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Responsible export controls for UK security and conflict prevention

Saferworld's submission on Equipment, Support, and Technology for UK Defence and Security: A Consultation Paper

Introduction

Saferworld recently commended the commitments made in the Strategic Defence and Security Review (SDSR) to ensure that the UK meets its obligations in relation to its defence and security export activities and to support the establishment of an international Arms Trade Treaty.¹ We now welcome this further opportunity to look in more detail at the UK's approach to both controlling and promoting UK arms exports.

As an organisation which works to prevent and reduce violent conflict, Saferworld is concerned with ensuring both that UK defence and security equipment is not used to fuel armed violence, and that the UK's diplomatic, defence and development activities promote the responsible application of arms transfer controls overseas. This briefing raises concerns about the UK's approach to promoting defence and security exports and the application of UK export licensing criteria, which is in need of improvement, a point we feel is clearly demonstrated by recent events in Middle Eastern and North African (MENA) states.

In the SDSR, the Government outlines its commitment to "increase significantly our support to conflict prevention."² The Secretary of State for International Development has set out the need for the UK to engage in 'upstream' conflict prevention which tackles the sources of conflict.³ Not only is there a strong moral imperative for investing Government resources in preventing conflict overseas; it also responds directly to concerns about national security – a focus of the Green Paper. As the UK's National Security Strategy acknowledges, ensuring the security of the UK is about meeting and deterring threats to our interests, and many of the things that threaten us at home – as well as our servicemen and women and our interests abroad – find their roots in conflict and fragility overseas and, importantly, the social, political and economic factors which are the drivers of conflict.⁴ As the SDSR recognises, conflict prevention and the protection of UK national security should therefore be treated not as separate areas of work serving different objectives, but as overlapping imperatives.

¹ Saferworld, UK Strategic Defence and Security Review (2010), <http://www.saferworld.org.uk/smartweb/media/news-article/504>.

² HM Government, Securing Britain in an Age of Uncertainty: The Strategic Defence and Security Review (2010), p44, paragraph 4B2.

³ Andrew Mitchell, 'Development in a Conflicted World' speech at the Royal College of Defence Studies, 16 September 2010, <http://www.dfid.gov.uk/Media-Room/Speeches-and-articles/2010/Development-in-a-Conflicted-World/>.

⁴ HM Government, A Strong Britain in an Age of Uncertainty: The National Security Strategy (2010), p10.

The widespread availability of conventional weapons in unstable regions of the world can make the escalation of conflict much more likely, and this too should be considered as the Government develops its strategy toward the defence and security sectors. As the Government develops its approaches to conflict prevention, defence procurement and export promotion, it should ensure close co-ordination between these policy processes to ensure consistency in their aims and effects.

We note, in this context, the Government's ongoing development of a cross-departmental Building Stability Overseas Strategy (BSOS), led by the FCO, which will define the Government's approach to addressing overseas conflict. Saferworld has recommended that the BSOS should link the UK's conflict prevention efforts to its approach to arms transfer controls.⁵ Accordingly, we would recommend that the White Paper on equipment, support and technology for UK defence and security should complement the BSOS, in order to ensure that the Government's efforts to promote defence and security exports are consistent with its goal of supporting upstream conflict prevention.

In order to make this submission as useful as possible we have responded to those questions in the Consultation Paper that speak most closely to Saferworld's concerns.

Q26. How can the Government and industry best support responsible defence and security exports by UK-based companies?

Q27. What are the current obstacles to doing so and how could these be overcome?

Central to most effectively supporting responsible defence and security exports by UK-based companies is ensuring that criteria for licensing these exports are rigorously implemented. In line with the Government's commitment to this principle, export promotion should only take place where potential transfers meet the standards contained in the Consolidated UK and EU Criteria.

Recent events in the Middle East and North Africa have highlighted the need for the UK to review its export licensing procedure and, in this regard, Saferworld welcomes the announcement by the Secretary of State for Foreign and Commonwealth Affairs that a review will take place.⁶ However, the Foreign Secretary has suggested that the review will focus on crowd control equipment; it is not yet clear whether it will also encompass other types of defence and security equipment. As recent events in Libya demonstrate, a wide range of strategic equipment can be used to repress populations and abuse human rights, which is not limited to equipment designed for the purposes of crowd control. Accordingly, fundamental questions should be asked about whether the current risk assessment process for all military, security and police equipment exports is adequate. Recent Government statements emphasise that risk assessments focus upon the "prevailing circumstances at the time of the application".⁷ Clearly, a rigorous assessment of the risks of a potential transfer must consider not just the prevailing circumstances, but also whether there is the reasonable risk of negative developments in the foreseeable future.

Export promotion

The Government has set out on multiple occasions its intention to make the promotion of UK defence and security exports a key priority, as part of a wider export promotion drive. The Green Paper begins to set out how this will be implemented, through a process led by UKTI but also including the MOD, FCO, Home Office and BIS (paragraph 128). Saferworld notes in particular the Government's intention to use its Diplomatic Service (paragraph 114) and that all UK Ministers will be "more personally involved in supporting defence and security exports", including the expectation that, as part of every overseas trip, they will engage in export promotion (paragraph 124).

⁵ Saferworld, Promoting sustainable security in a complex world: Saferworld submission to HMG Building Stability Overseas Strategy (2011), p7, <http://www.saferworld.org.uk/Saferworld%20submission%20to%20BSOS%20-%20March%202011.pdf>.

⁶ Foreign Affairs Committee, Developments in UK Foreign Policy - uncorrected evidence -16 March 2011 (2011), <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmfa/uc881-i/uc88101.htm>; See also House of Commons Hansard, 30 March 2011, column 375W.

⁷ e.g House of Commons Hansard, 14 March 2011, column 147W; House of Lords Hansard, 8 March 2011, column 381W.

Saferworld is concerned as to how the Government will reconcile this with the potentially competing priority, set out in the SDSR, of utilising the Government's diplomatic capabilities as part of an integrated approach to conflict prevention.⁸ As Saferworld and its partners in the UK Working Group on Arms set out in a recent submission to the Committees on Arms Export Controls (CAEC), we are concerned that prioritising the establishment of a more commercial culture could come at the cost of conflict prevention by means of a reduced emphasis on ensuring responsible arms transfer controls.⁹

The alternative priorities of export promotion and export control may also have budgetary implications as they potentially compete for resources. This should be assessed in the context of on-going pressures on the budget of the Export Control Organisation (ECO) that could weaken its ability to devote sufficient resources to ensure the rigour and effectiveness of the UK's arms transfer control system is not only maintained, but strengthened where necessary.

Arms export control and defence diplomacy

Aside from the perceived economic rationale for promoting arms exports, the Green Paper also makes clear the Government's intention to use defence and security exports as a diplomatic tool for building relationships with other countries. Saferworld would argue that the pursuit of any such strategy should not come at the expense of the rigorous application of UK export licensing criteria and the need to conduct thorough risk assessments. As the UK Working Group set out in its submission to the CAEC, the use of defence and security exports as a diplomatic tool "should be applied with extreme care given that it is not necessarily consistent with the UK's obligations as set out in the EU Common Position."¹⁰ These state, explicitly, that considerations relating to "defence and security interests [including] those of friendly and allied countries... cannot affect consideration of the criteria on respect for human rights and on regional peace, security and stability".¹¹

Pursuing a strategy of using defence exports to advance diplomatic relationships with other states also carries inherent risks. In situations where the Government is seeking to build closer ties with another state through defence co-operation, diplomatic imperatives may lead to an increased pressure in favour of licensing inadvisable transfers, and away from strict application of the Consolidated Criteria.

The UK's defence diplomacy with Libya since 2004 offers an example of how promoting defence and security exports in order to build diplomatic relationships can lead to ill-advised arms transfers borne out of a failure to properly and rigorously implement existing export licensing criteria. The Defence Services Organisation (formerly the Defence Export Services Organisation) established a full time office in Tripoli in 2006, followed in 2007 by Tony Blair's visit to Libya to secure defence contracts worth £350 million. More recently, in June 2010, Minister for Business and Enterprise Mark Prisk listed Libya as one of the Defence and Security Organisation's priority markets in 2009/10 and 2010/11.¹² In November 2010, UK Ambassador to Libya Richard Northern was reportedly accompanied by representatives of more than 50 UK defence and security companies to the LibDex arms fair in Tripoli, at the invitation of the Libyan regime.¹³

Long before the current unrest in Libya began, there were serious questions about Libya's status as a responsible arms importer. The Libyan regime repeatedly attempted to source orders that far outstripped its defence needs and a 2008 UN report showed that Libya shipped weapons – originally sold to it by Spain, Belgium and Bulgaria – on to Darfur in clear breach of the UN arms embargo on the region. Similarly, governmental and NGO reports from the period illustrate the authoritarian and repressive nature of a regime that was the subject of repeated and serious human rights concerns. While Saferworld welcomes the revocation in February 2011 of export licences for Libya "for equipment of concern", the risk of equipment being misused should have been foreseen. This is just one of a number of cases in which the obligation to ensure that risk assessments are thorough and

⁸ Op cit HM Government (2010), p44, paragraph 4B2.

⁹ UK Working Group on Arms, written evidence to the Committees on Arms Export Controls (2011), <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmquad/writev/arms/m5.htm>.

¹⁰ Ibid.

¹¹ Council of the European Union, Council Common Position 2008/944/CFSP (2008), Article 2.5.a, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:335:0099:0103:EN:PDF>.

¹² House of Commons Hansard, 28 June 2010, column 418W.

¹³ Mark Townsend, 'UK arms companies visited Tripoli three months ago', The Observer, 27 February 2011, <http://www.guardian.co.uk/world/2011/feb/27/libyan-arms-fair-attended-by-uk-firms>.

that transfers are refused where there is a clear risk that equipment might be used for internal repression or to aggravate existing tensions appears to have been compromised for reasons of diplomatic and commercial expediency.

Saferworld believes that it is sometimes necessary and even advisable to engage with authoritarian regimes. However, the UK Government has a wide range of defence, diplomatic and development tools at its disposal to engage with such states; selling arms should be at the bottom of the list. As the current situation in Libya demonstrates, any economic benefits derived do not justify the risks inherent in using transfers of defence and security equipment to build ties with regimes which do not respect the human rights of their citizens. In navigating a complex, multi-polar world to promote conflict prevention, the best compass the UK can have is a clearly defined commitment to its core principles. Systematically applying a criteria-based system of export controls is one important way in which the Government can put its principles into practice.

Choosing responsible trading partners

Saferworld is also concerned with the statement in the Green Paper, that “We are also seeking to build on... our established defence relationships with the Kingdom of Saudi Arabia and our Gulf partners” (paragraph 72). Saudi Arabia continues to be classed as a “country of concern” by the FCO due to its persistent domestic human rights abuses.¹⁴ However, despite these long-standing issues, governments past and present have been willing to export to Saudi Arabia a range of equipment such as smoke hand grenades, stun grenades, semi-automatic pistols, submachine guns, armoured all-wheel drive vehicles, combat aircraft, sniper rifles, assault rifles and combat shotguns and small arms ammunition, as well as components for air guns, and air-to-surface rockets, among other things.¹⁵

While Saudi Arabia is perceived as one of the most stable regimes in the region, this ignores the typically brittle nature of authoritarian regimes. Despite long having been considered an anchor of stability in the Middle East and no obvious warning signs, Hosni Mubarak’s authoritarian regime in Egypt was quickly toppled by means of a popular uprising. The dangers of assuming on-going stability in Saudi Arabia should be clear. Indeed in recent weeks, Saudi police are reported to have opened fire on Saudi demonstrators in the city of Qatif after imposing a nationwide ban on protests.¹⁶

Recent interventions by the Saudi regime in Bahrain and Yemen also highlight the role that country can play exacerbating existing tensions and facilitating human rights violations in the region. In March 2011 Saudi Arabia sent around 1,000 troops to Bahrain, and while it is unclear what role they are playing in assisting Bahraini security forces responding to anti-government protests, some eyewitness reports suggest that they have been involved in human rights violations.¹⁷ Reports of the transfer of armoured vehicles and personnel carriers on 14 March from Saudi Arabia to Yemen, where peaceful protesters have been attacked and killed in recent weeks, require further investigation.¹⁸

The Green Paper states (paragraph 110) that: “By helping other nations to build up their own defence and security capabilities, we can contribute to regional security, and help tackle threats to UK national security closer to their source.” While it is sometimes argued that building up the defence and security capabilities of authoritarian regimes may contribute to ‘stability’, recent events in the Middle East and North Africa clearly demonstrate that this is not sustainable. Indeed, it can undermine regional security by fuelling conflict and human rights abuses, which in turn can create conditions in which threats to the UK’s security are allowed to grow. Furthermore, Saferworld would emphasise that ministers and officials responsible for both promoting and controlling exports should consider not only

¹⁴ Foreign and Commonwealth Office, Annual Report on Human Rights 2010 (2011), <http://s3-eu-west-1.amazonaws.com/htcdn/Human-Rights-and-Democracy-The-2010-Foreign-Commonwealth-Report.pdf>.

¹⁵ Data from Strategic Export Controls annual reports 1999-2010

¹⁶ BBC News, ‘Saudi Arabia police open fire at protest in Qatif’, 10 March 2011, <http://www.bbc.co.uk/news/world-middle-east-12708401>.

¹⁷ Amnesty International, Bahrain: Ensuring accountability for excessive force and protection for protesters, 24 March 2011, <http://www.amnesty.org/en/appeals-for-action/bahrain-ensuring-accountability-excessive-force-and-protection-protesters>; Sean O’ Hare, ‘Bahrain protests: eye-witness report’, The Telegraph, 16 March 2011, <http://www.telegraph.co.uk/health/expathealth/8385486/Bahrain-protests-eye-witness-report.html>.

¹⁸ Al Jazeera Arabic, ‘A ship supplied by Saudi Arabia arrived in the Port of Aden in Yemen loaded with 75 armoured vehicles and personnel carriers to counter the protests led by the military attaché’, 13 March 2011, <http://www.altajdnews.com/default.aspx?view=article&id=28eb1022-99db-422b-8833-0163af7f2407>.

the security of states and regimes, but also that of civilian populations. While a well-armed state may be well placed to secure its own survival, this does not mean it will also ensure the security of its citizens; indeed, in some cases the state presents a serious threat to the security of those it governs.

A positive role for diplomacy in arms export control

Saferworld believes that using the UK's diplomatic networks to promote the responsible application of arms transfer controls would provide a valuable contribution to the UK's conflict prevention efforts. Indeed, the SDSR set out the Government's intention to use "non-operational defence engagement" to prevent conflict, "including... arms export control engagement so as to promote regional stabilisation and reduce the risk of conflict."¹⁹ By promoting a responsible, principled approach to arms transfers, the UK can help to improve the security of vulnerable populations overseas and its own national security, contributing to the Government's ambition to "promote our values with conviction and determination."²⁰

However, it will be more difficult for the Government to convince other states to implement a high standard of arms transfer controls if its own export licensing system is not seen to meet the standards set by the EU Common Position. The UK's diplomatic efforts in the Arms Trade Treaty (ATT) process, which has the support of UK defence industry bodies, provide a case in point. While the UK continues to be a proactive and progressive voice in this process, its efforts to persuade other states to agree to a treaty imposing high common standards may be damaged by the widespread knowledge that the UK – which implements some of the most sophisticated controls in the world – has for many years exported defence and security equipment to countries including Libya, Bahrain and Yemen where this is being used or is at risk of being used in the violent repression of legitimate protest.

In the Green Paper (paragraph 5), the Government states that, "We live in an uncertain world, but are prepared to take advantage of the opportunities that arise as a consequence." Such statements send out an incongruous and unhelpful message coming from a state which has been at the forefront of efforts to promote responsible international arms transfer controls.

Q28 How can the Government diversify the destinations for UK defence and security exports and at the same time ensure it has a pan-Government approach to prioritising Government support to export campaigns?

It is important to recognise that the UK Government and defence manufacturers already have extensive export promotion operations and are well aware of existing and potential markets for their goods and associated services. As such, it is important not to overplay the idea that if the Government does not do more to champion UK arms exports vital opportunities will be missed. Given the competitiveness of the international arms market and the dominance of the US, coupled with the emergence of new centres of arms production in the developing world, there are unlikely to be many 'easy gains' for the UK defence industry in terms of expanding its export base. Accordingly, efforts to expand defence export volumes could run the risk of promoting and authorising transfers of arms that – in terms of the application of the Consolidated UK and EU Criteria – are on the margins of advisability. The lessons that are currently being learned from the supply by the UK and EU partners of military and security equipment to authoritarian regimes in the Middle East and North Africa, point to the need for a strengthened application of UK and EU arms export controls rather than a relaxation.

Q29 Is a fresh approach needed for a world where export prospects will increasingly involve industrial partnership and technology transfer?

The dispersal of arms manufacturing capacity throughout the world has significant implications and poses challenges for counter-proliferation and conflict-prevention strategies on a broad scale. As acknowledged by the Consultation Paper, the increasing fragmentation of the arms market has meant that many UK defence manufacturers now focus on producing subsystems and components for

¹⁹ HM Government, *Securing Britain in an Age of Uncertainty: The Strategic Defence and Security Review (2010)*, p44-45, 4.B.2.

²⁰ William Hague, 'Britain's values in a networked world', speech at Lincoln's Inn, London, 15 September 2010, <http://www.fco.gov.uk/en/news/latest-news/?view=News&id=22864405>.

incorporation into larger weapons platforms. At the same time exports of larger UK-produced systems are often now tied in with co- or licensed production arrangements, where at least some of the manufacturing or assembly is undertaken overseas. Such trends highlight the need for the UK Government to ensure that it has an adequate range of control mechanisms so as to ensure that the purposes and intentions of UK arms export controls are sustained.

At present it is arguable that the UK does not have all the necessary controls in place to ensure that transfers of defence-related technology from the UK do not fuel arms proliferation elsewhere. Saferworld has long argued that the Government should take the power to control licensed production arrangements entered into by UK firms so as to ensure that potential export markets for the resultant defence and security equipment are identified, assessed against the Consolidated Criteria and approved or rejected prior to any agreement being entered into and prior to any transfers of goods and technology taking place from the UK. Similarly with regard to defence and security-related items exported for incorporation into larger systems overseas, checks should also be undertaken wherever possible to identify the proposed ultimate end-users of any items prior to the export of relevant goods and technology from the UK.

In light of the globalisation of defence manufacturing capacity, UK Government-backed efforts to establish an international ATT are of great significance. Only by agreeing high common standards for the regulation of international arms transfers among all states will it be possible to raise standards globally and thereby to facilitate legitimate and responsible defence co-operation between UK firms and international partners on a level playing field. We would therefore urge the Government to ensure it is dedicating an appropriate level of government resources to achieving a robust and effective ATT.

Q32. Can the Government streamline its security and export control processes [consistent with this objective]?

There have been considerable efforts over the past decade to streamline UK export control process including through the establishment of the online export licence application process "SPIRE". This has undoubtedly facilitated easier and quicker access to arms transfer licensing decisions on the part of UK defence and security equipment exporters. However, further to the reference in the Consultation Paper to the intention to "increase the use of open licences for lower risk transactions" (paragraph 117) it is important to recognise that the open licensing regime has undergone progressive liberalisation over the past decade or more. Forty-five Open General Licences for the export, trade or transshipment of military and/or dual-use goods and technologies now exist, and the ECO has been actively promoting the use of or application for open rather than standard licences. Saferworld would urge caution in extending this liberalisation process further and would highlight the need for the potential implications for the UK's obligations under the EU Common Position to be fully assessed before any further adjustments are made to the open licensing regime. In this context we recommend that the proposed review of arms transfer licences taking place in response to the situation in the Middle East and North Africa should pay particular attention to the use of open licences for arms transfers to authoritarian regimes.

Q36. Do any international regimes inhibit responsible exports and prevent UK exporting abroad?

The UK is a member of a number of multilateral conventional arms control arrangements, including at EU and OSCE level and as party to the Wassenaar Arrangement, and has played an active and constructive role in all of these fora. Far from inhibiting responsible exports, these regimes are the frameworks through which the UK ensures that its exports are responsible. Indeed, in some cases more could be done to strengthen these regimes.

In terms of the impact on the regulation of conventional arms transfers, by far the most effective regime is the EU Common Position on Arms Exports. However, in light of the recent and on-going revelations regarding the transfer of defence and security equipment by EU Member States to authoritarian regimes in the Middle East and North Africa, it is clear that whereas the EU Common Position may appear stringent on paper, its application in practice has been disappointing.

Accordingly, EU Member States need to urgently review their approach to licensing transfers of arms and security equipment to authoritarian regimes. While the announcement by the UK Government of a review of arms transfer licensing is to be welcomed, the Government should also lead efforts to conduct a similar comprehensive exercise at EU level.

As regards the impact of international regimes for controlling transfers of arms and related technology, these are only as effective as their States Parties are willing to ensure. Nevertheless such agreements are crucial to the establishment of international norms of restraint and responsibility in arms transfer control. They can also serve as an important means for the provision of capacity-building support to states that lack effective controls. As a result, current efforts on-going at the UN to establish an ATT are crucial to curtail irresponsible transfers and to prevent conflict and human rights abuses internationally.