item listed on the UK’s military list and destined for an embargoed destination.

49. Since IEDs are improvised, non-standard weapons, they may not be covered by the UK military list, which only covers devices associated with IEDs (for handling, operating, detonating or jamming them) which are “specially designed for military use”.³⁹ Exporting unlisted components for improvised IEDs, however sophisticated and however deadly their consequences, may therefore not be controlled, even with intelligence that the components were destined for the production of IEDs.

50. The Government should pursue an expansion of the EU Military End-Use Control to both complete items and components which the exporter knows are intended for use in listed destinations by the military, police or security forces, or has been informed by the Government that the goods are or may be so used, where there is a clear risk that the items or finished goods might be used for internal repression, breaches of human rights, or against UK forces or those of allies.

POST-EXPORT CONTROLS

51. The UKWG remains in profound disagreement with the UK Government’s assertion that “the introduction of a process that allows for the issue of licences based on future end use monitoring militates against the effective application of the criteria at the licensing stage.”⁴⁰

52. There is always some risk that exported equipment or technology will be misused or diverted, even when it stays in UK hands.⁴¹ Equal or greater concerns exist for equipment exported to other end-users. The March 2008 submission from Amnesty International, the Omega Research Foundation and Saferworld

³³ In October 2001, Jane’s Information Group reported that Turkey had given 80 unspecified “military vehicles” and four “non-military heavy work vehicles” to Azerbaijan “as part of continued military co-operation between the two states”. It is not known whether these included Land Rover vehicles. “In brief—Azerbaijan receives Turkish vehicles”, Jane’s Defence Weekly, 3 October 2001.

³⁴ International Committee for the Red Cross, ICRC Annual Report 2005 p.263, [http://icrc.org/Web/Eng/siteeng0.nsf/htmlall/6PPBUN/\\$FILE/icrc_ar_05_colombia.pdf?OpenElement](http://icrc.org/Web/Eng/siteeng0.nsf/htmlall/6PPBUN/$FILE/icrc_ar_05_colombia.pdf?OpenElement).

³⁵ Amnesty International, Iraq: In Cold Blood: Abuses by Armed Groups (MDE 14/009/2005 25 July 2005).

³⁶ United States District Court, Southern District of Florida, Superseding Indictment Case No. 08-20222-CR-LENARD (entered on FLSD Docket 18 September 2008).

³⁷ Microchip-brand PIC16F84A-04I/P micro-controllers. United States District Court, Southern District of Florida, Superseding Indictment Case No. 08-20222-CR-LENARD (entered on FLSD Docket 18 September 2008), para.33.

³⁸ US District Court, Southern District of Florida, Superseding Indictment Case No. 08-20222-CR-LENARD (entered on FLSD Docket 18 September 2008), para. 33; US Department of Justice, press release, 17 September 2008, www.bis.doc.gov/news/2008/doj09172008.htm.

³⁹ UK Military List, June 2008, Section ML 4b.

⁴⁰ Response of the Secretaries of State for Defence, Foreign & Commonwealth Affairs, International Development and Trade & Industry to the Report from the Quadripartite Committee on Strategic Export Controls: HMG’s Annual Report for 2004, Quarterly Reports for 2005, Licensing Policy and Parliamentary Scrutiny, October 2006, Cm 6954, para. 40, <http://www.official-documents.gov.uk/document/cm69/6954/6954.pdf>.

⁴¹ There were reports in 2006 of UK soldiers smuggling guns out of Iraq to be sold in the UK: Daniel McGrory and Dominic Kennedy, “Troops accused of gun-running for cocaine and cash,” The Times, 13 October 2006, <http://www.timesonline.co.uk/article/0,,29389-2401628.html>.

highlighted the case of re-exports from India to Myanmar of military equipment originally supplied by the UK.⁴² Other instances have included diversions of UK-exported arms which directly threaten UK forces: for example, in 2006 credible reports emerged that UK-supplied Beretta 92S semi-automatic pistols, originally supplied to the Iraqi police, had ended up in the hands of supporters of Abu Musab al-Zarqawi, then al-Qaeda's leader in Iraq.⁴³

53. The UK Government has repeatedly countered calls for post-export checks and remains confident that its system of pre-export risk assessments of the likelihood of diversion is adequate. The UKWG reiterates its belief that the great weight of evidence demonstrates the inadequacy of relying on pre-export risk assessments alone. For example, a DTI spokesman, commenting on the Beretta case, stated that the export licence was granted only after considering "the risk that the equipment will be diverted within the buyer country [Iraq]". This risk assessment was plainly flawed.

54. The importance of post-export checks is increased by the Government's resistance to requiring explicit re-transfer clauses in end-user undertakings: a position which puts it at odds with many other major arms exporters, including the US.

55. We are disappointed that since the committee's last inquiry, no progress has been made on the introduction of effective post-export controls. This must now be an urgent priority for the Government.

56. The Government should:

- Introduce a system of post-export controls, including more specific contractual limitations on end-use and re-export, and provision for end-use monitoring;
- Work with others to develop a forgery-proof internationally standardised end-user and delivery-verification certification process; and
- Provide details to the CAEC regarding the number of end-user checks carried out by overseas posts each year, the number of physical post-export checks undertaken, the reasons for them and their outcomes.

LICENSED PRODUCTION OVERSEAS (LPO)

57. The UKWG is disappointed with the Government's statement in its July response to the ECA Review that there is not a convincing case for enhancing current controls on the export of controlled goods in the context of LPO.

58. In several previous submissions, the UKWG has provided evidence showing that overseas licensed production facilities of UK-origin equipment have exported items to undesirable end-users. These examples include the case of Land Rovers produced under licence in Turkey reaching Uzbekistan, where they were used by Uzbek troops in the Andijan massacre in May 2005.

59. The current regulations for licensing intangible transfers and physical exports (including many types of production equipment) do not address the most critical aspects of the licensed production issue: how to apply controls on the equipment itself that is produced under licence. While controlling licensed production is clearly more difficult than controlling direct exports, if the Government feels it is right to exert full control over direct exports of strategic goods from the UK then it is equally important that controls are also applied to LPO. This is because the consequences of a lack of regulation of an overseas production facility producing and exporting military equipment for many years are potentially much more severe than in relation to one-off exports. British companies that wish to license the production of weapons overseas should first have to apply to the UK Government for authorisation. Any such authorisation should be dependent on the overseas company in question providing a legally-binding undertaking limiting the number of weapons to be produced and their ultimate destination.

60. Other countries have successfully placed controls on LPO agreements without damaging the competitive edge of their national defence industries. Most notably, the US imposes and enforces controls on LPO, while Sweden and Germany also control licensed production agreements. Russia, too, has begun to introduce stringent post-production controls on goods produced under licence.

61. British companies that wish to license the production of weapons overseas should first have to apply to the UK Government for authorisation.

SUBSIDIARIES

62. The issue of foreign subsidiary companies presents a challenge for the UK export control system, not least because subsidiaries are separate legal entities from their UK parents and therefore are regulated under the jurisdiction of the state in which they are located. In the case of overseas-based, UK-owned subsidiaries, it appears that UK controls do not apply at all—even to embargoed destinations. This is despite the fact that they may be controlled as well as owned by a UK-based company. Elsewhere, unless it was known or suspected that they were:

⁴² Amnesty International, Omega Research Foundation and Saferworld Submission to the Committee on Arms Export Controls, March 2008.

⁴³ "UK guns in Al Qaeda hands", Observer (UK), 19 March 2006, <http://www.guardian.co.uk/uk/2006/mar/19/alqaida.military>.

- UK-based businessmen were involved in a contract to supply military trucks to Sudan (which has been under an EU arms embargo since March 1994) from Ashok Leyland, a subsidiary of a UK company, Land Rover Leyland International Holdings (LRLIH).⁴⁴
- Land Systems OMC in South Africa, a subsidiary of BAE Systems, has exported armoured vehicles to over 20 countries, including India (for use in Kashmir), Guinea (where they were used in a massacre of protestors in January 2007),⁴⁵ Nepal (where OMC-type vehicles were used in King Gynandra's takeover of executive power in 2005) and Uganda (where they were used to forcefully disperse opposition supporters prior to the election in February 2006).⁴⁶

63. The UK Government should explore and establish ways of regulating exports from subsidiary companies. While clearly a complex legal area, the UK should be able to apply UK regulations on a UK parent company where it can be proved to hold de facto control over the subsidiary. We repeat our previous recommendations to the CAEC that, at a minimum, these controls should apply to exports from subsidiary companies to embargoed destinations.

OTHER DOMESTIC ISSUES

Open general export licences (OGELs)

64. Open general export licences (OGELs) allow for repeated, unlimited transfers of controlled items to (usually) unspecified recipients within a list of national jurisdictions. Open general trade and transshipment licences (OGTCLs and OGTLs) work similarly, though including an additional list of acceptable "source" countries from which goods can be transferred. Use of open general licences is open to all, subject only to an online registration process which the Government has stated "does not currently involve a pre-licensing vetting procedure".⁴⁷ Transfers under these licences do not involve prior or case-by-case Government scrutiny. In the hypothetical example cited above in the section on AVMs, it was noted that a UK person may broker repeated deliveries of Category C goods under an Open General Trade Control Licence (OGTCL) from Cyprus to a non-state consignee in Chad. Under the OGTCL (small arms) a trader or transporter could still move SALW from, for example, Cyprus to Israel or Haiti: both destinations to which we assume SITCLs for SALW would be most unlikely to be granted.

65. The Government has taken welcome steps to tighten the use of OGLs, for example by asserting the power to prohibit named individuals or companies from using them and by making it easier for overseas entities to meet their obligations by applying for UK licences. Moreover the UKWG accepts that careful use of OGLs can allow regulatory authorities to focus their attention on more sensitive transfers. However, the UKWG is concerned that the destinations covered by OGLs should be more strictly limited. It is also unclear how frequently and on what basis the OGL country lists will be reviewed; current indications (based on the dates of entry into force of extant OGLs) are that reviews are infrequent. Furthermore, given that the Government has already acknowledged that transfers of SALW are especially sensitive, the UKWG recommends that the OGTCL (small arms) should be withdrawn, and that all trading of SALW should require individual licensing.

66. The Government should withdraw the OGTCL (small arms) and more strictly limit the range of destinations covered by OGLs in general.

Components policy

67. In January 2009, evidence was published suggesting that Unmanned Aerial Vehicles (UAVs) operated by the Israeli Defence Forces and manufactured by Israeli company Elbit Systems, may contain engines manufactured in the UK.⁴⁸ This included a statement by an Israeli Air Force member referring to the performance of these UK engines in operations undertaken in 2006.

68. UAV Engines (UEL), based in Lichfield near Birmingham, has stated that it manufactures the engines for Hermes 450 UAVs produced by its parent company, Elbit Systems of Israel. Specifications displayed by Elbit Systems beside a Hermes 450 aircraft at a 2006 defence exhibition, photographs of which have been obtained by Amnesty International, also state that the Hermes 450 is powered by a "UEL AR-80-1010" engine manufactured by UEL. Respected defence industry media, such as Jane's Information Group, have also stated that Hermes 450 UAVs are powered by engines manufactured by UEL.

⁴⁴ Memorandum from Mark Thomas to Quadripartite Select Committee, January 2006, <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmquad/873/873we12.htm>.

⁴⁵ Amnesty International, *Blood at the Crossroads: Making the Case for a Global Arms Trade Treaty* (ACT 30/011/2008, 17 September 2008), Chapter 6.

⁴⁶ For more information, see UKWG Submission to the ECA Review p 21, at <http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/legislation/export-control-act-2002/review/page42883.html/strategic-export-control/legislation/export-control-act-2002/review/page42883.html>.

⁴⁷ CAEC, *Strategic Export Controls: HMG's Annual Report for 2006, Quarterly Reports for 2007, Licensing Policy and Parliamentary Scrutiny—Response of the Secretaries of State for Defence, Foreign & Commonwealth Affairs, International Development and Business, Enterprise and Regulatory Reform* (Cm 7485, November 2008), paragraph 8.

⁴⁸ "British link with drone aiding the Israeli war effort", *The Guardian*, Friday 9 January 2009, <http://www.guardian.co.uk/world/2009/jan/09/armstrade-gaza>.

69. The Israeli Defence Forces (IDF) have used UAVs to targeted civilian homes, hospitals and shops, and have documented significant civilian casualties from such strikes.⁴⁹ The UN Relief and Works Agency in the Gaza Strip has reported the use of drones by Israeli forces in the recent Gaza conflict.⁵⁰ Hermes 450s were reportedly deployed for surveillance and targeting missions in Gaza prior to 2006, and according to Elbit Systems were central to IDF operations in Gaza and Lebanon during 2006.⁵¹ Shortly after the 2006 conflict, defence media quoted Israeli Air Force sources discussing the performance of the Israeli Air Force Hermes 450's "50hp (40kW) UEL engine".⁵²

70. A spokesperson for Elbit Systems has denied these claims, stating that while the UK company does provide engines for Hermes 450s that are destined for export, the UK Company does not provide the engines for any of the drones used by the Israeli armed forces. The Foreign Secretary, in a Statement issued to the House of Commons on 12 January 2009, said there is no truth in the suggestion that UK arms are being used by the IDF.⁵³ At a subsequent CAEC evidence session of 21 January 2009, BERR added further clarification by stating that: "Our licensing database shows that we have only issued licences for those particular engines for incorporation in Israel and then onward export to a third destination. If the engines had stayed in Israel, then that would be a contravention of the licence condition and that would be an offence. *Whilst we cannot categorically confirm that we physically checked that the engines have been incorporated* [emphasis added], we have only licensed them for incorporation in Israel and onward export to another destination."⁵⁴

71. However, the UKWG can find no other publicly available source to suggest that alternative engines are fitted into Hermes 450 UAVs operated by the IDF. Respected defence journals, company information and statements issued by Israeli defence personnel all point to use of engines supplied by UEL in the Hermes 450. In light of these concerns, the UKWG are asking the CAEC to investigate the matter further.

72. The UKWG recommends that the CAEC:

- Examines all relevant export licences since issued for components for UAVs to Israel since 1998 to ascertain whether or not the Government has issued licences for UAV engines for use by the IDF;
- Ascertain the status of end-use assurances contained within these licences, especially stipulations that components for UAVs are not to be used in aircraft operated by the IDF;
- Investigates what end-use monitoring the UK Government has undertaken to ensure that no UK engines are incorporated into any UAVs currently operated by the IDF; and
- Identifies what alternative engines are being used in these UAVs by the IDF and whether these have been developed or enhanced with the assistance of UK technology and/or components.

TRANSPARENCY

73. The UKWG acknowledges that the amount and format of information about export and trade control licences included in the Quarterly and Annual reports has developed substantially in recent years. We also welcome the ECO's ongoing initiative to make licence information available through a searchable electronic database.

74. However, the UKWG remains concerned that information is seldom given regarding the approved end-user and end-use of licensed goods. This makes it difficult for public or parliament to assess whether the Consolidated Criteria are being effectively and consistently applied; it may also have the effect of exposing the Government to criticism about export licences issued for sensitive destinations where goods are in fact destined for innocuous end-users such as humanitarian agencies, UK Embassy personnel, or peacekeeping forces. The Government does on an occasional ad hoc basis provide information on end users, especially in cases of supply to embargoed destinations, however this should be extended to other destinations as a matter of course. Indeed, just as the Government publishes data on the number of SALW authorised for transfer under standard individual licences unless expressly asked not to by the exporter, so too should it apply the same rules to the provision of information on end-use and end-users.

75. The problem is illustrated by the example given above of export licences granted for "UAV components" to Israel, both as standard and incorporation (re-export) SIELs. It is impossible to prove or dispel these concerns without data on whether the stated end-user of any of those licences was a military end-user in Israel.

⁴⁹ See for example Amnesty International, Israel/Lebanon: Deliberate destruction or "collateral damage"? Israeli attacks on civilian infrastructure, 23 August 2006.

⁵⁰ Statements by John Ging, Director of Operations for the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Gaza City, 5 January 2009.

⁵¹ "On winged heels: Hermes flies high as UAVs play a bigger part in operations", Jane's International Defence Review, 1 November 2007; also Elbit Systems Press Release, 12 November 2007: "The Hermes 450 is an original development of Elbit Systems, and the IDF has been operating UAVs based on this platform for several years. During the recent war in Lebanon its UAVs flew many combat sorties proving their efficiency in performing their missions by providing effective operational results and achieving their goal—the supply of necessary, visual intelligence to the ground forces."

⁵² "Israel Praises UAV abilities", Flight International, 31 August 2006.

⁵³ Hansard, 12 January 2009, col. 29, <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm090112/debtext/90112-0005.htm>.

⁵⁴ Uncorrected Transcript of oral evidence, 21 January 2009, <http://www.publications.parliament.uk/pa/cm200809/cmselect/cmquad/uc178-i/uc17802.htm>.

76. Similarly, the CAEC enquired during 2007-8 about an Open Individual Trade Control Licence (OITCL) issued in 2006 for trade in components for equipment, ranging from submarines to heavy machine guns, between a large number of destinations which included the Ivory Coast (under UN and EU embargo since 2004). The Government stated only that “the licence was granted to the UK office of an overseas government, and the end-user is the navy of that government”, and that further details could not be given except in a Restricted briefing to the Committee, due to the information being commercially confidential.

77. Without further assurances that equipment moved under this licence would not be transferred to end-users embargoed by Common Position 2004/852/CFSP or UN Security Council Resolution 1472 (2004), we cannot be certain that the licence does not undermine these EU or UN embargoes. The UKWG also regards it as inappropriate that open licences—under which the quantities of equipment which can be moved are generally unlimited, and whose use is not systematically monitored outside of compliance visits—should include destinations covered by EU or UN embargoes, particularly when such licences cover SALW. We are also uncertain why information about equipment movements organised by the navy of an overseas government would be commercially confidential, rather than confidential on national security grounds.

78. The UKWG also notes that other European governments, such as Denmark, already list the broad nature of the end-user of export licences (government or industry) in their annual licensing reports.⁵⁵

79. UK national strategic export control reports should specify the type of end-user of equipment covered by each licence, and any excluded end-users (such as certain end-users in embargoed destinations), unless there is a specific, compelling reason for withholding such information.

ENFORCEMENT

80. We are pleased that the Government has recently amended the automatic eligibility to use OGELs, so that their use by named entities can now be either removed or suspended, especially where serious breaches in export controls or non-compliance with specific licences have been identified.⁵⁶

81. As in previous years, the UKWG is concerned that insufficient resources are being allocated to implementing transfer controls, thus undermining the proper enforcement of these controls. Concerns remain about an apparent lack of action to enforce controls even when credible evidence comes to light that companies or individuals are in breach.

82. We urge the CAEC to ascertain the status of enforcement activities undertaken by HMRC in light of these concerns. There appears to have been no further action on several prospective prosecutions, described to the CAEC in previous evidence sessions. We recommend in particular that the Committee requests an update from HRMC (in confidence if necessary) regarding the status of the prospective “WMD trafficking and brokering” case, described to the Committee by HMRC’s Head of the Publications & Restrictions Policy Group in 2005. If the case has not been prosecuted, it may be that valuable lessons can be drawn from it regarding obstacles to prosecution in the ECA.⁵⁷

83. To our knowledge, there have been ten reported prosecutions under the ECA since 2000. Virtually all of these have been for relatively minor and, on occasion, procedural offences. They have been subject to relatively small penalties, with only two custodial sentences awarded: to Mr. John Knight, for the unlicensed export of MPT9 sub-machine guns between Iran and Kuwait; and to Mr. Mehrdad Salashoor, for the supply of gyro-compasses to Iran.⁵⁸

84. The level of enforcement of UK export controls and the reliance on criminal prosecutions remains in stark contrast to enforcement in the USA, where strong and genuinely punitive criminal and civil penalties are used. For example, in January 2009, the US Government fined the Qioptiq group US \$15million for more than 160 alleged breaches the US Arms Export Control Act and International Traffic in Arms Regulations (ITAR). The companies were formally part of Thales High Technology Optic Group when these offences took place.

85. Thales Optical Coatings Ltd UK (now Qioptiq in Wales) was also cited for allowing various subcontracting companies based in Belgium, Germany, Netherlands, Singapore, Switzerland and the UK to access ITAR-controlled data without the necessary licences. The US authorities also criticised the UK company for having inadequate compliance, awareness and training available on US ITAR controls.⁵⁹ This

⁵⁵ Reports produced by the Danish Ministry of Foreign Affairs specify whether licences have been issued for government or industry end-users. See, for example, Denmark’s 2006 report, http://www.sipri.org/contents/armstrad/DEN_06.pdf/download.

⁵⁶ “NOTICE TO EXPORTERS 2008/12, Suspending or Revoking of Open General Licences,” BERR, 16 May 2008, <http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/licences/ogels/page46237.html>.

⁵⁷ Quadripartite Select Committee, 1st Report, Session 2005-2006, Evidence Session, 25 May 2006, Q. 402-406, <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmquad/873/6052506.htm>.

⁵⁸ UK Strategic Export Controls Annual Report 2005; UK Strategic Export Controls Annual Report 2006; “Fine and compound penalty for exporting without a licence”, BERR Press Release, 27 July 2007; Regina vs John Knight at Blackfriars Crown Court, 23 November 2007. In addition to these successful prosecutions, there have also reportedly been compound penalties levied in lieu of criminal proceedings on three companies for export control breaches.

⁵⁹ Proposed charging letter to Benoit Bazire, CEO Qioptiq S.a.r.l. from David Trimble, Director, Office of Defense Trade Controls Compliance, US State Department, 12 April 2008, http://www.pmdt.state.gov/compliance/consent_agreements/pdf/Qioptiq_ProposedChargingLetter.pdf.

action was taken following a prior investigation into the US defence group ITT Corporation, which in March 2007 received a record civil penalty fine of US \$100million for ITAR violations over exports to China. Thales High Technology Optic Group companies were part of ITT Corporation's supply chain.⁶⁰

86. The UK Government should introduce a system of civil penalties for export control violations. These would create a lesser test for prosecutors and therefore enable a greater number of breaches to be successfully prosecuted, creating stronger deterrent against transgressing the control regime. In cases involving transfers of controlled goods, given the opacity and complexity of many such deals, establishing the evidence sufficient to meet the burden of proof necessary for a criminal conviction through the court system is often very difficult, especially when offences are committed overseas or involve non-UK actors.

87. The Government should also initiate a viability study into the creation of a single regulatory agency, drawing together the personnel, experience and authority of the ECO and the controlled-goods section of HMRC, to create a unified organisation for the compliance and enforcement of export controls. This would assist in the implementation, detection, investigation and prosecution of offences under the ECA.

IMPORTS

88. The UKWG notes with some concern that the Government has still not fully accounted for a large number of licences issued between 2003 and 2005 for the import into the UK of assault rifles from Bosnia and Croatia. We note that the CAEC has asked for more information on these licences in both its 2007 and 2008 reports.

89. In addition, according to information provided by Amnesty International, a further consignment of 20,000 assault rifles was imported from China, arriving into the UK in February 2007. Sources have indicated that this Chinese shipment was part of contracts to supply the Iraqi Police Force.⁶¹

90. The CAEC should ascertain whether or not these imports were part of Government contracts to rebuild the Iraqi police force, and if so, why China was chosen as a suitable supplier of these weapons.

91. The UKWG would like to draw the CAEC's attention to the answers contained in a 2007 memorandum from the ECO regarding the import of assault rifles into the UK. The UKWG considers this answer to be misleading and inaccurate. The following extract is highlighted:

“THE OBSERVER ARTICLE OF 25 JUNE

“The facts of this case are as follows:

“A registered UK firearms dealer did import approximately 20,000 assault rifles from Bosnia in May–June 2005. In this context it is important to bear in mind that the removal of weapons from the Former Republic of Yugoslavia is an agreed objective of both NATO and the UN, and is fully supported by the UK. The UNDP has been active in running a programme for the destruction or removal of weapons from the Former Republic of Yugoslavia, and NATO has also played its part in arms reduction in the region, under Project Harvest (formerly Operation Harvest). The UK fully supports both the UN and NATO in their objectives.”⁶²

92. This reply does not accurately reflect the facts of the case as known. Following the publication of the Observer article, it was revealed that number of assault rifles imported was approximately 78,000, and not 20,000 as stated in the article.⁶³ The weapons were imported into the UK in July 2005. Interviews conducted by Amnesty International have made it clear that the UK Government was fully aware of the total number of weapons imported into the UK on that particular shipment. It is not clear why, in a formal letter to the CAEC, the Government did not reveal the total shipment that was known to them, given the heightened significance of small arms proliferation.

93. The answer also implies that these imports were part of a wider policy of weapons collection and destruction. However, these weapons were not in any way connected with any efforts to destroy surplus weapons stocks from the former Yugoslavia and were imported by private companies.⁶⁴

94. The UKWG recommends that the CAEC revisit this issue, and ask the Government: to fully account for these weapons; and to establish how many of these weapons have been exported, to which destinations and how many still remain within the UK. The CAEC should also investigate whether or not these weapons have formed part of either UK or US government-sponsored weapons supplies to forces in Iraq and Afghanistan.

95. All import licences for ML goods should be considered against the consolidated criteria on a case-by-case basis and import licences for ML goods should automatically be circulated to relevant export licensing officials within the ECO. Details of import licences should be included in the Government's annual and quarterly reports on strategic exports.

⁶⁰ “Former Thales companies agree to pay penalties for US export violations”, *Janes Defence Weekly*, 08 January 2009: http://www.janes.com/news/defence/business/jdi/jdi090108_1_n.shtml.

⁶¹ *Blood at the Crossroads: Making the case for a global Arms Trade Treaty*, Amnesty International, September 2008.

⁶² Memorandum from the ECO, Department of Trade and Industry, to the Quadripartite Select Committee, August 2006, <http://www.publications.parliament.uk/pa/cm200607/cmselect/cmquad/117/117we18.htm>.

⁶³ Documents supplied to Amnesty International.

⁶⁴ *Ibid.*

96. Clear procedures should be drawn up to ensure that all relevant government departments (the Home Office and local Police firearms units, Import Licensing, the ECO and HMRC) are co-ordinating effectively in cases such as these. A central database of imported weaponry, particularly SALW, should be established to enable relevant government departments to trace and monitor all firearms movements into, within and from the UK.

EUROPEAN ISSUES

EU Common Position

97. In December 2008 the EU at last adopted a Common Position defining common rules governing the control of exports of military technology and equipment (Common Position).⁶⁵ This was the culmination of a review process that began in 2003. The text of the Common Position was largely agreed by early 2005, but the process then became mired in attempts (principally French-led) to make the adoption of the Common Position dependent on the EU lifting its arms embargo on China. Unfortunately the Common Position sets no deadline for national compliance, which is of concern given (a) the length of time the EU Code review process took, and (b) that eight Member States are still not in compliance with the 2003 Common Position on the control of arms brokering almost six years since its adoption.

98. The most welcome specific change to the regime is that states are now obliged to “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”.⁶⁶ There are other improvements over the previous EU Code, however these tend to be compromised by caveats that in effect allow national opt-outs. For example, although each Member State which exports technology or equipment on the EU Military List must now publish a national report on these exports, the content of the report is completely at the discretion of the individual Member State.⁶⁷ Member States also continue to have discretion over the circumstances under which arms transfer licences are required.⁶⁸

99. It was hoped that one of the main tasks of the EU Code review would be to promote convergence of licensing decision-making (as is set out as a stated intention of the Common Position in its preamble⁶⁹) through development of the EU Code criteria. However, aside from the fresh references to international humanitarian law (see above), there has been very little change to criteria language.

100. A significant part of the Common Position is therefore in essence a carry-over from the original EU Code. Therefore, while its legal force is welcome, this cannot hide the fact that the Common Position is a modest achievement, with its substantive content in effect either four-to-five or more-than-ten years old.

101. Member States should be looking once again at reviewing and updating the text, with a new focus on improving convergence of export licensing decision-making and policies. This need is made even more urgent by the recent decision to liberalise intra-community transfers of defence-related goods (see below).

102. EU Member States should as a matter of urgency ensure their national legislation is in compliance with the requirements of the Common Position

103. EU Member States should also commence as soon as possible a further review of the EU arms transfer control regime, focusing on:

- Improving convergence of export licensing decision-making and policies;
- Improving post-export controls; and
- Addressing challenges posed by the internationalisation of arms production.

INTRA-COMMUNITY TRANSFERS OF DEFENCE-RELATED PRODUCTS

104. In December 2008 the EU agreed a new Directive on simplifying terms and conditions of transfers of defence-related products within the Community.

105. The Directive is supposed “to simplify rules and procedures applicable to the intra-Community transfer of [EU Military List] products in order to ensure proper functioning of the internal market”.⁷⁰ Individual licences are still applicable where essential security interests require protection, however the Directive establishes new types of general and global licences for the repeated transfer of items around the EU to certain recipients (eg armed forces of other EU Member States, to “certified” European defence companies, and to recipients participating in “an intergovernmental cooperation programme”⁷¹). Within limits, each transferring Member State sets the terms and conditions of their general and global licences, eg relating to the subsequent export of products from the EU.

⁶⁵ “Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment” (Common Position), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:335:0099:0103:EN:PDF>.

⁶⁶ *Ibid*, article 2.2.c.

⁶⁷ *Ibid*, article 8.3.

⁶⁸ *Ibid*, article 1.2.

⁶⁹ *Ibid*, preamble, paragraph 5.

⁷⁰ Directive of the European Parliament and of the Council on simplifying terms and conditions of transfers of defence-related products within the Community, Article 1.

⁷¹ *Ibid*, Article 5.

106. The Directive stipulates that Member States are responsible for certifying companies within their territory, on the basis of certain criteria.⁷² It seems, however, that there is no mechanism to ensure that all Member States' certification processes are equally rigorous. Where concerns exist about the conduct of a certified company a Member State of origin may suspend transfer licences to that company or the receiving state may suspend exports from its territory for up to 30 days, however the expectation is that certification should be respected by all Member States. Moreover, the Directive does not provide for any systematic means whereby receiving Member States are routinely informed about relevant re-export conditions; it is up to the certified recipient company to abide by and to alert its government to any export restrictions associated with the original transfer licence. There would thus appear to be a significant risk of unauthorised export in cases where companies either wilfully or inadvertently neglect to inform their authorities of any re-export restrictions that apply to particular defence-related products.

107. The UKWG believes that Member States should adopt a system of peer review to make sure that the certification process is working correctly and to a common high standard. This would help build trust and confidence on the part of the Member States in the operation of the new regime.

108. In addition certified recipients should be required to keep detailed information about transfers received and any relevant restrictions; these records should be inspected annually by the certified recipients' national authorities. Another option could be to create a searchable on-line licence-information database in order to collate the details (including export restrictions) of relevant licences for each Member State. This would allow those dealing with export licence applications to easily verify the nature of any restrictions that apply to exports of defence products that have originated in other Member States.

109. At some point (as yet undetermined) the Directive is to be reviewed, which could provide the opportunity to introduce the measures suggested above. However the stated purpose of the review is to examine whether the Directive has lowered barriers to intra-community defence trade, not its impact on effective transfer controls.

110. The UK Government should insist that the eventual review of the Directive should include an analysis of its impact on transfer controls, with particular attention paid to the consequences of the certification process on the unauthorised export of defence equipment.

EU OUTREACH

111. In March 2008 the EU adopted a Joint Action on support for EU activities in order to promote the control of arms exports and the principles and criteria of the EU Code of Conduct on Arms Exports among third countries (Joint Action).⁷³ The Joint Action, which runs for the calendar years 2008 and 2009, allots approximately €500,000 for a series of outreach seminars involving countries in South Eastern Europe, Eastern Europe, the Caucasus, North Africa and Turkey (though Turkey has so far chosen not to engage with this process) to promote the principles and criteria of the EU transfer control regime. Also, in June 2008 Member States agreed to develop an informal roster of arms transfer control experts who could be called upon for EU outreach duties.

112. Both these steps represent welcome developments in EU arms transfer control outreach. Historically, outreach by Member States has been ad hoc, uncoordinated and with little apparent thought for prioritisation. Member States have failed to take full advantage of the leverage they have at their disposal to influence arms transfer control practice in states with aspirations to EU membership, or at least to closer relations with the EU.

113. However, although the Joint Action is a positive step, rather than comprising an outreach strategy it simply mandates a series of one-off seminars. The transformation of the EU Code into a legally-binding Common Position gives Member States increased leverage over those with EU ambitions, as it provides the opportunity for including arms transfer control obligations for the first time within the EU acquis communautaire. EU Member States should take advantage of this new context and build on the Joint Action by developing a prioritised, well-resourced and comprehensive strategy for 2010 and beyond. To its credit the UK has been one of the most active of the EU Member States in terms of outreach activity; it should continue to play a leading role in further developing the EU outreach agenda and in supporting outreach activity. All relevant Government Ministries should be involved, including BERR, Customs, DFID, the FCO and the MOD.

114. A comprehensive strategy should include inter alia:

- Effective co-ordination, not only across member states and EU institutions, but also with other relevant support programmes including those identified through the OSCE and other actors or institutions.
- Prioritisation of target states–regions based on a careful assessment of likely impact.

⁷² Criteria for certification include: proven experience in defence activities; the record of compliance with export restrictions; and a written commitment on the part of a senior executive that the company will abide by any specified conditions relating to the end-use and export of defence products.

⁷³ "Council Joint Action 2008/230/CFSP of 17 March 2008 on support for EU activities in order to promote the control of arms exports and the principles and criteria of the EU Code of Conduct on Arms Exports among third countries" (Joint Action), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:075:0081:0085:EN:PDF>.

- In-depth consultation with the proposed partner countries.
- Political-level engagement from within the EU.
- Consideration of all of the various themes that make up a comprehensive effective national arms transfer control system, including legislation–regulation, policies, implementation and enforcement, information-sharing (with other governments), and transparency and accountability.
- Detailed workplans for each partner country/region.
- A monitoring and evaluation framework–mechanism.
- Strong references to arms transfer controls within the EU’s various bilateral stabilisation, partnership and association agreements, as well as co-operation and development agreements.
- Engagement with civil society in the partner countries

115. The UK should work with its EU partners to develop a prioritised, well-resourced and comprehensive EU arms transfer control outreach strategy for 2010 and beyond.

ARMS TRADE TREATY

116. The need for a global Arms Trade Treaty (ATT), to help curb flows of arms contributing to abuses of human rights and international humanitarian law and undermining sustainable development, remains acute. The UKWG is encouraged by continuing progress within the UN system towards this goal. We also appreciate the commitment of the UK Government, reiterated by the Foreign Secretary at a stakeholders’ meeting in September. Alongside its international partners, the UK has continued to play a lead role in promoting the ATT on the international stage. However, the UK must continue to work hard to drive the ATT process through the UN system and to increase efforts to secure widespread and active international support, particularly among Southern governments.

117. In 2008, as instructed by the UN Secretary General, a Group of Governmental Experts, comprising representatives from 28 states, was convened in New York for three one-week meetings to discuss the feasibility, scope and draft parameters of an ATT. The GGE process was difficult, given the presence of states (eg China, Russia, India, Pakistan, Egypt) that remain, to varying degrees, sceptical about the ATT. However, a consensus report was produced—essentially a narrative of the sessions—which concluded that “further consideration of efforts within the UN to address the international trade in conventional arms is required”.⁷⁴

While the GGE reached consensus on the point that “principles enshrined in the Charter of the UN” would be central to any potential ATT”, “differing views” were expressed on the “applicability of existing international human rights law and international humanitarian law”.⁷⁵ It is critical that the ATT process does not pay undue heed to the concerns of a small minority of states at the expense of the opinions of the wider international community as expressed in the submissions of almost 90 states to the Secretary General.

118. In December 2008, a large majority of governments voted in favour of a UN General Assembly resolution which endorsed the GGE report and decided to establish an Open-Ended Working Group (OEWG) on the ATT. The only state to vote against the resolution was the US, with nineteen abstaining. The OEWG is mandated to meet in six one-week sessions, with the first two set for March and July 2009. These 2009 sessions are tasked to consider “those elements in the GGE report where consensus could be developed for their inclusion in an eventual legally binding treaty.” Meanwhile, the EU has agreed a Decision mandating the UN Institute for Disarmament Research (UNIDIR) to organise a series of regional meetings to take place over the next 15 months. This will provide states with an alternative platform to discuss elements that are further from GGE consensus, such as criteria based on human rights, international humanitarian law and sustainable development.

119. Over the course of 2009, the UK Government must work hard to ensure that both the OEWG and the EU–UNIDIR regional meetings generate positive outcomes that reflect the prevailing views of the vast majority of states. The UK must not only maintain its leading role but should also use its position to build a regionally diverse and regionally powerful core group of states to share the burden of leadership and create bridgeheads of proactive support around the world. This approach will be necessary to ensure that a substantial majority of UN Member States vote for a resolution on the ATT that drives the process forward. A resolution in 2009 will need to mandate the OEWG to move in 2010 to discuss more contentious items such as arms transfer criteria. This mandate will be necessary to speed the process towards the negotiation of a comprehensive, meaningful ATT.

120. An ATT will only save lives and protect human rights if it is truly comprehensive, robust and effectively implemented. UKWG does not support an ATT at any cost; we believe that the eventual treaty must enshrine the core principles of international human rights, humanitarian law and sustainable development if it is to be effective in saving lives.

⁷⁴ “Report of the Group of Governmental Experts to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms”, UN General Assembly, A/63/334, 26 August 2008.

⁷⁵ *Ibid.*

121. The ATT must cover all aspects of international arms transfers, including import, export, transit, transshipment, overseas production and arms brokering activities.

122. Any ATT must also be as comprehensive as possible, applying to all conventional arms; including their components, manufacturing technologies, production equipment and relevant dual-use goods. It is of great concern that governments are discussing limiting the scope of an ATT to the seven categories on major conventional weaponry from the UN Register of Conventional Arms (UNRCA), plus SALW, often referred to as “7 + 1”. This would exclude many categories of weapons, police and internal security equipment that are used in the commission of human rights violations, including ammunition and explosives, many types of military vehicles, vessels and aircraft, and many categories of ordnance including short-range missiles and bombs. Nor would it include components and parts, which are central to international supply chains that dominate the increasingly global nature of the production of conventional weapons.

123. Finally, the ATT must enshrine effective reporting, monitoring and verification mechanisms and dispute settlement provisions—drawing on the significant experience developed in the context of many other international regimes such as the 1997 Chemical Weapons Convention and the 1992 UN Framework Convention on Climate Change and subsequent Protocols—to ensure that all states parties abide by the spirit and letter of the agreement and to build confidence in the effective implementation of the Treaty.

124. The UK and its ATT allies should make an explicit public commitment to establish by 2011 an ATT founded on core principles of international human rights, humanitarian law and sustainable development and covering all aspects of international arms transfers, including import, export, transit, transshipment, overseas production and arms brokering activities.

125. The UK should respond to the change in the US administration by increasing its engagement on the ATT with the US at the political level and through contacts among officials, and by encouraging the UK defence industry to engage their US counterparts. Persuading the world’s most powerful state and biggest arms exporter to move from a stance of outright opposition would be a major step forward in securing the ATT’s eventual agreement.

126. The Wassenaar Arrangement military list should be utilised as the basis for the equipment covered by an ATT, as it is comprehensive, multilateral, enjoys the support of a majority of arms exporting states, and is an agreed international standard for the classification of conventional weapons. While a number of states view the Wassenaar Arrangement as politically suspect—on the grounds that it dominated by the “North” and discriminates against non-Wassenaar members—there is nevertheless widespread recognition of the technical validity of the Wassenaar list.

3 March 2009

**Memorandum from Ian Pearson MP, then Economic and Business Minister at the
Department for Business, Enterprise & Regulatory Reform**

Further to my letter dated 19 February 2009, regarding the follow-up issues that arose during my appearance before the Committees on 21 January, I am now in a position to provide examples of where Government policy has changed towards an end user and destination (I would stress that the overall policy of case-by-case assessment against the Criteria remains the same in these cases but the result is different).

Information received from all sources has led to tighter policies on Iran and even more so on countries that are emerging as Iranian intermediaries.

With regard to specific companies, it can be seen from the “Iran List” on the ECO website that licences have been refused to end users in Iran where previously they have been granted. One example is Mapna Turbine Blade Company for which licences have been granted in the past. All licences are subject to case-by-case consideration but a first refusal is an indication of increasing concern. A further tranche of companies was added to the Iran List on 26 February 2009.

Open source news of political upheaval or internal unrest often leads to blanket reviews of extant licences for a country. Recent examples of destinations for which these reviews have taken place are Thailand, Nepal (when the King was overthrown) Russia and Georgia (when the Russians entered South Ossetia and Abkhazia). Naturally all new licence applications are considered against the prevailing circumstances in the destination country.

13 March 2009

Memorandum from Saferworld

1. During our evidence to the CAEC on 11 March 2009 we were asked the following by Sir John Stanley:

I would like to ask each of you to respond to this question, if you would. It has been the policy of successive British governments that there should be no approval of military exports from this country of offensive weapons—and I stress “offensive” not defensive—into areas of conflict or potential conflict. The

question I would like to ask each of you: Do you consider against that criterion that there are any breaches of that policy that have been taking place in respect of any particular weapon or weapon component to any particular country? (Q 65)

2. The only examples given at the time were in connection with various transfers to Israel, military vehicles to Indonesia, and military equipment to India and Iraq. We, did however, commit to write to the CAEC with more examples.

3. Sir John has since, in a Westminster Hall debate of 26 March 2009, referred to this exchange from the evidence session, stating that:

At the Committees' evidence session on 11 March, we took evidence from non-governmental organisations such as Amnesty International, Oxfam and Saferworld. I asked whether they could cite specific examples of UK arms exports that had breached the EU consolidated criteria, and I was supported in that by my hon. Friend the Member for Buckingham (John Bercow). At the time, the NGOs were unable to come up with specific examples, with the exception of Israel, to which I shall come. They said that they would like to go away and reflect further, and as of today's debate, we have not heard further from them. I would therefore conclude that, in broad terms, and with some exceptions to which I shall come, the British Government are in pretty full compliance with the terms of the EU consolidated criteria.⁷⁶

4. The following sets out a range of examples since the Labour Government came to power in 1997 where Saferworld believes that equipment licensed for export by the UK Government raises concerns regarding its potential for use in conflict. Note however that when considering these examples, a number of factors must be taken into account.

5. It is not one of the UK's criteria for licence decision-making that "there should be no approval of military exports from this country of offensive weapons ... into areas of conflict or potential conflict". The UK is legally obliged to apply the eight criteria of the *EU Common Position defining common rules governing control of exports of military technology and equipment* (Common Position), none of which contain such language. Most directly connected to Sir John's concerns are:

- criterion 2—respect for human rights in the country of final destination as well as respect by that country of international humanitarian law;
- criterion 3—internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts; and
- criterion 4—preservation of regional peace, security and stability.

6. Criterion 7—Existence of a risk that the military technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions—is also relevant to questions of use or potential use in conflict. However for the sake of simplicity and brevity, in the following list no licences are included on the basis that the equipment therein authorised for transfer was at risk of diversion. An exception is made for incorporation cases, where by definition the equipment will be subject to onward transfer.

7. The Common Position, like the EU Code of Conduct on Arms Exports that preceded it and UK national legislation, makes no distinction between offensive and other military equipment. Indeed, while in some cases it may be straight forward to identify "offensive" equipment, in many cases it is impossible to draw such a distinction in isolation from the context in which it will be used. For example, demolition charges may not immediately be regarded as offensive weapons, however if those charges are used by military forces or other armed groups to blow up civilian structures then they could well be considered as offensive in nature. C4ISTAR items (Command, Control, Communications, Computers, military Intelligence, Surveillance, Target Acquisition and Reconnaissance) are critical to being able to wage effective high-technology warfare, but little of this equipment would be classed as offensive under the traditional meaning of the term.

8. Saferworld would instead support the repeatedly asserted position of the CAEC Chair Roger Berry, that the key question for determining the appropriateness of licensing decisions concerns the end-use to which the equipment is likely to be put, rather than the inherent qualities of that equipment (with the exception of weapons already prohibited by international law).

9. The Common Position criteria are predicated on the understanding that decisions will be taken on a balance of risk as calculated on the basis of imperfect information. For external organisations such as Saferworld, the partial level of public transparency regarding arms transfer licensing decisions renders the information available to us incomplete and imperfect when compared to that available to governments. For example, the summary descriptions of items licensed are frequently generic, much of the equipment that can be exported under open licences may bear little relevance to actual export intentions to specific destinations included in those licences and, as a rule, no information is provided on proposed end-use or end-users. Further, there is little or no systematic end-use monitoring of UK arms transfers to verify that they have reached their intended destination—end-user and are being used in accordance with export licence conditions. Therefore, the lists below of potentially problematic licences frequently raise more questions than they answer.

⁷⁶ (Hansard debates, 26 March 2009, col 150WH).

10. With those caveats in mind, the following list of licences—which is *not* exhaustive—should make it clear that during the twelve years of the current Government’s rule, there are many cases where permitted exports of military equipment from the UK raise significant concerns about possible contributions to “conflict or potential conflict”.

11. Whilst Saferworld does not have specific evidence that equipment transferred under the licences outlined below has been used in breach of export control undertakings—the information publicly available on the transfers in question and on the political and security situation in the countries of destination gives cause for concern in these cases.

1997

<i>Country of Concern</i>	<i>Licences granted for;</i>
<p>Colombia Armed conflict between the Government forces and non-state groups.</p>	Ammunition components, smoke grenades.
<p>Ecuador Violent Political Conflict (Peru border dispute) Political turmoil—a bloodless coup forced the President from office on the grounds of “mental competence.”</p>	Light machine guns, submachine guns and spares, sights, grenade launcher spares, rifle spares, rifle components, pistol spares, aircraft spares (T), refurbishment of cluster bombs.
<p>India High Intensity Conflict (India -Pakistan Kashmir) estimated number of deaths in 1997 1,500, High intensity conflict in Assam estimated number of deaths in 1997 1,000, High intensity conflict in Bihar estimated number of deaths in 1997 1,000, Low Intensity Conflict in Maharashtra, Manipur, Nagaland, Punjab and Tripura. There were also violent political conflicts in West Bengal, Orissa, Madhya Pradesh, Andra Pradesh, Tamil Nadu, Mizoram, Meghalaya, Jarkhand, Siachen, Sikkim and Uttarkhand.</p>	Aircraft spares, naval spares, shotgun cartridges, aircraft engine spares, thermal imaging systems, aircraft production equipment, pistols, rifles, machine guns and spares (T), sniper rifle and spares (T), helicopter spares, spares for cannons, spares for anti-aircraft gun, gun mountings for patrol boats, vehicle spares, aircraft gun spares.
<p>Indonesia Low intensity conflict in Aceh and Western Kalimantan, there was violent political conflict in Java, West Irian and East Timor, deaths from the violence in East Timor stand at 1,000. The export of 4 Hawk Combat aircraft and 23 Armoured Personnel carriers were licensed by the previous government, however the exports were still carried out in 1997, even though there was a deepening political crisis.</p>	Aircraft spares, aircraft machine gun spares, body armour.
<p>Kenya Ongoing low intensity conflict in the Rift Valley, Turkana and Samburu regions, there was serious electoral violence during and after the December election.</p>	Pistols, pistol spares, sporting rifles, telescopic sights, shotguns, shotgun cartridges, sporting ammunition, 4-wheel drive vehicles, trucks. Assault rifles and spares.
<p>Pakistan High intensity conflict with India in Kashmir which claimed 1,500 lives in 1997. There were also a number of low intensity conflicts in Punjab, Sind, NWFP and Baluchistan.</p>	Naval engines, guidance equipment, ordnance tooling, rifle-submachine gun silencers, shotguns, submachine gun spares, ammunition components, depth charge components, naval gun spares.

<i>Country of Concern</i>	<i>Licences granted for;</i>
<i>Philippines</i> Ongoing low intensity conflict and violent political conflicts between the government forces and both Muslim separatists and Communists.	Aircraft spares, submachine guns and spares, weapons sights, night vision goggles (T), pistols and spares, sniper rifles, armoured personnel carrier (T).
<i>Sri Lanka</i> High intensity conflict between the government of Sri Lanka and the LTTE, the estimated number of deaths in 1997 4,000.	Submachine guns equipment and spares, machine guns equipment and spares, pistol and components–spares, aircraft spares, fuses, shotgun cartridges, shotgun.
<i>Turkey</i> Ongoing war between the Turkish government and the PKK claimed 6,000 lives in 1997.	Vehicle turrets, aircraft engines, aircraft spares, shotguns, shotgun cartridges, pistols, silencers, helicopter spares, missile components, air rifles, sniper rifles, ammunition, vehicle periscopes, helicopter helmet, rifles, telescopic sights, detonator, missiles.
<i>Zambia</i> Violent political conflict, deterioration in the relationship between Zambia and Angola, possibilities of arms diversion.	Rifle spares, submachine guns, ammunition, shotguns.
<i>Zimbabwe</i> Violent political conflict, confiscation of white-owned farms.	Laser rangefinders, aircraft spares, sporting pistols, pistols, 4-wheel drive vehicles, lorries and spares, detonators and spares, sporting ammunition, submachine guns and ammunition, shotgun cartridges, ammunition, spares for helicopter, shotgun.

1998

<i>Country of Concern</i>	<i>Licences granted for</i>
<i>Algeria</i> Ongoing civil war.	Armoured all-wheel-drive vehicle, military explosives, combat helmets.
<i>Angola</i> Ongoing civil war.	All-wheel-drive utility vehicles, armoured all-wheel-drive vehicle, firing set.
<i>Burundi</i> Ongoing civil war.	Automatic pistol, submachine gun.
<i>Colombia</i> Violent conflict between government, various rebel groups and criminal organisations.	Components for rifle, semi-automatic pistols, heavy machine gun, military explosive.
<i>Ecuador</i> Potential issues with Colombia over refugees fleeing violence and porous border used by paramilitary groups.	Assault rifles (T), components for assault rifles (T), components for combat aircraft, components for projectile launcher, components for unmanned air vehicle, equipment for the use of assault rifle, military explosives, semi automatic pistols, sniper rifles, thermal imaging equipment.
<i>Indonesia</i> Ongoing violence between the Indonesian Government and various militant groups.	Components for combat aircraft, components for combat helmets, components for aircraft cannon, components for military aero-engines, components for military utility helicopter, military utility vehicles, missile launching equipment (T), projectile launchers (grapnel).

<i>Country of Concern</i>	<i>Licences granted for</i>
<p><i>Israel</i> Ongoing unrest with the Palestinians and occupation of Southern Lebanon.</p>	<p>Castings for combat aircraft, castings for military aero-engines, castings for optical target tracking, castings for unmanned air-vehicle, castings for thermal imaging equipment, components for anti-tank missile, components for assault vessel, components for combat aircraft, components for command and control vehicle, components for general military utility vehicle, components for general purpose machine gun, general purpose machine guns, components for light gun, components for light gun ammunition, components for rifle, components for telescopic sights, components for unmanned air vehicle, components for weapon day-night sights, laser range finder, light gun ammunition, military aero-engine, tank, military utility vehicle.</p>
<p><i>Kenya</i> Politically motivated violence in the Rift Valley following the 1997 election.</p>	<p>All-wheel-drive armoured vehicle, small arms ammunition, components for combat aircraft, components for general purpose machine gun, components for small arms, components for submachine gun, optical target designator equipment, rifles, shotguns, tank, tank transport aircraft.</p>
<p><i>Lebanon</i> Occupation of Southern Lebanon, a number of factions in the country, fragility of the political system.</p>	<p>Assault rifles, components for assault rifle, equipment for the use of small arms, laser range finder (T), shotguns, small arms ammunition.</p>
<p><i>Pakistan</i> Pakistan detonates nuclear bomb in response to India n nuclear test. Heightened tension in relationship with India .</p>	<p>Components for small arms, components for airborne targeting system, components for assault rifle, components for combat aircraft, components for frigates, components for general purpose machine gun, components for general naval vessel, components for heavy gun, components for light gun, components for military utility helicopter, components for optical target-tracking-surveillance-acquisition system, components for small arms ammunition, grenades, shotgun.</p>
<p><i>Peru</i> Fighting between government forces and Shining Path guerrillas.</p>	<p>Assault rifles, components for combat aircraft, components for general purpose machine gun, components for submachine gun, general purpose machine guns, projectile launchers, sniper rifles, submachine guns, telescopic sights.</p>
<p><i>Philippines</i> Fighting between the Government of the Philippines and the Moro Islamic Front (MILF).</p>	<p>Small arms ammunition, components for submachine gun, components for assault rifle, semiautomatic pistols, submachine guns, assault rifles, equipment for the use of military utility helicopters.</p>
<p><i>Sri Lanka</i> Ongoing fighting between the Government of Sri Lanka and the LTTE and associated groups.</p>	<p>Components for armoured personnel carriers, components for general purpose machine guns, components for heavy machine gun, components for light gun, components for military utility helicopter, components for small arms, heavy machine guns, projectile launchers, rifles, shotguns, small arms ammunition, submachine guns.</p>

<i>Country of Concern</i>	<i>Licences granted for</i>
<p>Turkey Continuing tension between the Government of Turkey and Kurdish groups such as the PKK.</p>	Components for combat aircraft, components for combat helicopter, components for heavy gun ammunition, components for missile control–launching–handling equipment, components for tank, components for thermal imaging equipment, semi-automatic pistol, shotguns, demolition charges–devices.
<p>Zimbabwe Zimbabwean troops enter the DRC conflict, political situation in Zimbabwe of serious concern.</p>	Assault rifles, components for combat aircraft, components for training aircraft, military utility vehicle, rifles, semiautomatic pistol, shotguns, sporting rifles, submachine guns.

1999

<i>Country of Concern</i>	<i>Licences granted for</i>
<p>Colombia Continued fighting between the Government and various non-state groups. Potential spill-over into neighbouring countries.</p>	Components for heavy machine gun, components for combat aircraft, components for combat helicopter, general naval vessel components, technology for the use of military aircraft ground support equipment.
<p>India “Kargil” War with Pakistan.</p>	Castings for combat aircraft, castings–forgings and unfinished products for military aero-engines, components for heavy gun, components for airborne electronic warfare systems, components for airborne targeting systems, components for heads-up display, components for aircraft machine gun, components for armoured fighting vehicle, components for artillery fire location equipment, components for combat helicopters, components for light gun, components for military aero-engines, components for missile control–handling–launching equipment, components for naval light gun, components for range finding systems, components for submachine gun, components for submarine, components for tank, components for unmanned air vehicle, equipment for the development of air-to-surface missiles (T), equipment for the development of military aero-engines, equipment for the use of combat aircraft, production equipment for military aero-engines, general aircraft components, submachine guns, shotgun, small arms ammunition, revolver, support equipment for armoured fighting vehicles (T), technology for the use of air-to-surface missiles (T), technology for the use of combat aircraft, components for combat aircraft, components for combat helicopter, components for training aircraft, components for multi-role non-combat aircraft.
<p>Indonesia Political violence between Muslim and Christian groups, outbreaks of communal violence in a number of areas.</p>	Anti-tank ammunition, components for aircraft cannon, components for anti-aircraft cannon, components for combat aircraft, components for unmanned air vehicle systems, test equipment for light gun, test equipment for heavy gun.
<p>Israel Ongoing tension with the Palestinians.</p>	Castings for airborne targeting systems, castings for combat aircraft, castings–forgings and unfinished products for grenades, castings–forgings and unfinished products for tank, component for air-to-surface missiles, components for laser rangefinders,

<i>Country of Concern</i>	<i>Licences granted for</i>
	component for military propellant, component for tank, components for aircraft heads-up display, components for anti-tank missile, components for armoured fighting vehicle, components for bombs, components for combat aircraft, components for combat helicopter, components for heavy gun ammunition, components for light gun, components for infrared–thermal imaging equipment, components for unmanned air vehicles, components for weapon control systems, optical target tracking–surveillance–acquisition system, production equipment for missile control equipment components, production equipment for small arms ammunition, small arms ammunition, components for combat aircraft, components for combat helicopter, components for military utility vehicles.
<i>Nepal</i> Ongoing Maoist insurgency.	Component for rifle, components for sniper rifle, equipment for the use of sniper rifle, transport aircraft, rifle, shotgun, sniper rifles, technology for the use of sniper rifle, telescopic sights, gun mountings, troop transporters, components for troop transporters, components for weapon sight, components for gun laying equipment, components for day–night sight.
<i>Pakistan</i> Kargil War with India , military coup and suspension of the democratic process.	Air-to-air missile control equipment, all-wheel-drive utility vehicle, castings for mortars, castings–forgings and unfinished products for general purpose machine gun, components for airborne targeting systems, components for aircraft heads-up display, component for all-wheel-drive utility vehicle, components for armoured personnel carriers, components for combat aircraft, components for combat helicopter, components for fragmentation grenade, components for frigate, components for general purpose machine gun, components for tank, equipment for the use of small arms, production equipment for assault rifles, production equipment for general purpose machine guns, shotgun, test equipment for heavy gun, infrared–thermal imaging equipment, equipment for the use for combat helicopter, components for unmanned air vehicles, troop transporter, components for troop transporters, military aero-engines, components for military aero-engines, components for combat helicopters, components for combat helicopter, components for combat aircraft.
<i>Philippines</i> Ongoing fighting between the government of the Philippines and various armed groups.	Assault rifles, components for assault rifles, components for projectile launcher, components for semi-automatic pistol, equipment for aircraft operations in confined areas, components for semi automatic pistol, gun silencer, night vision goggles, projectile launcher, semiautomatic pistols, shotgun, small arms ammunition, technology for the use of assault rifles, technology for the use of semiautomatic pistol, weapon sights, weapon day–night sights, components for armoured personnel carriers, components for combat aircraft, technology for the use of components for combat aircraft, components for combat helicopter.
<i>Sri Lanka</i> Ongoing fighting between the government of Sri Lanka and the LTTE.	Armoured fighting vehicles (T), components for armoured fighting vehicles, components for armoured personnel carriers, components for

<i>Country of Concern</i>	<i>Licences granted for</i>
	general purpose machine gun, components for heavy machine gun, components for light gun, components for naval light gun, components for small arms ammunition, CS grenades, equipment for the use of military vehicles (T), equipment for the use of general purpose machine gun (T), equipment for the use of heavy machine gun, light gun ammunition, small arms ammunition, weapon sight, support equipment for naval light gun.
<p>Turkey Ongoing war between the Turkish government and Kurdish separatists.</p>	Armoured personnel carrier (T), castings for combat aircraft, components for armoured fighting vehicle, components for armoured fighting vehicles (T), components for armoured personnel carrier (T), components for military utility helicopter, components for unmanned air vehicle systems, optical target acquisition system, components for combat aircraft, components for combat helicopter, missile launching equipment, equipment for the use of combat aircraft, components air-to-surface missile, components for military aero-engines, air weapons, components for air weapons, equipment for the use of air weapons, weapon sights.
<p>Zimbabwe Internal trouble; forces deployed in DRC.</p>	All-wheel-drive utility vehicle, shotguns, weapon sights, rifles, components for military utility vehicles.

2000

<i>Country</i>	<i>Licences granted for;</i>
<p>Algeria Continuing violence (civil war) between government forces and a variety of extremist groups.</p>	Components for combat helicopter, components for military utility helicopter, technology for the use of combat helicopter, technology for the use of components for military utility helicopter.
<p>Colombia A mixture of low and high intensity conflicts in both the North and Southern regions in Colombia, there were also violent political conflicts in the Indian reserves. Paramilitary groups also displayed a willingness to operate in adjacent territory therefore potentially widening the conflict regionally.</p>	Rifle components, military aero-engines, components for combat helicopter and related technology.
<p>India Ongoing conflict in Kashmir, a number of low intensity conflicts in Bihar, Assam, Uttar Pradesh, Andhra Pradesh to name but a few, as well as several violent political conflicts.</p>	Indian produces Jaguar International FGA combat aircraft under licence from BAE systems. In 2000 a contract was agreed that another 17 Jaguars would be built under licence in India , licences were also granted for components for combat helicopter and components for armoured personnel carrier, components for aircraft cannon and aircraft machine gun, components for aircraft carrier, components for submarine, components for frigates, components for combat aircraft.
<p>Indonesia Continuing conflict in East Timor, Aceh and Java, there was violent political conflict in Bali. The Indonesian Government acknowledged that Hawk aircraft had been used to intimidate the civilian population in East Timor.</p>	Components for aircraft cannon, components for combat aircraft, components for combat helicopters, components for military training aircraft.

<i>Country</i>	<i>Licences granted for;</i>
<p>Israel The visit of Ariel Sharon to the Temple Mount sparked the most serious violence between Israel and the Palestinians since 1967, the violence was characterised by violent protests and assassination. It also strained relations between Israel and its neighbours. Egypt withdrew its Ambassador from Israel and Israel withdrew its diplomatic staff from Jordan following attacks in its staff in Amman.</p>	<p>Components, parts and equipment for combat aircraft and combat helicopters, components for air-to-surface missiles, castings and components for tank, components for large calibre artillery ammunition, body armour, components for armoured personnel carrier, components for armoured fighting vehicle, components for large and small calibre artillery ammunition, demolition charges, general purpose machine guns, equipment for the use of general purpose machine gun, rifles, small arms ammunition, components for anti-tank missile.</p>
<p>Morocco Ongoing conflict between the Moroccan government and POLISARIO forces in the Western Sahara.</p>	<p>Small arms, assault rifles, general purpose machine guns, shotguns, rocket launching equipment, small calibre artillery, technology for the use of combat helicopter, components for combat helicopter.</p>
<p>Nepal Ongoing fighting between the government and the Maoist insurgency.</p>	<p>Automatic pistols, shotguns and small arms ammunition.</p>
<p>Nigeria Fighting flared up across Nigeria in 2000, the most significant in the oil rich Niger Delta region. Regional security concerns and the issue of the status of the Bakassi Peninsula (oil-rich area disputed between Cameroon and Nigeria).</p>	<p>Components for large and small calibre artillery, weapon night sights, armoured all-wheel-drive vehicles, components and technology related to combat helicopters. Concern over the export of frigate, for which a licence was granted in 2000.</p>
<p>Pakistan A number of violent political and tribal conflicts as well as ongoing tension with India .</p>	<p>Components for combat helicopter, components for military utility vehicle, components for frigate, components for naval gun, components for naval mine and naval gun mounting, shotguns, components for combat helicopters.</p>
<p>Philippines Ongoing violence in Mindanao between the government and the Moros Islamic Front (MILF). Tension with China over the Spratley Islands.</p>	<p>Semi-automatic pistols, components for tank, components for combat helicopter, components for combat aircraft, components for military training aircraft, components for tank.</p>
<p>Sri Lanka Intense fighting in the Jaffna peninsula. Large number of bombings, one of which killed 20 civilians and the Minister for Industry at a ceremony for war heroes.</p>	<p>Heavy machine guns, semi-automatic pistols, submachine guns, components for heavy machine gun, components for semi-automatic pistol, armoured all-wheel-drive vehicles, components for armoured fighting vehicle.</p>
<p>Turkey Continued fighting in Southeast Anatolia, although at a much reduced level.</p>	<p>Small arms ammunition, small calibre artillery, components for sub-machine gun, components for general purpose machine gun, components for combat helicopter, components for military aero-engine, components and related equipment for combat aircraft and for combat helicopters, components for submarines, components for aircraft carrier, components for mortar.</p>
<p>Zambia The long-standing conflict between the Angolan Government and UNITA forces caused flows of refugees into Zambia and also fighting within Zambia's borders in 2000, threatening the already tense relationship between Zambia and Angola. Angolan government accused Zambia of harbouring senior UNITA members, the border areas of Zambia are very volatile.</p>	<p>Submachine guns, semi-automatic pistols, shotguns, rifles, components for combat aircraft, components and related technology for combat helicopters.</p>

<i>Country</i>	<i>Licences granted for;</i>
<p>Zimbabwe In Aril 2000 Robert Mugabe admitted that Zimbabwe had 0-12,000 troops in DRC. On 3 May the UK announced an arms embargo against Zimbabwe; on 12 May extant licences for military goods were revoked.</p>	<p>Military utility vehicles. Seven licences for spare parts for Hawk aircraft were granted in February, two weeks after Prime Minister Blair had announced a tighter regime on arms exports to Zimbabwe and despite the fact that the UK Government was aware that Zimbabwean Hawk aircraft were being used in DRC.</p>
2001	
<i>Country of Concern</i>	<i>Licences granted for;</i>
<p>India Military build-up with Pakistan in Kashmir and a build-up of 250,000 troops on the Indian Pakistan border following the attacks on the Indian Parliament building in New Delhi.</p>	<p>Components for combat aircraft, components for heads-up displays, components for aircraft radars, technology, equipment and test equipment for the use of combat aircraft, forgings for combat aircraft; production equipment for combat aircraft and military aero-engines, unfinished products for large calibre artillery ammunition and torpedoes, technology for the production of frigates and naval engines, components for combat helicopters, military transport aircraft, tanks, destroyers, frigates, submarines and aircraft cannons.</p>
<p>Indonesia Continuing high intensity conflict, especially in the province of Aceh. Violence also reported in Papua.</p>	<p>Components for combat aircraft, military aero-engines, components for military aero-engines, components for military training aircraft, aircraft heads-down displays, armoured all-wheel-vehicles, components for aircraft cannons, components for surface-to-air missile-control-launching-handling equipment.</p>
<p>Israel Continuing cycle of violence stemming from the second intifada of November 2000.</p>	<p>General purpose machine guns, sub machine guns, components for military small arms training equipment, body armour and components there for, military helmets, castings for combat aircraft, components for combat helicopters and military aero-engines, components for armoured fighting vehicles, castings, components for heads-up displays, castings, components and production equipment for unmanned air vehicles, components for aircraft radars, components for corvettes, components for fast attack craft, for military aero engines, for naval light guns, components for large calibre artillery ammunition and bombs, substances related to military explosives-propellants.</p>
<p>Nepal Escalation of conflict between the state and the Maoist Communist Party.</p>	<p>6780 assault rifles, 11 semi-automatic pistols, 4 shotguns, 2 sporting rifles, grenade launchers, components for the use of small arms.</p>
<p>Pakistan Instability within Pakistan following riots at the support shown by the government of Pakistan for the US led invasion of Afghanistan. Confrontation with India in Kashmir and further instability between the tow nations after the attacks on the parliament in Delhi.</p>	<p>Components for shotguns, unmanned air vehicles, components for combat aircraft, for combat helicopters, for military aero-engines, for frigates for submarines, for large calibre artillery, for surface-to-air missile launching equipment and for torpedo launching equipment, military equipment and components for ex-Royal navy vessels excluding complete weapons or ammunition, small arms and light weapons, light and heavy artillery, armoured vehicles including main battle tanks, combat aircraft and helicopters, rocket systems with a range of less than 300km, production equipment for large calibre artillery.</p>

<i>Country of Concern</i>	<i>Licences granted for:</i>
<p>Philippines Sporadic but heavy fighting between the Government of the Philippines and the New People's Army (NPA) and the Moro Liberation Front (MILF). Continued fighting with Abu Sayyaf organisation.</p>	<p>Assault rifles, submachine guns, general purpose machine guns, sniper rifles, components and technology for the use of various small arms, gun mountings, weapon sights and sporting gun ammunition, anti-riot shields, body armour and military explosives, components for combat aircraft, components for tanks, military aero-engines, military utility vehicles.</p>
<p>Sri Lanka Continuing conflict with the LTTE, despite a ceasefire which ended in April 2001, by the end of the year the US State Department estimated that 2000 combatants and 100 civilians had been killed.</p>	<p>Sniper rifles, components for sniper rifles, gun mountings, weapon sights, small arms ammunition, sporting gun ammunition, stun grenades, grenade launchers and technology for their use, military devices for initiating explosives, smoke hand grenades, smoke canisters, smoke ammunition, crowd control ammunition, CS hand grenades, stun grenades, tear gas-irritant ammunition, components for combat helicopters.</p>

2002

<i>Country of Concern</i>	<i>Licences granted for:</i>
<p>Bangladesh In October 2002 the army and police were deployed across the country in a crackdown on crime named Operation Clean Heart. More than 10,000 people were arrested, and at least 38 men were killed, allegedly as a result of torture by the army. Increased attacks on minority groups after the Parliamentary elections.</p>	<p>50 semi-automatic pistols, 40 assault rifles, 12 submachine guns, components for semi-automatic pistols, components for submachine guns, technology for the use of machine pistols, technology for the use of semi-automatic pistols, technology for the use of submachine guns, weapon sights, small arms ammunition, non-sporting shotgun ammunition, tear gas-irritant ammunition, equipment for the use of grenade launchers, components for combat aircraft.</p>
<p>Colombia Intensifying political violence, impacting upon the five neighbouring states to Colombia, examples being reports of Colombian paramilitary groups operating inside Venezuela and the build-up of Ecuadorean troops along the border with Colombia.</p>	<p>Components for combat aircraft, technology for the use of combat aircraft, components for combat helicopter and technology for the use of combat helicopter, components for mortars, components for heavy machine guns, components for general purpose machine guns, components for surface-to-air missiles, components for small calibre artillery.</p>
<p>Cote d'Ivoire State of civil war stemming from the September 2002 uprising.</p>	<p>Components for heavy machine guns and for general purpose machine guns, components for surface-to-air missile launching equipment, for weapons control systems, for combat aircraft, for combat helicopters, for surface-to-air missiles, for small calibre artillery and for mortars, technology for the use of combat helicopters and for the use of electronic warfare equipment.</p>
<p>India "Worst communal violence in over a decade"—Human Rights Watch. Massive military mobilisation for potential war with Pakistan after the December 2001 Parliament attack.</p>	<p>Inter Alia: aircraft cannons, combat aircraft and components there for, combat helicopters and components there for, components for frigates, components for aircraft machine guns, components for fast attack craft, components for surface-to-air missiles, components for tanks, components for small calibre artillery, components for mortars, components for heavy machine guns and general purpose machine guns, small arms ammunition, components for submarines, components for torpedoes, technology for the use of torpedoes, components for torpedo launching equipment,</p>

<i>Country of Concern</i>	<i>Licences granted for:</i>
	components for aircraft carriers, components for frigates, components for anti-ship missiles launching equipment, components for anti-submarine rocket launching equipment, components for corvettes, components for combat aircraft, components for the manufacture of combat aircraft, technology for the use of combat helicopters, components for aircraft cannon, technology for the use of depth charges, components for surface-to-air missile launching equipment.
Indonesia A number of simmering internal conflicts, including against the Free Aceh Movement (GAM), with grave human rights violations carried out by the state.	Components for combat aircraft, components for combat helicopter, components for tanks, components for air-to-surface launching equipment and technology for the use thereof, components for armoured fighting vehicles, components for armoured personnel carriers, military utility vehicles, armoured all-wheel-drive vehicles.
Israel Violent clashes between Israel and the Palestinians and Israel and Hezbollah involving cross-border strikes into Southern Lebanon.	Assault rifles (10), components for combat aircraft, components for military aircraft heads-up display, components for submarines, technology for the development of large calibre artillery ammunition, armoured all-wheel-drive vehicles, components for anti-ship missiles, anti-armour missiles, anti-armour launching equipment, forgings for air-to-surface missiles.
Nepal Fighting between government forces and Maoist insurgents.	The use of the Global Conflict Prevention Pool funds to "gift" two Russian-made military helicopters to the Royal Nepalese Army must be subject to some searching questions given the ongoing fighting between the Government of Nepal and a Maoist insurgency.
Pakistan Mobilisation for potential war with India .	Components for machine pistols, components for combat aircraft, components for air-to-air missiles, components for naval light guns, small arms ammunition, components for combat helicopters and technology for the use of components for combat helicopters, components for frigates.
Philippines Fighting between government forces and Islamist secessionists in Mindanao; Fighting between government forces and the Abu Sayyaf Group.	Small arms ammunition, military helmets, anti-riot shields, components for heavy machine guns, components for general purpose machine guns, components for mortars, components for submarines, components for naval mines, components for surface-to-air missile launching equipment, for combat aircraft, for combat helicopters for surface-to-air missiles, for small calibre artillery, for mortars, for heavy machine guns and for general purpose machine guns, technology for the use of combat helicopters and for the use of electronic warfare equipment.

2003

<i>Country of Concern</i>	<i>Licences granted for;</i>
Colombia Ongoing high-intensity conflict (more than 1 000 deaths per year, in 2003 < 3,000 fatalities were recorded).	Components for combat aircraft and military training aircraft, mortar training equipment, explosives.

<i>Country of Concern</i>	<i>Licences granted for;</i>
<p>Indonesia Conflict in Aceh, increasing militancy in Papua. Fatalities in Aceh alone in 2003 <2,000 Note: UK-made Scorpion tanks were used in the fighting with GAM, an Indonesian military spokesman stated that "Scorpion vehicles will become a key part of our campaign to finish off the separatists."</p>	<p>Body armour, general military aircraft components, gun silencers, technology for the production of combat aircraft, components for combat aircraft, components for military training aircraft, components for aircraft machine guns, components for military utility helicopters, components for tanks, military image intensifier equipment, missile launching equipment, technology for the use of aircraft cannons, weapon sights.</p>
<p>Iraq The major concern must be one of diversion, much of Iraq characterised by open warfare and sectarian conflict. Given the relative ease with which weapons are diverted from security forces to militias sending any quantities of small arms into Iraq must be questioned. The issue of licences for weapons to PMC's is also one that is open to critique.</p>	<p>Components for semi-automatic pistols, components for submachine guns, equipment for the use of semi-automatic pistols, equipment for the use of submachine guns, semi-automatic pistol maintenance equipment, small arms ammunition, smoke hand grenades, submachine gun maintenance equipment, submachine guns, assault rifles, general purpose machine guns.</p>
<p>Israel Ongoing violence stemming from the second intifada which started in 2000. In 2003 the fighting killed 600 Palestinians and 200 Israelis, from March to June a further 450 people were killed.</p>	<p>Components for aiming devices, components for airborne electronic warfare equipment, components for anti-armour missiles, components for anti-radiation missiles, components for combat aircraft, components for electronic warfare equipment, components for military aero-engines, components for military heads-up displays, components for optical target surveillance equipment, components for small arms ammunition, components for small calibre artillery, components for tanks, components for unmanned air vehicles, software for the use of unmanned air vehicles, technology for the use of unmanned air vehicle control-handling-launching equipment, technology for the use of unmanned air vehicle control equipment, weapon day and night sights, unfinished products for air-to-surface missiles. <i>Incorporation:</i> components for aiming devices, components for airborne warfare equipment, components for anti-radiation missiles, components for electronic warfare equipment, components for military aero-engines, components for unmanned air vehicles, equipment for the use of unmanned air vehicles, military aero-engines, technology for the use of optical target designator equipment.</p>
<p>Morocco Although the conflict between the Moroccan government and POLISARIO in the Western Sahara claimed no lives in 2003, both sides have rejected peace agreements and at various times threatened to go back to war. Recognising that the 1991 ceasefire appears to be holding and the presence of a UN monitoring force, however given the fragility of the situation and the real possibility of a return to conflict is sending arms to the Moroccan Govt advisable?</p>	<p>Components for submachine guns, sub machine guns, assault rifles, pistols, revolvers, semi-automatic pistols, rifles, sniper rifles, heavy machine guns, shotguns, mortars, components for large calibre artillery.</p>
<p>Nepal Ceasefire between the Government of Nepal and the Communist Party of Nepal. Ceasefire ended on 27 August 2003. Between the end of the ceasefire and June 2004, 17 000 people were killed in the resumption of hostilities.</p>	<p>Combat shotguns, components for combat shotguns, small arms ammunition.</p>

<i>Country of Concern</i>	<i>Licences granted for;</i>
<p>Philippines Continuing fighting in Mindanao province, 200 killed and an estimated 70,000 displaced.</p>	<p>Armoured all-wheel-drive vehicles, components for heavy machine guns, components for large calibre artillery, components for weapons sights, equipment for the use of large calibre artillery, heavy machine guns, large calibre artillery, technology for the production of military aero-engines, technology for the production of unmanned air vehicles, weapon sights, military aero-engines, weapon night sights, military image intensifier equipment, components for military image intensifier equipment, technology for the use of armoured all-wheel-drive vehicles.</p>
<p>Sri Lanka Although the ceasefire holds between the LTTE and the Sri Lankan government, the LTTE pull out of talks. Given the extremely fragile state of the peace agreement, the UK is certainly not adhering to its stated principle of not sending military equipment to zones of potential or actual conflict.</p>	<p>Components for aircraft military communications equipment, components for military-aero engines, components for military aircraft navigation equipment, components for naval light guns, components for small arms ammunition, equipment for the use of naval light guns, illuminators, military cargo vehicles, tear gas-irritant ammunition, military transport aircraft, military utility vehicles, armoured all-wheel-drive vehicles, equipment for operation of military aircraft in confined areas, general military aircraft components, components for military electronic equipment.</p>
<p>Turkey On going conflict between the Turkish government and Kurdish groups. Whilst the fighting was less intense than in previous (and following) years, in 2003, 12 civilians, 19 members of the security forces and 71 people described as “terrorists” died. (All statistics taken from Saferworld Audit of UK government reports on strategic exports controls 2003-2004. These figures were taken from an open citation, US Department of State Country Reports on Human Rights 2003: Turkey. Given the on going conflict and the real possibility of spill over into neighbouring Iraq, exacerbating the on going conflict there, arms exports to Turkey should be scrutinised.</p>	<p>Components for general purpose machine guns, components for combat helicopters, components for heavy machine guns, assault rifles, machine pistols, general purpose machine guns, components for armoured personnel carriers, smoke hand grenades, munition fuses, armoured all-wheel-drive vehicles, components for combat aircraft, crowd control ammunition, tear gas-irritant ammunition, components for combat helicopters.</p>

2004

<i>Country of Concern</i>	<i>Licences granted for;</i>
<p>Colombia Ongoing fighting between government forces and paramilitary forces.</p>	<p>Sporting rifles, sporting gun ammunition, test equipment for large and small calibre artillery, components for combat helicopters, equipment for the use of combat aircraft, components for military utility helicopters, components for military surveillance aircraft, shotguns, laser range finders (T), night vision goggles (T), weapon sights (T).</p>
<p>Israel Fragile situation in both Israel and Occupied Palestinian Territories, 18 month ceasefire, marked with Israel’s withdrawal from the Gaza strip.</p>	<p>Components for bombs, military aero-engines, small arms ammunition, components for surface-to-surface missile launching vehicles, components for armoured fighting vehicles, components for combat aircraft, armoured all-wheel-drive vehicles, components for anti-armour missiles, components for military infrared-thermal imaging equipment, components for unmanned air vehicles, components for weapon day and night sights, production equipment for optical target tracking devices, weapon control systems, components for airborne</p>

<i>Country of Concern</i>	<i>Licences granted for;</i>
	<p>electronic warfare equipment, small arms ammunition, weapon control systems, components for large calibre artillery ammunition.</p> <p>Incorporation: components for combat aircraft, components for military infrared–thermal imaging equipment, components for unmanned aerial vehicles, components for weapons day and night sights, components for airborne radars, components for airborne surveillance equipment, components for electronic warfare, laser range finders.</p>
<p>Indonesia Serious ongoing conflict in Aceh.</p>	<p>General military aircraft components, components for combat aircraft, technology for the use of aircraft cannons, components for combat helicopters, components for aircraft cannons, components for munitions launching equipment, technology for the use of combat aircraft, firing sets.</p> <p>Incorporation: Components for combat helicopters, components for military aircraft communications equipment.</p>
<p>Nepal On going fighting between the Government of Nepal and Maoist forces, the gifting of two aircraft to assist in “offensive operations” paid for by the Global Conflict Prevention Pool, seems at the very least to be rather perverse.</p>	<p>The quotation was taken from Quadripartite Committee, Select Committee on Defence—Fourth Report, 2003-04, (House of Commons), point 76; Reproduced in the 2003-2004 Independent Audit of UK Government Reports on Strategic Export Controls, by Saferworld.</p> <p>In January 2004 two STOL aircraft were gifted to assist in “offensive operations,” these were funded from the Global Conflict Prevention Pool.</p>
<p>Philippines Fighting between government forces and various non-state groups. A ferry bombing killed 100.</p>	<p>Components for large calibre artillery, components for tanks, equipment for the use of weapon control systems, technology for weapon control systems, weapon control systems, military aero-engines, components for military aero-engines, equipment for the use of components for military aero-engines, weapon night sights, weapon sights, naval light guns, components for assault rifles, components for general purpose machine guns, components for machine pistols, components for rifles, components for semi-automatic pistols, components for submachine guns.</p>
<p>Sri Lanka Extremely fragile situation, ceasefire held, however, fighting broke out between rebel groups, in 2004 a split occurred in the LTTE which broke out into armed conflict between the Tamil Tigers and a break away group. Possibility of the Sri Lankan army becoming involved despite assurances to the contrary.</p>	<p>Armoured all-wheel-drive vehicles, components for military communications equipment, components for military utility helicopters, components for naval light guns, ground vehicle military communications equipment, air guns, components for assault rifles, components for combat aircraft, components for heavy machine guns, components for semi-automatic pistols, semi-automatic pistols, small arms ammunition, technology for the use of semi-automatic pistols, components for military aero-engines, components for military transport aircraft, components for submachine guns, heavy machine guns, night vision goggles (T), military infrared–thermal imaging equipment (T), military utility vehicles, military transport aircraft, components for general purpose machine guns, gun mountings, submachine guns, weapon sights.</p>
<p>Turkey Ceasefire between the Turkish government and Kurdish groups called off paving the way for a resumption of violence.</p>	<p>Armoured all-wheel-drive vehicles (T), components for electronic warfare equipment, components for air-to-surface missile control equipment, components for air-to-surface missile handling</p>

<i>Country of Concern</i>	<i>Licences granted for;</i>
	<p>equipment, components for air-to-surface missile launching equipment, components for surface-to-air missiles, surface-to-air missile control equipment, surface-to-air missile handling equipment, surface-to-air missile launching equipment, components for military utility helicopters, components for military training aircraft, components for combat aircraft, components for unmanned air vehicles, components for military surveillance aircraft, general military vehicle components, gun silencers, components for gun silencers, components for heavy machine guns, components for general purpose machine guns, components for mortars, gun mountings, heavy machine guns maintenance equipment, general purpose machine guns maintenance equipment, general purpose machine guns, heavy machine guns, equipment for operation of military aircraft in confined areas, components for armoured fighting vehicle, optical target acquisition equipment, components for tanks, components for sniper rifles, equipment for the use of sniper rifles, sniper rifles, small arms ammunition, weapon sights and night sights, components for surface-to-surface missiles, shotguns.</p> <p>Note: Between October and December a number of very large permanent OIELS were granted, mainly for naval equipment. Given Turkey's NATO membership and current areas of conflict between Kurdish fighters and Turkish forces these are not especially worrying. If the issue of Cyprus is taken into consideration then they may become more pertinent, however they have not been added into this list at this time.</p>

2005

<i>Country of Concern</i>	<i>Licences granted for;</i>
<p>Afghanistan Violent conflict across the country, limited government control outside of the capital. Possible diversion issues.</p>	<p>Assault rifles, components for assault rifles, semi-automatic pistols, non-sporting shotgun ammunition, armoured all-wheel-drive vehicles,</p>
<p>Indonesia Peace agreement signed between GAM and the Central Government, appeared to be holding. However UK Tactical armoured personnel carriers armed with water cannon were deployed during large demonstrations in West Papua.</p>	<p>Components for military training aircraft, military aircraft navigation equipment, military aero-engines, components for combat aircraft, general military aircraft components, gun silencers, components for air-to-air missile launching equipment, munitions launching equipment, technology for the use of combat aircraft, components for aircraft cannons, military firing sets, military image intensifier equipment, components for military aero-engines.</p>
<p>Iraq Volatile situation on the ground, fears of all out sectarian conflict still real, security only really provided by coalition forces, Iraq Government security apparatus still rife with sectarian tension. Real issue of arms being diverted from regular Iraq forces to militant groups.</p>	<p>Assault rifles, components for assault rifles, heavy machine guns, general purpose machine guns, semi-automatic pistols, small arms ammunition, armoured all-wheel-drive vehicles, components for artillery fire location equipment, grenade launchers, pyrotechnic ammunition, smoke hand grenades,</p>
<p>Israel Ongoing clashes between Israel and Palestinian factions.</p>	<p>Components for anti-armour missiles, components for airborne electronic warfare equipment, components for airborne surveillance equipment, components for ground-based radars, components for military training aircraft, components for naval</p>

<i>Country of Concern</i>	<i>Licences granted for;</i>
	light guns, components for naval radars, components for surface-to-surface missiles, components for combat helicopters, components for military utility helicopters, armoured all-wheel-drive vehicles, components for airborne electronic warfare equipment, components for ground-based radars, components for laser range finders, components for naval light guns, components for optical target surveillance equipment.
<i>Nigeria</i> Increasing conflict in the Niger Delta.	Armoured all-wheel-drive vehicles, components for armoured fighting vehicles, components for military cargo vehicles, components for combat helicopters, components for combat aircraft, military aircraft ground equipment, military utility vehicles.
<i>Philippines</i> Fighting between Government forces and various on-state groups.	Components for military electronic warfare equipment, technology for the use of weapon sights, technology for the use of weapon night sights, components for weapon sights, components for weapon night sights, weapon sights.
<i>Sri Lanka</i> Ongoing conflict with the LTTE, a fragile truce had been declared between the government and the LTTE although the situation was extremely delicate.	Components for heavy machine guns, components for military training aircraft, components for military utility helicopters, components for naval light guns, components for semi-automatic pistols, components for heavy machine guns, components for combat aircraft. Incorporation: components for naval light guns, armoured plate, ballistic shields, body armour, components for military transport aircraft.
<i>Sudan</i> Whilst an explanation is given in the Strategic Export Controls Report for the equipment licensed as either part of the peace keeping operation or in support of the comprehensive peace agreement, in light of the ongoing violence in Sudan more information is required about this equipment.	Military aircraft ground equipment.

2006

<i>Country of Concern</i>	<i>Licences granted for;</i>
<i>Colombia</i> Continuing conflict between the state and various rebel groups.	armoured all-wheel-drive vehicles, components for military communications equipment, military communications equipment, naval electronic equipment, components for naval electronic equipment, technology for the use of naval electronic equipment, naval light guns maintenance equipment, test equipment for naval light guns, components for test equipment for naval light guns, technology for the use of test equipment for naval light guns, technology for the use of naval light guns maintenance equipment.
<i>Indonesia</i> Unrest in the Sulawesi region, fighting between government forces and various non-state actors.	Components for combat aircraft, components for military aircraft ground equipment components for military training aircraft, components for military transport aircraft, general military aircraft components, military aircraft head-up displays, military aircraft navigation equipment, military communications equipment, components for

<i>Country of Concern</i>	<i>Licences granted for;</i>
	<p>military utility helicopters, components for aircraft cannons, aiming devices, airborne electronic warfare equipment, bombing computers, components for optical target tracking equipment, components for weapons sights, components for laser range finders, fire control equipment, weapon control systems.</p> <p>Incorporation—aircraft military communication equipment, components for military transport aircraft.</p>
<p><i>Iraq</i> On going security vacuum, possible diversion issues.</p>	<p>Armoured personnel carriers, assault rifles, components for assault rifles, general purpose machine guns, hand grenades, components for semi-automatic pistols, components for small arms ammunition, stun grenades, non-military explosive-propellants, components for armoured fighting vehicles, equipment for the use of armoured fighting vehicles, technology for the use of armoured fighting vehicles, weapon day and night sights.</p>
<p><i>Israel</i> Clashes between Israel and Palestinian groups, “The Summer War” in Lebanon, aimed at Hezbollah, included a naval blockade of Lebanon.</p>	<p>Components for airborne radars, components for ground-based radars, components for anti-armour missiles, components for airborne radars, components for aircraft military communications equipment, components for gun laying equipment, components for large calibre artillery, components for military aircraft heads-up displays, constituents of propellants, components for combat aircraft, military aircraft ground equipment, armoured all-wheel-drive vehicles, components for demolition charges, equipment for the use of demolition charges.</p> <p>Incorporation—Components for airborne radars, components for aircraft radars, components for electronic warfare equipment, components for laser range finders, components for military flying helmets, components for infrared-thermal imaging, components for submarines, components for tanks, components for unmanned air vehicles, components for unmanned air vehicle control equipment, components for submarines, general military aircraft components.</p>
<p><i>Pakistan</i> Fighting between the Pakistani army and militants in the tribal region, however a peace agreement was signed between the warring parties in September 2006, and a period of relative calm ensued. (The peace agreement subsequently broke down in 2007–2008).</p>	<p>Aerial target equipment, components for combat aircraft, components for combat helicopters, components for gun mountings, components for large calibre artillery, components for sniper rifles, equipment for the use of aerial targeting equipment, gun silencers, general military aircraft components, shotguns, production equipment for tanks, sniper rifles, small arms ammunition, weapon sight mounts, weapon sights. Armoured all-wheel-drive vehicles, components for military utility helicopters, components for military transport aircraft.</p>
<p><i>Philippines</i> Fighting between rival militias, one with government backing, in Mindanao. Although there was a peace deal between the government of the Philippines and rebel groups, this was threatened by the renewed hostilities.</p>	<p>Components for armoured fighting vehicles, components for combat aircraft, components for military communications equipment, components for military utility helicopters, components for naval light guns.</p>
<p><i>Sri Lanka</i> Break down in the truce between the government and the LTTE. Hostilities began to escalate throughout 2006.</p>	<p>Air guns, aircraft military communications equipment, armoured all-wheel-drive vehicles, components for general purpose machine guns, components for heavy machine guns, components</p>

<i>Country of Concern</i>	<i>Licences granted for;</i>
<p>Turkey Mobilisation of Turkish troops to attack Kurdish groups in Iraq. Troops cross into Northern Iraq.</p>	<p>for military aero-engines, components for semi-automatic pistols, semi-automatic pistols, small arms ammunition, components for combat aircraft, components for combat helicopters, components for military transport aircraft, equipment for the use of combat helicopters, military utility vehicles.</p> <p>Aircraft military communications equipment, air-to-surface missile handling equipment, air-to-surface missiles, components for airborne electronic warfare equipment, components for air-to-air missiles, components for air-to-surface missiles, components for fire control equipment, components for gun mountings, components for military infrared-thermal imaging equipment, components for optical target surveillance equipment, components for sniper rifles, components for surface-to-air missile launching equipment, components for weapon night sights, demolition charges, general military aircraft components, gun silencers, general military vehicle components, incendiary hand grenades, military firing sets, sniper rifles, unfinished products for artillery rockets, laser range finders, components for laser range finders, aiming devices, components for aiming devices, night vision goggles, components for combat aircraft, components for combat helicopters, heavy machine guns, general purpose machine guns, components for mortars, equipment for the use of heavy machine guns, components for heavy machine guns.</p> <p>Incorporation: Components for armoured fighting vehicles, general military vehicle components, munitions launching equipment.</p>

2007

<i>Country of Concern</i>	<i>Licences granted for;</i>
<p>Afghanistan Licences issued in 2007 for use in Afghanistan were to: International Security Force (ISAF), the European Commission; the United Nations Office for Project Services; or for the protection of diplomatic, NGO and charity staff working in Afghanistan.</p>	<p>Armoured all-wheel-drive vehicles, assault rifles, components for general purpose machine guns, general purpose machine guns, semi-automatic pistols, small arms ammunition.</p>
<p>Colombia Ongoing conflict between government forces and non-state groups-actors.</p>	<p>Components for heavy machine guns, gun mountings, 43 heavy machine guns, components for combat aircraft, components for combat helicopters, technology for the production of military helicopters, air-to-surface missile launching equipment, components for general purpose machine guns, components for littoral combat vessels, components for mortars, technology for the use of aircraft cannons, technology for the use of air-to-surface missiles.</p>
<p>Indonesia Although the situation in Sulawesi was stabilized there were still reports of heavy handed police tactics (See International Crisis Group Report, "Jihadism in Indonesia: Poso on the Edge, Asia Report No 127—24 January 2007) and serious instability arising from Islamist militancy on the islands. Taking into consideration the history of violence between the state and various non-state</p>	<p>Air guns, aircraft military communications equipment, components for combat aircraft, components for equipment for the operation of military aircraft in confined areas, components for military aero-engines, components for military aircraft heads-down displays, components for military aircraft head-up displays, components for military training aircraft, components for military</p>

<i>Country of Concern</i>	<i>Licences granted for;</i>
<p>groups, and the continuing fragility of the situation in the islands, especially Java and Sulawesi, the number of export licences granted in 2007 needs to be explained in light of the UK's international commitments.</p>	<p>transport aircraft, components for military utility helicopters, components for sniper rifles, equipment for the operation of military aircraft in confined areas, equipment for the use of sniper rifles, firing sets, gun mountings sniper rifles, non-sporting shotgun ammunition, small arms ammunition, military firing sets, weapon sights.</p>
<p><i>Iraq</i> "With the surge" in Iraq beginning in 2007 the security situation began to become more stable. However the wisdom of granting licences for small arms and armoured vehicles to a country that already had a huge issue with the diversion of weapons to militia groups–non-state actors is contentious</p>	<p>Armoured personnel carriers, assault rifles, assault rifles maintenance equipment, components for rifles, components for semi-automatic pistols, equipment for the use of assault rifles, equipment for the use of semi-automatic pistols, equipment for the use of weapon sights, general purpose machine guns, general purpose machine guns maintenance equipment, semi-automatic pistols, small arms ammunition, grenade launchers, armoured all-wheel-drive vehicles, gun mountings.</p>
<p><i>Israel</i> Fighting between Palestinian factions, high levels of instability in the region, possibility of resumption of violence between Israeli and Palestinian forces high.</p>	<p>Components for combat aircraft, components for assault rifles, components for military heads-up display, components for military infrared–thermal imaging equipment, components for semi-automatic pistols, components for unmanned air vehicles, components for weapon, general naval vessel components, components for airborne radars, components for aircraft radars, components for anti-armour missiles, components for helmet-mounted display equipment, components for optical target surveillance equipment, military firing sets, re-breathing apparatus.</p>
<p><i>Kenya</i> Electoral violence stemming from the December 2007 election. This ran into 2008. Given the previous outbreaks of violence surrounding elections in Kenya and the tense situation in parts of the country any licences granted should have been done so with that in mind.</p>	<p>Components for assault rifles, components for body armour, components for semi-automatic pistols, semi-automatic pistols, military utility vehicles, military helmets.</p>
<p><i>Lebanon</i> Severe fighting broke out between Lebanese government forces and Fatah al-Islam an Islamist organisation in the Nahr el-Bared refugee camp. The fighting spread to the Ain al-Hilweh refugee camp and there were several bombings in Beirut.</p>	<p>General military aircraft components, gun mountings, components for body armour, weapon night sights, firing sets, components for military firing sets, devices for initiating explosives.</p>
<p><i>Nigeria</i> Increasing attacks in the Niger Delta region, between 2006 and 2007 the attacks were responsible for shutting down one quarter of Nigeria's oil supply: www.stratfor.com/analysis/20090316_nigerias_mend_different_militant_movement</p>	<p>Armoured all-wheel-drive vehicles, components for combat aircraft, components for military training aircraft, patrol craft, marine position fixing equipment.</p>
<p><i>Pakistan</i> State of emergency declared in Pakistan, constitution suspended, widespread political turmoil, violence in the tribal areas spread into the major cities in Pakistan, as well as spilling over into Afghanistan (and vice versa). Full text of the proclamation of emergency: http://news.bbc.co.uk/1/hi/world/south_asia/7077136.stm</p>	<p>Aiming devices, aircraft military communications equipment, components for air-to-air missiles control equipment, components for combat helicopters, components for destroyers, components for frigates, components for large calibre artillery, components for military aircraft heads-up displays, components for military aircraft navigation equipment, components for military utility helicopters, components for semi-automatic pistols, components for sporting rifles, general naval vessel components, equipment for the use of aiming devices, equipment for the use of optical target designator equipment, military aircraft ground</p>

<i>Country of Concern</i>	<i>Licences granted for;</i>
	equipment, military devices for initiating explosives, military firing sets, shotguns, technology for the use of military transport aircraft, technology for the use of aiming devices, weapon sights, fire control equipment, weapon control systems, components for fire control equipment, components for weapon control systems, large calibre artillery, components for large calibre artillery, range finding equipment, laser rangefinders, components for optical target designator equipment, components for optical target surveillance equipment, components for optical target tracking equipment, torpedo handling, launching and control equipment, military aero-engines, components for military aero-engines, components for combat aircraft, military transport aircraft, components for military transport aircraft, assault rifles (from Romania).
<i>Philippines</i> Heavy fighting in the southern Philippines between government forces and rebel groups.	Air guns, components for airguns, components for armoured fighting vehicles, components for combat aircraft, gun silencers, re-breathing swimming apparatus, shotguns, imaging cameras, weapon night sights (T), weapon sights (T).
<i>Sri Lanka</i> Fighting between Sri Lankan government forces and the LTTE, battles took place on land and at sea.	General naval vessel components, components for military utility helicopters, components for combat aircraft, components for military training aircraft, components for combat helicopters, technology for the use of combat aircraft, technology for the production of combat aircraft, technology for the production of combat helicopters.
<i>Turkey</i> Fighting between Turkish government forces and Kurdish groups, fighting took place in a number of areas including the Iraqi border.	Airguns, airborne electronic warfare equipment, components for aerial targeting equipment, components for aircraft radars, components for armoured fighting vehicles, components for combat aircraft, components for equipment for operation of military aircraft, components for large calibre artillery, components for military aero-engines, components for military infra-red/thermal imaging equipment, components for military training aircraft, components for military utility helicopters, components for patrol craft, components for surface-to-air missiles, components for surface-to-air missiles control-launching equipment, equipment for the use of ground-based radars, general military aircraft components, gun silencers, military aircraft ground equipment, military aircraft head-down displays, military communications equipment, production equipment for small arms ammunition, production equipment for small calibre artillery ammunition, shotguns, technology for the development of air-to-surface missiles, technology for the use of military aero-engines, test equipment for night vision goggles, test equipment for large calibre artillery, weapon sights.

2008

(Please note that at the time of writing the final quarterly report for 2008 has yet to be published. All licences below are therefore up to and including September 2008.)

<i>Country of concern</i>	<i>Licences of concern;</i>
<p><i>Afghanistan</i> Deteriorating security situation, Afghan government remit only extends as far as Kabul, instability throughout the country, factionalism rife.</p>	Armoured all-wheel-drive vehicles, assault rifles, components for assault rifles, components for machine pistols, components for semi-automatic pistols, machine pistols.
<p><i>Georgia</i> War with Russia in August 2008.</p>	Components for ground vehicle military communications equipment, equipment for the use of tanks, small arms ammunition, sniper rifles, military utility vehicles,
<p><i>Iraq</i> Although the US “Surge” and a change in tactics has helped to bring a more stable security situation to Iraq, questions about the reliability of indigenous security forces and whether arms are being diverted to militias need to be looked at.</p>	Assault rifles, components for armoured personnel carriers, components for assault rifles, components for general purpose machine guns, components for semi-automatic pistols, components for submachine guns, general purpose machine guns, semi-automatic pistols, small arms ammunition, weapon sights.
<p><i>Israel</i> Massive Israeli military operation launched in Gaza, codenamed, “Operation Cast Lead,” resulted in heavy Palestinian loss of life.</p>	Components for airborne electronic warfare equipment, components for electronic warfare equipment, components for helmet-mounted display equipment, technology for the use of weapon sights, components for combat aircraft, technology for the use of military aircraft ground equipment, Incorporation: components for airborne targeting equipment.
<p><i>Nigeria</i> Fighting between armed groups in the Niger Delta and Nigerian government forces. Oil installations attacked and serious disruption occurred to Nigeria’s oil producing facilities. A ceasefire was called by MEND (Movement for the Emancipation of the Niger Delta) in September 2008, however it was called off in early 2009.</p>	Armoured all-wheel-drive vehicles, general purpose machine guns, heavy machine guns, components for large calibre artillery, equipment for the use of large calibre artillery, components for anti-aircraft guns, equipment for the use of anti-aircraft guns, components for artillery computers, military utility vehicles.
<p><i>Pakistan</i> Fighting between the Pakistani army and groups in the tribal areas of northern Pakistan. Violence spilled over into the cities. However a truce was signed although sporadic attacks do still occur. The tribal areas of Pakistan are used as a base by militants for operation inside Afghanistan.</p>	Components for optical target acquisition equipment, components for small calibre artillery, shotguns, armoured all-wheel-drive vehicles, components for large calibre artillery, components for sniper rifles, sniper rifles, gun mountings, equipment for the use of weapon sights, technology for the production of launching equipment for munitions, technology for the use of launching equipment of munitions, components for combat helicopters, components for the use of airborne surveillance equipment, non-sporting shotgun ammunition, small arms ammunition, tear gas-irritant ammunition.
<p><i>Philippines</i> Break down of peace talks and a resumption of violence between the Government of the Philippines and the secessionist group the Moro Islamic Liberation Front (MILF).</p>	General military aircraft components, components for armoured fighting vehicles, components for military transport aircraft, components for semi-automatic pistols, gun silencers.
<p><i>Russia</i> Invaded Georgia in August 2008.</p>	Air guns, components for military aero-engines, military utility vehicles, rifles, shotguns, sniper rifles, components for sniper rifles, Incorporation: General military aircraft components (destined for Saudi Arabia), components for combat aircraft.

<i>Country of concern</i>	<i>Licences of concern;</i>
<i>Sri Lanka</i> Ongoing fighting between government of Sri Lanka forces and secessionist groups.	Military–infrared thermal imaging equipment.
<i>Turkey</i> Bombardment of Kurdish groups in Northern Iraq in late 2007 preceded a ground invasion of Northern Iraq by Turkish forces in early 2008.	Components for anti-aircraft guns, components for electronic warfare equipment, components for fire control equipment, components for launching equipment of surface-to-air missiles, components for man-portable air-defence systems, components for military infrared–thermal imaging equipment, components for military transport aircraft, components for tanks, components for weapons sights, general military aircraft components, general military vehicle components, weapon day and night sights, armoured fighting vehicles, components for air defence systems, components for large calibre artillery, components for laser range finders, components for air-to-surface missiles, components for armoured fighting vehicles, components for armoured personnel carriers, components for unmanned air vehicles, components for military transport aircraft.

OTHER AREAS OF CONCERN

Saudi Arabia: Whilst there is no actual conflict in Saudi Arabia, the massive rearmament of Saudi Arabia, spearheaded by British companies raises some difficult questions. We have not looked at human rights issues in this report, focusing only on conflict, if we had Saudi Arabia would feature heavily. Given the potential fragility of the Saudi regime, is it wise to help them acquire huge quantities of advanced weaponry, both sparking a possible regional arms race (Iran–Israel...) and also opening up the possibility of this equipment ending up in hostile hands.

Incorporation: Incorporation is an issue. For example in 2006 over £5 million worth of incorporation licences were granted to the US, including for components for combat aircraft, and for military aircraft heads-up display (HUD); the US has previously incorporated UK-made HUD's into fighter jets exported to Israel. Under current UK policy, it is likely that permission for direct transfer of such equipment to Israel would be denied.

DIVERSION–END USE

Example Iraq: There are concerns that some equipment has–is being diverted for use by militia forces, Beretta pistols exported to Iraq from the UK and distributed to the Iraqi police, have been found in the hands of Iraqi insurgents. The Quadripartite Committee has also voiced concerns over end-use citing statements from the chief of police in Basra reporting that he could only rely on half of his forces and speculating the most likely source of diversion was from within the Iraqi police force. (Source: The Quadripartite Committee, Minutes of Evidence, Examination of Witnesses, Dr Kim Howells MP, Mr Trevor Moore and Mr Graham Glover, 25 April 2006, QUS. 280-299, <http://www.publications.parliament.uk/pa/cm200506/cmquad/873/6042501.htm>)

For more information please see the Saferworld report from where this information is drawn entitled, “The Good, the Bad and the Ugly. A decade of Labour’s arms exports.” Saferworld, May 2007:

<http://www.saferworld.org.uk/images/pubdocs/The%20Good%2C%20the%20Bad%20and%20the%20Ugly%20rev.pdf>

RE-EXPORT–LICENSED PRODUCTION OVERSEAS

It is a fact highlighted by the Quadripartite committee that British military equipment has been re-exported to undesirable locations and also produced overseas and then used for abuses of human rights. The export of British maritime patrol aircraft from India to Burma and the Turkish made Land Rover Defenders used in the Andijan massacres are well trodden examples., highlighted by both NGO’s and the Quadripartite Committee.

(<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmquad/254/25406.htm#a16>). It is not inconceivable that these are the only examples of this, and whilst the information does not make provision for this it is something that should be considered further.

Note:

High Intensity Conflict: More than 1000 fatalities.

Low Intensity Conflict: Between 100-1000 fatalities.

Violent Political Conflict: Fewer than 100 fatalities.

The rating system used comes from PIOOM (Interdisciplinary Research Programme on Causes of Human Rights Violations), an independent research institute based in Netherlands which focuses on monitoring human rights. As such PIOOM registers three levels of armed conflict (above). Where High Intensity, Low Intensity and Violent Political Conflict are mentioned it refers to this register.

15 April 2009

Memorandum from Bill Rammell MP, then Minister of State at the Foreign & Commonwealth Office

ISRAEL: UPDATE ON UK STRATEGIC EXPORT CONTROLS

I am writing to follow up our telephone conversation about the Foreign and Commonwealth Office's plans to issue a Written Ministerial Statement, on "Israel: Update on UK Strategic Export Controls" on Tuesday 21 April.

Due to the complexities of the task and the recent two-week recess, we are only now in a position to provide an update to the briefing the Foreign Secretary gave to the House on 19 January. We wanted to take advantage of the session on Wednesday 22 April to discuss this with the Committee.

Since the start of Israeli "Operation Cast Lead" on 27 December, we have sought to assess what equipment was used by the Israeli Defence Forces (IDF), and whether UK supplied equipment might have been used by the IDF during the recent conflict in Gaza. We are aware of the level of interest in Gaza in Parliament, the media and by members of the public. When the Foreign Secretary answered questions in Parliament on 19 January it was not completely clear what equipment had been used.

We wanted to share with Parliament the information we have been able to gather. Since the conflict ended we have been working to complete an assessment and will now make a Written Ministerial Statement to ensure the utmost transparency on this issue. This has taken time because we wanted to ensure that we had the most complete information.

The Ministerial Statement will take the following format.

Firstly: Our assessment of the equipment used by the IDF in relation to Operation Cast Lead which—contrary to reports in the Press and elsewhere—we do not believe contained components supplied under licence in the UK. This will cover UAVs and Armoured Vehicles.

Secondly: Israeli equipment which may have been involved in Operation Cast Lead and may have contained British-supplied components.

Thirdly: Israeli equipment that was used in Operation Cast Lead and which almost certainly contained British-components. These fall broadly into two categories—equipment for incorporation through the USA and components for a 76mm gun for the Saar 4.5 naval vessel.

20 April 2009

Memorandum from Bill Rammell MP, then Minister of State at the Foreign & Commonwealth Office

At the session of the Committees on Arms Export Controls on 22 April Sir John Stanley raised a question about a recent report in the Independent newspaper that British-made components had been discovered in the remnants of bombs used by the Taliban in Afghanistan.⁷⁷ I undertook to provide the Committee with a written response.

There have been a number of recent press reports alleging that British citizens have been directly supporting the Taliban in Helmand Province and that British-made components have been used in improvised explosive devices. Any claims of British involvement with the Taliban are looked at seriously. There is, however, no definitive evidence to substantiate any of these allegations

⁷⁷ Q 187.

It is clear that insurgent techniques and tactics have evolved and that they are increasingly using improvised explosive devices. We take any threat to our personnel very seriously and we do everything possible to protect them. We constantly monitor the capability and protection requirements of our troops and have a well-developed route in place by which commanders on the ground can ask for new or additional military equipment to address these threats.

30 April 2009

Memorandum from Bill Rammell MP, then Minister of State at the Foreign & Commonwealth Office

Further to my letter of 30 April, I'm now writing with the answers to the remaining outstanding questions from the Evidence Session on 22 April.

ISRAEL

(i) *Has the Government refused any licence applications, 2002 to present, for the supply of components for F16s for use by Israeli Air Force?*

Yes. HMG has refused ten applications, for the supply of components for F16s direct to Israel for use by the Israeli Air Force. Licence applications have been refused on a number of grounds, including concerns under Criteria 2, 3, 4 and 6 of the EU and National Consolidated Licensing Criteria. I would note at this point that export licence applications can be refused using one or more of the criteria.

The details of the licences in question are as follows: In 2003 two licences were refused (due to concerns under Criteria 2, 3 and 4). One licence was refused in both 2004 and 2005 (on each occasion citing concerns under Criteria 2, 3 and 4). In 2006 ten licences were refused (citing concerns under Criteria 2, 3, 4 and additionally Criteria 6). Finally in 2008 one licence was refused (on concerns relating to Criteria 2 and 3).

(ii) *Since 2002 to present there have been a small number of licences granted for F16's and Apaches where, although not going direct to Israel, we were aware that Israel was the ultimate end-user. Could you provide details of the "small number of licences", including dates when granted, where the Government knew that Israel was ultimate end-user?*

Details of the licences granted for F16 components are as follows:

- 2002: One licence issued on 08/07/02;
- 2003: Two licences issued on 03/01/03 and 31/07/03;
- 2004: Two licences issued on 19/05/04 and 05/08/04;
- 2005: Three licences issued on 05/01/05, 20/10/05 and 03/11/05;
- 2006: One licence issued on 26/01/06.

Details of those licences granted for Apache components are as follows:

- 2003: Two licences issued on 15/10/2003 and 29/10/2003;
- 2004: Two licences issued on 19/05/2004 and 23/09/2004;
- 2005: Five licences issued on 15/08/2004;
- 2006: One licence issued on 23/01/2006.

The review of extant licences to Israel is still on-going, and we will inform the Committee once the outcome is known.

RE-EXPORTS

(iii) *Is it UK Policy that if a country to which we exported arms were to re-export them to another country subject to a UN or EU arms embargo, that would be the last time an export licence was granted to them?*

No. As I said during the session, future export licence applications would be considered on a case-by-case basis against the Criteria. Of course the past practices of the state concerned would inform our assessment, under the Criteria, of future export licence applications. If the recipient state had re-exported goods in breach of UN or EU arms embargoes then that would be taken into account under Criterion 6 (the behaviour of the buyer country with regard to the international community and respect for international law) and Criterion 7 (risk that the equipment will be re-exported under undesirable conditions) along with other applicable Criteria and the situation in the destination country at the time of the application.

ANTI-VEHICLES LAND-MINES

(iv) *Please give us the names of the 19 countries that went ahead and made a series of commitments, when international consensus on a joint declaration could not be achieved at the third review conference.*

25 countries have now aligned themselves with the statement, these are; Albania, Australia, Bosnia and Herzegovina, Belgium, Bulgaria, Canada, Croatia, Denmark, El Salvador, Estonia, France, Israel, Latvia, Lithuania, Luxembourg, Netherlands, New Zealand, Norway, Republic of Korea, Romania, Serbia, Slovenia, The Former Yugoslav Republic of Macedonia, United Kingdom of Great Britain and Northern Ireland and the United States of America. A copy of the statement is attached.

11 May 2009

Memorandum from the Export Group for Aerospace & Defence

I believe that the Committee asked for further details of the problems that our companies have reported encountering when seeking End-User Undertakings from the UK Ministry of Defence; I must apologise for the delay in addressing this issue, but I have been taking soundings of our Members to try to get a better feel of the scale of the problem.

It is clear that this is a bit of an on-going problem for UK Industry, depending on with whom they are liaising within the UK MoD, and on which project, as the extent of their knowledge and understanding on export control issues is highly variable—some IPTs are exceptionally good and proficient, whilst others are not, and require the always effective and knowledgeable input from the Export Policy and Assurance (EPA), formerly known as “Directorate of Export Services Policy (DESP)”, at the UK MoD to intercede on Industry’s behalf.

It is clear that the exact definitions of “End-User” and “Consignee” are greatly misunderstood within some parts of HMG who have few dealings with export licensing matters on a daily basis. In some instances, involving intra-EU trade, the IPTs have been known to refuse point blank to sign EUUs, citing the EU Directive as giving a total blanket exemption to them from having to do so. However, this perceived exemption is seemingly totally unknown to the Governments of other EU Member States, who still demand that their exporters need to provide an EUU.

Some internal awareness training of IPTs on the need for EUUs, and how to complete them, is clearly needed to rectify this issue.

On another matter, I have heard that during the UK Government’s own oral evidence session, back in April 2009, comments were made about the possible inclusion of anti-vehicle land mines under Category B of the UK’s Trade Controls. There follows the text of an e-mail which I sent to the Export Control Organisation, on 22nd December 2008, on this issue:

I can confirm that I have (very hurriedly) taken some Industry soundings on this issue, and we would totally support the NGOs’ stance on this matter.

The only UK manufacturer that I can readily identify is BAE Systems Land Systems Division, and the impact on their supply chain activities would be minimal.

Our initial thoughts in our discussions with the NGOs was that the new Category B should be focused on, to put it very simply (because we in Industry is not very bright), “anything that goes ‘bang’”—ie all weapons and munitions—as this is the area of greater concern, over which HMG should want to have the closest of control and scrutiny. Clearly anti-vehicle mines (as with all such mines) should fall within this definition.

It should be, as stated, a relatively minimal and uncontroversial in its impact on UK Industry.

These items are also relatively easily, inexpensively and readily “traded”—and much more so than long-range missiles and UAVs, to our way of thinking—and, therefore, are much more likely to be the subject of “trade” activities.

Therefore, we would have no objections to this being re-examined by the ECO.

22 May 2009

**Memorandum from Ian Pearson MP, then Economic and Business Minister at the
Department for Business, Enterprise & Regulatory Reform**

NOTIFICATION OF A SIGNIFICANT EXPORT CONTROL ERROR

I feel that it is important for me to write to notify you of a significant error that has occurred within ECO and—more importantly—to provide the Committees with reassurance about the measures we have taken to put things right.

One of the international commitments to which HMG is party is the Chemical Weapons Convention (CWC). One of the CWC stipulations is that chemicals listed in Schedule 2 of CWC must not be exported to States that are not party to the CWC. UK exporters are obliged to make a declaration of Schedule 2 exports to the CWC UK National Authority within the Department of Energy and Climate Change (DECC). In January 2009, a declaration made by a UK exporter revealed that they had exported Cetaflam PD.P, a Schedule 2 chemical, to Israel and Taiwan, two countries who are not States Party to the CWC. DECC therefore followed this inconsistency up with ECO, who found that the exports did indeed take place; and that this was because the exporter had been wrongly informed that Cetaflam PD.P did not require an export licence and so had proceeded to export it.

This error is of course highly regrettable. If we had correctly advised the exporter at the time that a licence was required, the subsequent application would almost certainly have been refused under Criterion 1 of the Consolidated EU and

National Arms Export Licensing Criteria, since it would have been inconsistent with the UK's international obligations under CWC. The error occurred because the chemical mixture in question is not specifically listed in the control lists—unlike the great majority of controlled items—but is included in a larger group of chemicals defined by their molecular structure. It is not, therefore, instantly recognisable as being controlled and so it was mistakenly overlooked. But we have taken prompt action to update all the precedents on our databases so that in future, technical staff doing research on past cases will get the most accurate information; to advise all technical staff to take special care in this area; and to highlight other sources of information and advice that they can and should use.

Whilst not seeking to diminish this error in any way, it is also worth stating that the real world risk posed by these exports is small. Cetaflam PD.P has a legitimate use for, the flame retardant treatment of polyester fabric. That was the declared purpose of the exports and having made enquiries through Posts as to the actual end-use there is no reason to suggest that it was diverted to any other purpose. It cannot be used directly as a chemical weapon and is controlled because, after processing, it can produce a chemical precursor of use in the manufacture of chemical weapons. That precursor can then, after undergoing a further round of processing, produce a nerve agent. However, this whole process would be very difficult and time consuming and it would be easier to use other flame retardant chemicals, available on the open market, for this purpose. So there is no suggestion of WMD use, and indeed, little reason to suggest that it would make sense to acquire it for those purposes.

We are primarily looking here at a technical breach of the UK's commitments.

I do not seek to downplay it in any way, but think that the important point is that we have identified it promptly, advised the company so that it will not recur, and tightened up our internal systems to the same end.

3 June 2009

**Letter from Rt Hon David Miliband MP, Secretary of State for Foreign and Commonwealth Affairs,
to the Chairman**

YOUR VISIT TO KIEV

Many thanks for your letter of 9 June about your recent FCO-funded visit to Kiev. I was delighted to hear that the visit went so well, and I have passed on your thanks to all those involved.

Visits such as this one, where we are able to combine our resources and effort in a shared objective, are therefore important. As a result, I am extremely grateful to you, Sir John Stanley and David Borrow for making the time to undertake the trip, despite the busy parliamentary schedule that you all faced. In terms of next steps, my staff here in London and at our Embassy in Kiev are looking to build on the momentum that your visit has generated. They will be holding detailed discussions with members of the Ukrainian Parliament with a view to establishing how and with whom to take forward work on establishing committees to undertake parliamentary oversight. We will obviously keep the Committees abreast of progress as these talks go forward.

I would also like to take this opportunity to reassure you about the list, handed to you by the Deputy Foreign Minister, which gave details of brokering transactions involving UK-registered companies. We have already passed the list to both HMRC and the Export Control Organisation. They are looking into the companies mentioned and the transactions referred to, but they need time to establish the facts. First, they need to establish whether any of the transactions identified in the list needed a licence? Second, was a licence applied for? And third, if no licence was applied for, was an offence committed? I can assure you that we will keep the CAEC informed of progress. From our perspective, it would be preferable if the CAEC did not at this point make public the details contained in the list, as it would alert the companies to the fact that we are investigating, and might lead those who have committed an offence to try and cover their tracks.

Finally, can I reiterate my thanks to the CAEC for the interest you continue to take in the area of strategic export controls. I strongly believe that the constructive engagement of the Committees has enabled us to both strengthen and improve our export control system, and at a time of heightened interest in the issues surrounding the subject, demonstrate that the Government not only takes its responsibilities seriously but is also rigorously held to account by the body charged with its oversight.

11 July 2009
