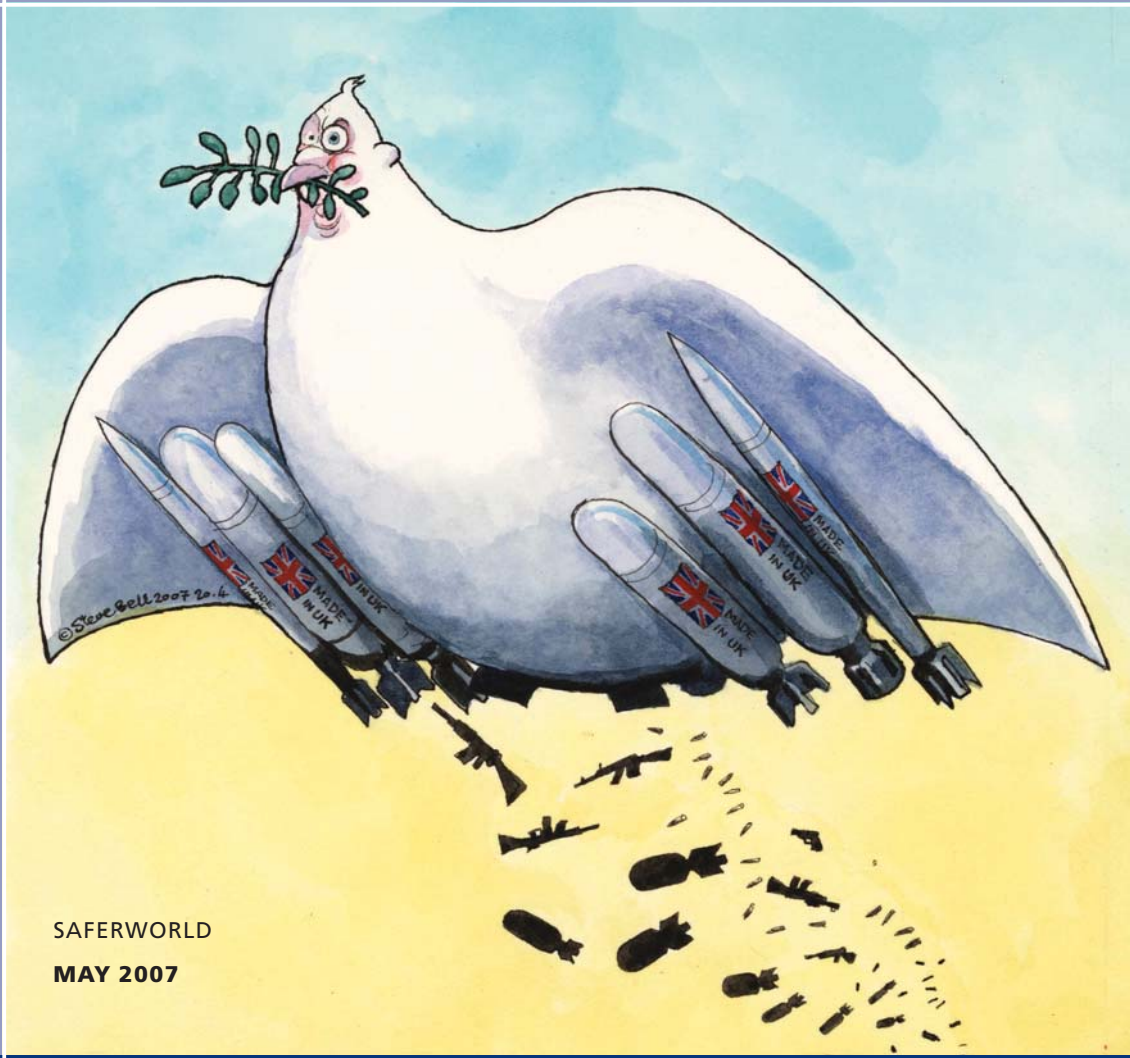


# The Good, the Bad and the Ugly

**A decade of Labour's arms exports**



SAFERWORLD  
MAY 2007

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## Authors and acknowledgements

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## Acronyms and abbreviations

<b>ATT</b>	International Arms Trade Treaty
<b>DESI</b>	Defence Systems and Equipment International Exhibition
<b>DESO</b>	Defence Export Services Organisation
<b>DFID</b>	Department for International Development
<b>DRC</b>	Democratic Republic of Congo
<b>ECA</b>	Export Control Act
<b>ECGD</b>	Export Credit Guarantee Department
<b>FCO</b>	Foreign and Commonwealth Office
<b>HMRC</b>	Her Majesty's Revenue and Customs
<b>HUDs</b>	Heads-up display units
<b>MoD</b>	Ministry of Defence
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OIEL</b>	Open Individual Export Licence
<b>POA</b>	Programme of Action on small arms and light weapons
<b>SALW</b>	Small arms and light weapons
<b>SFO</b>	Serious Fraud Office
<b>SIEL</b>	Standard Individual Export Licence
<b>UAE</b>	United Arab Emirates

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# Summary

The last ten years have seen a number of 'good' policies undermined by 'bad' implementation, and numerous examples of outright 'ugly' practice.

The UK is the world's second largest arms exporter. Under the current Labour Government, military equipment and services worth over £45 billion have been transferred around the world. Although the Government has introduced a number of progressive policies on arms export in the past ten years, its apparent reluctance to enforce its own guidelines, and its willingness on occasion to flout them, have undermined the potential improvements that these policies seemed to promise.

A case in point is the ongoing controversy surrounding the reported involvement of the Attorney General, and even Prime Minister Tony Blair, in the recent decision to halt the Serious Fraud Office investigation into alleged corruption in arms deals with Saudi Arabia. This contradicts the Government's policy statements about the need to firmly tackle corruption and illustrates the Government's willingness to bend its own rules when it sees fit.

The current review of the Export Control Act and the change in leadership of the Labour Party is an ideal opportunity for the Government to revisit its commitment to prevent irresponsible arms transfers, and to radically improve both the UK's arms export controls and their enforcement.

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## The Good

- The export of torture equipment and landmines has been banned.
- The Government championed an EU-wide Code of Conduct on Arms Exports during the UK Presidency in 1998.
- The Export Control Act, which tightened some aspects of Britain's arms trade, was passed in 2002.

- Annual and quarterly national reports on strategic export controls, which include significant information on export licences issued have been introduced.
- The Government led efforts within the 2001 UN Programme of Action on Small Arms and Light Weapons to bring the international trade in small arms and light weapons under control.
- The Government co-led the UN process calling for an international Arms Trade Treaty in 2006.

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## The Bad

- While public reporting on export *licences* has improved markedly under Labour, reporting on actual arms export *deliveries* is poor.
- The Government has failed to regulate arms companies' overseas subsidiaries and licensed production overseas, despite the huge risk these pose for downstream arms proliferation.
- There is a seeming reluctance to adequately enforce breaches of the Government's controls.
- The 2001 Labour manifesto pledge to crack down on all arms brokering has not been honoured.
- The Government has rejected persistent parliamentary calls to scrutinise arms exports before they occur, and has failed to take sufficient steps to stamp out corruption.
- The Government provides subsidies to the arms industry worth between £453m and £936m a year.
- The UK has exported arms to countries without armies, such as the Cayman Islands and Channel Islands, running the risk of diversion of weapons. At the same time, the Government is reluctant to monitor how UK weapons and equipment are used after export.

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## The Ugly

- The Government has failed to treat corruption in the arms trade with due seriousness, as demonstrated by the recent decision to halt the Serious Fraud Office's inquiry into corruption of arms deals with Saudi Arabia.
- The Government has failed to monitor adequately the transfer of components that will be incorporated into weapons systems in the recipient country for onward export, asking few questions about the ultimate destination of such exports.
- The Government has failed to effectively implement its own arms export criteria by persistently permitting the export of arms when there is the risk that they may be used to repress human rights, for example to Colombia, Nepal, Russia and Sri Lanka. It has been reported that Indonesia has used UK equipment for repressive purposes on numerous occasions in the Labour years.

- The Government has licensed the sale of inappropriate equipment to some of the world's least developed countries. For example, the transfer of an air traffic control system to Tanzania in 2001, which was, according to a study commissioned by the World Bank, unsuitable for Tanzania's needs and overpriced.
- The Government has approved unnecessary arms exports to countries with no real need for the equipment. In 1999 South Africa ordered Hawk jets and Gripen aircraft from the UK. These contracts have been criticised by senior South African military figures as being irrelevant to South Africa's defence needs and for diverting badly needed resources away from areas where funding is required such as training pilots and investing in transporters. Other observers have noted the desperate need in South Africa for more to be spent on health and education programmes.
- From 1999 to 2006 the Government licensed approximately half a billion pounds worth of military and 'other' equipment to China, which is under an EU arms embargo.
- Ministers promote arms exports to countries of concern, for example in 2002, when India had fully mobilised its army against Pakistan, both Tony Blair and Jack Straw (then Foreign Secretary) paid separate visits to India and discussed arms sales.
- The Government has promoted and approved exports to both sides in confrontations between India/Pakistan, increasing the risk of regional conflict. It has sometimes exported to both sides similar equipment that could aid offensive operations.
- Iraq has recently become a large British arms market again, with UK arms worth over £130m licensed for export since 2003, despite huge concerns over the reliability of the recipients of UK arms.
- Over £110m of military and 'other' equipment has been licensed for export to Israel from 1999 to 2006 inclusive, throughout a period of offensive operations in the Occupied Territories and war with Lebanon.

"In my time I came to learn that the Chairman of British Aerospace appeared to have the key to the garden door to Number 10. Certainly I never once knew Number 10 come up with any decision that would be incommoding to British Aerospace, even when they came bitterly to regret the public consequences, as they did in overruling me on the supply of Hawk spares to Zimbabwe."

Robin Cook (2003)

Benefits of arms exports to the economy at large are inconsequential. Indeed, arms exports are subsidised to the tune of hundreds of millions of pounds every year. Figures citing jobs supported by defence exports are often exaggerated. In the media debate surrounding the proposed BAE Systems contract with Saudi Arabia the defence industry stated up to 50,000 UK jobs could go if the contract was lost. However the report cited as the basis for this figure, commissioned by Eurofighter, states that 11,000 jobs would be supported across Europe (approximately 5,000 in the UK) if Eurofighter secured the Saudi contract. To place this in context, in 2005 job 'churn' (i.e. the number of people finding and losing jobs) was averaging over 10,000 people per week.

Aspects of the UK's foreign policy and the apparent willingness of the Government – especially, it would seem, Tony Blair – to yield to the influence of defence companies seem to have been critical factors behind a number of 'ugly' arms export decisions.

The coincidence of the Export Control Act review with the imminent change in Labour leadership provides an opportunity for a change of direction, and for the Government to redeem its ultimately disappointing record on arms exports.

The coincidence of the Export Control Act review with the imminent change in Labour leadership provides an opportunity for a change of direction, and for the Government to redeem its ultimately disappointing record on arms exports. But the Government must not only improve its policies; most importantly it should ensure that it is those policies, rather than other considerations, that determine practice. Otherwise policies will remain ethical in theory but there will still be room for ruthless pragmatism in determining their application.

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## Key recommendations

This report puts forward recommendations, key among those are that the Government should:

- introduce a “presumption of denial” for arms exports towards an agreed and frequently updated list of countries which raise *prima facie* concerns under the Government’s own criteria
- fully implement in letter and in spirit all international and regional commitments on corruption including all provisions of the UN Convention Against Corruption and the Organisation for Economic Co-operation and Development Anti-Bribery Convention
- fully support the Serious Fraud Office investigations into corruption within the arms industry and pursue unreservedly prosecutions where evidence emerges of corrupt practice
- increase the quality and user-friendliness of information published both on licences and on exports
- carry out a limited trial of prior parliamentary scrutiny of selected export licence applications to see if this presents the constitutional difficulties that the Government has previously claimed
- honour the Labour 2001 Manifesto commitment and introduce full extraterritorial controls on arms brokering and trafficking
- implement a system to allow clear and effective monitoring of the end-use of UK arms exports
- improve controls on the transfer of production capacity offshore
- commit greater resources for the investigation and enforcement of breaches of the UK Export Control Act, and take a far more assertive approach to pursuing prosecutions in the event of breaches
- end subsidies for arms transfers, e.g. by ending export credit support for unproductive expenditure and public funding of the Defence Export Services Organisation
- ensure that its domestic policies support, not undermine, efforts to agree an effective international Arms Trade Treaty.



## 1

## Introduction

The sheer extent of the UK's arms exports means that controlling them properly really does matter, on a global scale.

In the three years from 2004 to 2006, the UK Government approved arms exports to 19 of 20 "countries of concern" identified by the annual Foreign and Commonwealth Office Human Rights Reports.

The UK is the second largest global arms exporter.<sup>1</sup> Under the current Labour Government, military equipment and services worth over £45 billion have been transferred around the world.<sup>2</sup> The extent of these exports means it really does matter, on a global scale, how well the UK controls its arms transfers. The past ten years have seen the Government introduce a number of positive policy changes domestically, and champion others internationally. However, these progressive policies have repeatedly been undermined by poor implementation and by decisions in individual cases which appear to contradict or flout the stated criteria. A fundamental paradox lies at the heart of Labour's approach to arms exports: the Government claims it has a foreign policy with an "ethical dimension", yet there is no guarantee that such policy wins the day when it comes to arms exports. Instead, as the cancellation of the Serious Fraud Office (SFO) inquiry into BAE Systems' dealings with Saudi Arabia demonstrates, when push comes to shove, other interests appear to hold sway.

The Government has consistently approved military exports to countries violating human rights. In the three years from 2004 to 2006, for example, arms exports were approved to 19 of the 20 countries identified as "countries of concern" in the Foreign and Commonwealth Office (FCO)'s annual Human Rights Reports. The Government has also continued to invite some of the same countries to the biennial Defence Systems and Equipment International Exhibition (DSEi) held in London. In 2005, for example, representatives were invited from 6 of the 20 countries of concern listed in the 2006 FCO Human Rights Report.<sup>3</sup>

The 2002 Export Control Act (ECA) and its supporting secondary legislation introduced a number of changes for the better, such as partial controls on arms brokers and controls on transfers of technology by email, fax and other "intangible" means, but ultimately the Government missed the opportunity to comprehensively control arms exports. During the passage of the legislation, the Government blocked many proposals that would have

Unless there is a fundamental shift in the way that Government decisions are made, changes to arms export policy will have limited impact on practice.

strengthened UK controls on arms exports, such as full extraterritorial controls on arms brokering. The review of the ECA taking place this year provides the Government with the opportunity to complete this unfinished business.

However, unless there is a fundamental shift in the way that Government decisions are made, changes to arms export policy will have limited impact on practice. If the Government is not committed to abiding by the letter and spirit of the rules, the effective implementation of any new policies will be undermined, and there will be a risk that good news in terms of policy distracts from what the Government does in practice.

The coincidence of the ECA review with the imminent change in Labour leadership provides an opportunity for taking stock, and making further steps to ensure that Labour's stated policies are more accurately reflected in their practice.

This paper looks at Labour's record on arms export policy over the last ten years. While there have been a number of 'good' policy developments, these have been too often undermined by 'bad' policy decisions and implementation, and there have been numerous examples of outright 'ugly' practice.

# 2

## Labour's record on arms export decisions

### 2.1 UK arms export criteria

Within a few months of the 1997 election, Labour set out new criteria for governing arms export licensing decisions. In 2000, the national criteria and the 1998 EU Code of Conduct on Arms Exports (*see section 2.8 below*) were brought together in the Consolidated Criteria, which highlight various possible consequences that must be considered before arms exports can be approved. These include the impact of the export on conflict and regional security, human rights, the attitude of the buyer towards terrorism and international law, the risk that the equipment would be re-exported and the sustainable development of the buyer country.

The formal introduction of criteria governing export licence decisions was a significant step. However, licences continue to be granted for exports that appear to contravene these criteria. Furthermore, while every licence application decision is supposed to be judged impartially and objectively against the consolidated criteria, there are ways in which the system is weighted in favour of licences being approved.

Ministers actively promote arms export licences. The Quadripartite Committee<sup>4</sup> has criticised this, arguing that it could have a prejudicial outcome on any licensing application and have recommended that “before any minister becomes personally involved in promoting the sale of defence equipment abroad, the Government should consider the proposed export in question against the Consolidated Criteria with as much care as it would an export licence application.”<sup>5</sup>

While every licence application decision is supposed to be judged impartially and objectively against the consolidated criteria, there are ways in which the system is weighted in favour of licences being approved.

Pre-licensing procedures can also impact on the decision-making process. The Ministry of Defence (MoD)-led F680 process allows companies to receive preliminary advice as to whether an export is likely to receive eventual official authorisation. While the Government insists that licensing decisions are taken completely independently of any F680 approval, an F680 clearance can lead to the signing of contracts and enable financing to be put in place. In the controversial case of the supply of an air traffic control system to Tanzania in 2001, an F680 clearance led to the contract being signed, a loan being agreed, equipment being produced and payments made to BAE Systems before a licence had been approved.<sup>6</sup> In the light of the momentum generated by these arrangements, it is perhaps unsurprising that the Government was reluctant to refuse the relevant licences.

In addition, although the ECA is premised on the notion that any arms export is an exception which requires the express approval of the Secretary of State for Foreign Affairs, it is clear that in reality the reflex is to export unless there is a compelling reason not to.

### THE UGLY 1

#### Failure to implement criteria: Saudi Arabia

UK arms exports to Saudi Arabia give cause for concern on a number of accounts:

- **Human rights:** Despite being classed as a “major country of concern” by the FCO due to its persistent domestic human rights abuses, Britain has 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, sniper rifles, assault rifles and combat shot-guns.<sup>7</sup>
- **Regional instability:** Britain’s exports to Saudi Arabia amount to a massive re-equipping of the Saudi military. The recent agreement to supply 72 Eurofighter aircraft is worth an initial £6 billion to BAE Systems<sup>8</sup>, but follow-on contracts for training and spare parts could be worth an eventual £40 billion.<sup>9</sup> Large deals of this kind to Saudi Arabia can affect the strategic military balance in the volatile Middle East region, affecting procurement decisions of states rivalling Saudi Arabia, such as Israel and Iran.
- **Secrecy:** These deals lack transparency. While the initial order is typically in the public domain, no export licences are required for any of the transfers, thus the public has little or no information about the way the deal is implemented over time.<sup>10</sup>
- **Uncertain future:** The Saudi regime is potentially unstable, presenting the risk that arms sold today could fall into different hands in the future with negative implications for the UK’s own security.



## Failure to tackle corruption: Saudi Arabia

The reported involvement of the Attorney General and even Tony Blair in the recent decision to halt the SFO investigation into alleged corruption with Saudi Arabia undermines the Government's stated determination to firmly tackle corruption. The director of the SFO, Robert Wardle, reportedly said that his team had found significant evidence in the arms inquiry and was hoping to find more from Swiss banks.<sup>11</sup> It has also been reported that the inquiry was widening to examine whether MoD staff were aware of 'commission' payments to Saudi officials<sup>12</sup> but was dropped after BAE and Saudi Arabia allegedly lobbied the Government suggesting that other lucrative Saudi orders for arms exports might be lost.<sup>13</sup> This decision has been widely condemned by MPs and anti-corruption campaigners as a violation of the spirit, if not the letter, of the Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention)<sup>14</sup>, which, in 2002, made payments of bribes a specific criminal offence under UK law.

Tony Blair argued that proceeding with the inquiry "would have been devastating for our relationship with an important country with whom we cooperate closely on terrorism, on security, on the Middle East peace process."<sup>15</sup> The Attorney General, Lord Goldsmith, added that Britain would have been "deprived of a key partner in our global counter-terrorist strategy."<sup>16</sup> Yet it was also reported that MI5 and MI6 disputed the assertion by Lord Goldsmith that national security was in jeopardy, saying they possessed no intelligence that the Saudis intended to sever intelligence cooperation with Britain.<sup>17</sup> This case highlights how defence industry's lobbying and other interests can apparently influence Britain's moral, if not legal, international commitments.

However, the Saudi case appears to be far from isolated, with several other allegations of corruption against BAE Systems:

- The *Guardian* alleged in 2005 that BAE Systems had secretly paid more than £1 million to Chile's General Pinochet between 1997 and 2004.<sup>18</sup>
- BAE Systems allegedly secretly paid a \$12 million commission into a Swiss bank account in the notorious deal that led Tanzania, one of the world's poorest countries, to buy an overpriced and inappropriate radar system.<sup>19</sup>
- There are allegations that 'substantial payments' were made by BAE Systems to a senior South African defence ministry official who had influence over a £1.5 billion multi-national contract won by the company to supply Hawk aircraft.<sup>20</sup>

The SFO has corruption probes underway into BAE Systems deals with Chile, Tanzania, South Africa, Romania, Qatar and the Czech Republic.<sup>21</sup> Ensuring the integrity of these investigations is vital.

## 2.2 Arms export transparency

The Government has improved national reporting on arms exports by publishing annual and quarterly reports. Information is provided on the number and value of standard individual export licences granted (these licences limit the maximum value of the goods that can be exported and specify the end-user and country of end-use).

Reporting on open licences is not to the same standard. Open licences typically allow exporting companies to make multiple deliveries of goods after an initial single authorisation, place no limits on the value or quantity of the exports and do not specify the end-use or end-user. While the Government does give “summary descriptions” of the type of equipment approved for transfer under such licences, nothing is provided on quantities or values. Thus there is a much lower level of scrutiny and transparency over exports authorised under open licences. Yet the Government has been encouraging exporting companies to use open licences, as this reduces the administrative burden on companies and the Government.<sup>22</sup>

Some examples of open licences issued in the last few years which give cause for concern are as follows:

- In 2006, open licences were granted to a variety of countries with poor human rights records, such as Egypt, Indonesia, Nigeria, Pakistan, Sri Lanka and Turkey. Open licences to Nigeria included armoured vehicles, and components for combat helicopters were authorised for export to Sri Lanka.
- In 2005 open licences for components for combat aircraft were issued to India, Pakistan, Saudi Arabia, Sri Lanka and Turkey. Open licences for pistols, rifles and sub-machine were granted to Saudi Arabia and Turkey.
- In 2004, open licences were approved for the export of armoured vehicles to Algeria, Morocco, Pakistan, Syria, Saudi Arabia and Turkey. The failure to place limits on the amount of vehicles that can be exported is especially concerning.
- In 2003, open licences were authorised for goods including tear gas, crowd control ammunition and stun grenades to countries such as Saudi Arabia and Turkey.

The Government also provides very little information on *incorporation* licences, i.e. licences issued for the transfer of components that will be incorporated into weapons systems in the recipient country for onward export. Most importantly, no information is available on where onward exports are destined.

Reporting on actual *deliveries* of arms exports is poor. The Government states this information cannot be provided due to a mismatch between EU tariff codes used by HM Revenue & Customs (HMRC) and categories used in the Military List, a mismatch that cannot be addressed without the agreement of all EU member states. However 21 of the 27 EU member states already provide data on arms export deliveries to the EU for publication in the annual EU Consolidated Report.<sup>23</sup>

In 2006, open licences were granted to a variety of countries with poor human rights records, such as Egypt, Indonesia, Nigeria, Pakistan, Sri Lanka and Turkey.

Information compiled by the Defence Analytical Services Agency does include estimates of the value of total export deliveries for each year, made up of identified defence equipment exports (recorded by Her Majesty's Revenue & Customs (HMRC) plus an *estimate* by the Society of British Aerospace Companies of additional exports of aerospace equipment and services. These additional exports include dual-use aerospace items and activities such as training, consultancy and project support related to export activity. Much of this is not monitored by HMRC. In 2004, the combined total value of these additional exports was estimated at £5.162 billion; in 2005 it was £7.142 billion (these are the most recent years for which figures are available).<sup>24</sup> The Government has admitted in a disclosure under the Freedom of Information Act that it does not know the destination of these exports and that the figures "cannot be broken down at the country level."<sup>25</sup>

The lack of prior scrutiny is a serious gap in arms transfer controls, heightening the risk of irresponsible arms exports being approved.

The introduction of published reports has enabled greater scrutiny of export licensing decisions, but the Quadripartite Committee's oversight of these is entirely retrospective, occurring only after licences have been granted. The Committee has consistently called for the introduction of prior parliamentary scrutiny and over 300 MPs signed an Early Day Motion supporting the call. Yet the Government rejects such a system and continues to argue that this "raises unacceptable constitutional, legal and practical difficulties."<sup>26</sup> The lack of prior scrutiny is a serious gap in arms transfer controls, heightening the risk of irresponsible arms exports being approved.

## THE UGLY 2

### Weakening incorporation policy: China, Indonesia, Russia and Turkey

In July 2002, the Government issued new guidelines to be applied when assessing applications for "incorporation" licences, i.e. for components that would be incorporated into weapons systems in the recipient country for onward export.<sup>27</sup>

China, Indonesia, Israel, Russia and Turkey have all been granted incorporation licences, yet all have inadequate export control standards (certainly more lax than the UK). Israel is a known exporter of arms to China, currently under an EU embargo, yet in 2006, Britain approved 65 incorporation licences worth £4.5m to Israel for equipment such as components for submarines, components for military utility helicopters and military communications equipment.<sup>28</sup> At least eight incorporation licences were awarded for transfers to China over the same period (information on whether exports are for incorporation are not available for all types of UK export licences, so the real figures, for Israel as well as China, could well be higher).

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 units (HUDs);<sup>29</sup> the US has previously incorporated UK-made HUDs 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.

No information is provided by the UK Government on which countries are the ultimate intended destination of the incorporated equipment.

The Export Control Act makes no mention of controlling licensed arms production overseas, developing a system of end-use monitoring or providing for prior scrutiny of arms exports.

### 2.3 The UK Export Control Act

The Government passed the Export Control Act (ECA) in 2002, honouring a pre-1997 pledge to modernise Britain's archaic system of export control – “the most comprehensive overhaul of the UK's strategic export control regime for over 60 years,” according to the Government.<sup>30</sup> For the first time Ministers have the power to control the transfer of intangible technology, the provision of technical assistance overseas and the brokering and trafficking of arms on UK soil or by UK passport holders wherever located. The Government is also required to present an annual report on “matters relating to the operation of the [ECA]” to Parliament. According to the Government's own analysis, the new legislation has had various tangible effects: hundreds of licence applications have been made for transfers that would have formerly been unregulated; some exhibition stands have been withdrawn from the Government's annual arms exhibition for promoting paramilitary equipment while “similar promotional material on websites has on occasion been changed and trade deals have not gone ahead because a licence has been refused or the application withdrawn.”<sup>31</sup> But the ECA was also a missed opportunity. The Government blocked other sensible proposals that would have strengthened controls over arms exports, while the ECA makes no mention of controlling licensed arms production overseas, developing a system of end-use monitoring or providing for prior scrutiny of arms exports. What is more, the powers that the ECA does give the Government have not always been exercised in full – for example, in the case of arms brokering (*see section 2.4 below*).

Saferworld has long been concerned about an apparent reluctance to enforce export controls through the courts when evidence emerges that companies may be in breach. Some prosecutions have taken place but they have been relatively minor and subject to minimal penalties. The most significant prosecution was in relation to efforts by the company Multi-core to procure and smuggle components for the Iranian military – but penalty was limited to one individual receiving an 18-month prison sentence suspended for two years, being banned from being a company director for ten years and a seizure of assets worth around £70,000. In other cases, the authorities have failed to launch or pursue prosecutions when there appeared to be strong grounds for doing so.<sup>32</sup>

When evidence provided by Mark Thomas to the Quadripartite Committee about the promotion of torture equipment at an arms fair in 2005 and on the websites of UK-based companies<sup>33</sup> was brought to the attention of the authorities, the stands were closed down and the websites removed, but no efforts were made to bring forward prosecutions, to Saferworld's knowledge.

This reluctance to investigate breaches of the export control system and to impose stiff penalties contrasts with the approach in the US, where for example the ITT Corporation was recently fined US\$100m for passing night-vision technology to China and Singapore and



setting up a front company to escape detection. The investigation took five years and was dogged by the corporation's unwillingness to cooperate.<sup>34</sup>

## 2.4 Arms brokering

A loophole in the Export Control Act makes it legal under UK law for a British dealer in Russia, for example, to supply surface-to-air missiles to governments accused of sponsoring terrorism or to supply countries in conflict, without needing a licence from the UK Government.

The ECA gave the Government the power to control the brokering of arms on UK soil or by UK passport-holders. But for the most part, the secondary legislation concerns itself only with brokering activity carried out on UK territory. Extraterritorial controls apply only to the brokering of long-range missiles, torture equipment and exports to embargoed destinations. A loophole in the ECA makes it legal under UK law for a British dealer in Russia, for example, to supply surface-to-air missiles to governments accused of sponsoring terrorism or to supply countries in conflict, without needing a licence from the UK Government. The failure of legislation to cover extra-territorial controls on small arms, light weapons and ammunition is a particularly serious gap. This is despite Labour's 2001 manifesto pledge to control UK brokers and traffickers wherever they are located and despite calls by the Quadripartite Committee to introduce full extra-territorial controls.

But even where there is reason to suspect that the current laws have been broken, the Government appears reluctant to investigate further:

- Documents obtained by a British newspaper in 2004 showed that UK-based arms brokers had been involved in deals to supply £2.25 million worth of arms to Sudan,<sup>35</sup> while Amnesty International has documented the role of three UK-based companies in supplying 240 tonnes of arms and ammunition from Albania to Rwanda for onward shipment to armed opposition groups in the Democratic Republic of Congo.<sup>36</sup> In both cases, there is strong *prima facie* evidence meriting investigation by the authorities, but, to Saferworld's knowledge, in neither has an investigation ensued.
- Other recent cases include an Israeli company advertising electro-shock batons and leg-irons in brochures at a UK arms fair, a UK-based company advertising stun guns and stun batons on its website and a website run by a London-based company promoting the sale of shock batons by a Chinese company. In none of these cases is Saferworld aware that prosecutions have been launched.<sup>37</sup>

The Government maintains that it works effectively behind the scenes to dissuade brokers from engaging in illicit activity; these efforts are wholly inadequate. If the worst penalty that can be expected by those who would seek to ignore UK arms transfer controls is a word in the ear and a slap on the wrist, it should come as no surprise that they continue to try their luck. It is also most discouraging for those companies that go to the expense and effort of ensuring that they are in full compliance with the UK regime.

Some recipients of UK military equipment, such as China, Israel, Pakistan, South Africa and the UAE, have been identified as conduits of arms or technology elsewhere.

## 2.5 End-use monitoring

The Government does little to check what happens to arms exports once they leave the country. Therefore, it is difficult to know whether these arms might find their way to users such as paramilitaries, warlords or states committing serious human rights abuses. The Government argues that pre-licensing checks are sufficient to prevent diversion and misuse, but this is certainly not always the case:

- Some recipients of UK military equipment, such as China, Israel, Pakistan, South Africa and the UAE, have been identified as conduits of arms or technology elsewhere.<sup>38</sup> Jordan was a known conduit for arms to Iraq, yet the UK Government authorised the export of over 400 Challenger tanks to Jordan in 2000–02.<sup>39</sup>
- The UK has provided arms to Colombian Government forces, which are known to have strong links to paramilitary groups. There is a risk that some of these arms could end up in the hands of those groups.<sup>40</sup>

Scrutiny of the recipients of UK military exports reveals some surprising destinations, notably the British Virgin Islands, the Cayman Islands and the Channel Islands. Britain approved over 200 export licences to these destinations from 2002 until December 2006. More worrying is the kind of equipment authorised for export<sup>41</sup>:

- British Virgin islands: equipment for the use of military communications (2006), military communications equipment (2003), 108 semi-automatic pistols, small arms ammunition, components for submachine guns, 30 submachine guns (2002)
- Cayman Islands: small arms ammunition, NBC (nuclear, biological, chemical) filters and respirators (2006), anti-riot shields, components for submachine guns, 12 submachine guns (2002)
- Channel Islands: gun mountings (2006), 53 shotguns, 10 semi-automatic pistols, small arms ammunition, 4 submachine guns, military vehicle components, crowd control ammunition, teargas/irritant ammunition, CS hand grenades, demolition charges (2003), 2 assault rifles, stun grenades (2002)

Assuming, for example, that the Channel Islands itself has little use for crowd control ammunition or hand grenades, where this equipment is ending up is anybody's guess. Without greater transparency around these exports, it is difficult to assess reasons behind them.

**THE UGLY 3****Arms used for repression: Indonesia**

Indonesia provides a powerful example of the inadequacies of end-use monitoring of UK weapons exports. The UK delivered nearly £400m worth of military equipment to Indonesia between 1997 and 2005.<sup>42</sup> The most serious hardware was delivered in the early years, following agreements made under the last Conservative Government, and included Hawk jets, armoured personnel carriers and tanks. Since then, the arms have continued to flow – the Labour Government licensed more than £100m worth of strategic goods for export to Indonesia between 2001 and 2006 inclusive. Export licences have been granted for armoured all-wheel drive vehicles, components for tanks, technology for the production of combat aircraft, and components for both combat aircraft and combat helicopters.<sup>43</sup>

Indonesia has committed human rights abuses within its borders, notably in West Papua and Aceh provinces against popular separatist movements. UK-supplied equipment has been used on numerous occasions by Indonesian forces. During the 2003 offensive in Aceh the Indonesian military used Hawk aircraft, Scorpion tanks, Saracen armoured vehicles and military Land Rovers. Eyewitnesses said Hawks were used in bombing raids against villages, and Land Rovers were used by special forces, the Kopassus, which have been widely accused of human rights abuses. A senior Indonesian military official admitted an intention to use Scorpion tanks, saying: “they will become a key part of our campaign to finish off the separatists.” He went on: “maybe later the British foreign minister will have a fit.”<sup>44</sup>

Other examples include:

- 1998: Scorpion tanks exported from the UK were used in Jakarta in May and November 1998 in incidents in which 18 protestors were killed.<sup>45</sup> Throughout that year, UK-supplied Scorpion tanks, armoured vehicles and water cannon were regularly photographed on the streets of Indonesia putting down peaceful protests against the rule of then President Suharto and his successor Habibie.
- 1999: UK-supplied Hawks flew sorties to intimidate the population in East Timor.<sup>46</sup>
- 2005: Tactica armoured personnel carriers armed with water cannon were deployed during large demonstrations in West Papua.<sup>47</sup>

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## 2.6 Regulating subsidiaries and licensed production overseas

By failing to put adequate controls on the activities of UK companies' foreign subsidiaries and equipment produced under licence overseas, the Government has not kept pace with the globalisation of arms production. It would seem the UK applies no controls at all on UK-owned subsidiaries, even regarding countries subject to embargo; they can supply military equipment to countries where it would be extremely unlikely an export licence would be approved if sourced directly from the UK.

- In February 2006, Ugandan forces used seven Mamba armoured vehicles to disperse supporters of the opposition candidate in national elections, driving the armed vehicles into the crowd and critically injuring two people.<sup>48</sup> The vehicles were manufactured in South

By failing to put adequate controls on the activities of UK companies' foreign subsidiaries and equipment produced under licence overseas, the Government has not kept pace with the globalisation of arms production.

Africa by Land Systems OMC, a subsidiary of the UK's BAE Systems. Land Systems has also exported armoured vehicles to Ivory Coast, Nepal, and India; (for use in Kashmir) – exports to some of these destinations would raise serious concerns if exported directly by the UK parent company.

- Equipment produced under licence overseas can also escape regulation. Uzbek troops used Land Rover Defender military vehicles during the massacre at Andijan in May 2005, which killed hundreds of people. These vehicles were exported from Turkey, where they were assembled from components of which 70 percent were exported from the UK in kit form as non-military components. The export of these components did not require an export licence, even though it is unlikely the UK would have authorised the export of such vehicles directly to Uzbekistan.<sup>49</sup>

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## 2.7 Export Credit Guarantee Department

The Government announced in January 2000 that it was banning the use of export credits for “unproductive expenditure” to 63 of the world’s poorest countries. The announcement made clear that “these principles need not necessarily preclude Export Credit Guarantee Department (ECGD) support for the sale of defence or dual-use equipment provided that such equipment is, for example, deemed essential for national security, or required to combat the drugs trade, piracy, smuggling etc.” However, such support would need to be cleared with the Department for International Development.<sup>50</sup> This was a very positive move by the Government, but not for the first time it seemed unwilling to finish the job: it is unclear why this ruling on “unproductive expenditure” should not be applied to all states.

The ECGD anti-bribery and corruption rules have been strengthened by procedures that came into force in July 2006. This was the culmination of a bizarre chain of events whereby the Government drew up new procedures in May 2004, and then watered them down due to exporters’ concerns, though without proper consultation, in December 2004. Following subsequent complaints from non-governmental organisations and a legal challenge, the courts ordered the Government to start consultations on the December 2004 decision. This eventually resulted in the reinstatement of much of what was originally agreed in May 2004.<sup>51</sup> This is a clear example of a case in which the Government was prepared to defer to the lobbying and interests of military industry. The rules now require exporters seeking export credits to provide the ECGD with the name of any agents involved in the transaction who have been appointed by or on behalf of the exporter, and permit the ECGD to audit the contract records of an exporter to verify they have not engaged in corrupt activity. However, although the new procedures are welcome, it is still possible for companies to work around them. For example, exporters are only required to give information on those agents directly appointed by themselves; joint-venture partners can appoint agents without the exporter’s explicit authorisation, thus sidestepping the exporter’s obligations.<sup>52</sup>

**THE UGLY 4****Arms undermining development: Arms to Africa**

The UK has exported arms to numerous poor, developing countries with the risk of undermining sustainable development, one of the Government's criteria for rejecting arms exports. It was reported in 2005, for example, that the UK arms export licences to Africa had risen to record levels, reaching £631m for the previous four years combined.<sup>53</sup> Small arms have flowed to states such as Angola, Malawi, Namibia and Eritrea, while in 2003 alone, for example, the UK authorised standard individual export licences worth £200 million for the sale of arms to Africa. In 2005 ten countries involved in conflicts in Africa had made recent military purchases from the UK.<sup>54</sup> Specific concerns centre around three cases:

- The 2001 deal to sell Tanzania – one of the world's poorest countries – a military air traffic control system for £28m. This received much media attention when Tony Blair overruled opposition from his Foreign and International Development Secretaries to approve the deal, which was described as a “waste of money” by the World Bank.<sup>55</sup> Yet the latter's assessments are meant to be among those that the Government takes account of when considering military exports to poor countries.
- The UK has licensed over £400 million worth of arms to South Africa under Labour.<sup>56</sup> This is nearly ten times the amount of annual development aid South Africa currently receives from the UK.<sup>57</sup> The biggest single deal was the agreement in 1999 to supply 24 Hawk fighter/trainer jets and 28 Gripen fighter aircraft to South Africa. This was part of a larger procurement involving purchases from several countries, a deal that has been dogged by claims of endemic corruption<sup>58</sup>, has been criticised by senior members of the South African armed forces as largely irrelevant to South Africa's needs, and is diverting military resources away from areas where funding is required – such as training pilots and investing in transporters.<sup>59</sup> Other observers have noted the desperate need in South Africa for more funds to be spent on health and education programmes.
- Following Zimbabwe's military intervention in the war in the Democratic Republic of Congo (DRC) in August 1998, the UK announced it would not supply equipment that could be used for ‘aggressive ends’.<sup>60</sup> However, it continued to grant export licences for Hawk aircraft, despite the fact that Zimbabwe had used them in the intervention. Export licences for components for Hawk and other aircraft continued to be granted in late 1998 and early 1999; the International Development Select Committee noted that these “may well have been used to supply spares for military equipment used for intervention in the DRC, including aircraft spares.”<sup>61</sup> In February 2000, further licences for Hawk spares were granted – a decision reportedly taken by Tony Blair against the advice of the then Foreign Secretary Robin Cook<sup>62</sup>; only in May 2000 did the UK Government finally announce an arms embargo on Zimbabwe and revoke outstanding licences.<sup>63</sup>

**2.8 International arms controls****EU**

During the UK's presidency of the EU in the first half of 1998, the Government pressed hard for establishing an EU Code of Conduct on Arms Exports (EU Code)<sup>64</sup>, the world's first regional, politically-binding agreement of this type. In June 1998, the EU Code was adopted, with member states agreeing eight criteria that were to be taken into account before selling arms, along with an intra-EU information-sharing and consultation mechanism, intended

Ten years on, the EU Code of Conduct has had only a limited impact on improving the UK's arms export practice. Many of the criteria remain ambiguous, granting states too much discretion.

to help deal with the argument that 'if we don't sell, other countries will'. Governments argued that such criteria would set higher, common standards in arms export decisions across the EU.

However, ten years on, the EU Code has had only a limited impact on improving the UK's arms export practice. Many of the criteria remain ambiguous, granting states too much discretion. A review of the EU Code in 2004/05 did little to tighten the criteria, though member states have agreed to transform it into an EU Common Position, with which member states would be legally obliged to comply. But the draft Common Position has sat untouched for the last two years, and in any event the current draft maintains many of the ambiguities that have compromised the effectiveness of the initial agreement.

The Government also demonstrated leadership in the negotiation of an EU Common Position on the control of arms brokering of June 2003, which requires member states to "take all the necessary measures to control brokering activities taking place within their territory." This is defined as buying, selling or transferring military-related equipment from one third country to another. However, the UK's negotiating position was that nothing in the Common Position should require the UK to move any further than it already had on controlling arms brokering, for example by ensuring that member states were only "encouraged to consider" controlling brokering activities outside their countries carried out by their nationals.<sup>65</sup>

The Government also helped to secure the EU Regulation on Torture of June 2005. This forbids the export of goods that can be used solely for the purposes of torture or capital punishment and requires export licences on a case-by-case basis for goods that might be used for such purposes.<sup>66</sup>

### International

The Government played an important role in the international agreement reached in 2001 to establish the UN Programme of Action on Small Arms and Light Weapons (POA), whereby states undertook, *inter alia*, to establish or maintain effective systems of export and import authorisation to combat the illicit trade in small arms and light weapons (SALW). The POA Review Conference in 2006, which campaigners hoped would strengthen international action to address the proliferation and misuse of illicit small arms, collapsed in disarray when states were unable to agree an outcome document. During the Review Conference the UK was extremely active in encouraging states to take further steps to better regulate international SALW transfers. Despite the blocking manoeuvres of various states, some progress was made in the margins during the conference (to a significant extent due to the leadership of the UK delegation).

The UK's strong support for an international Arms Trade Treaty (ATT) was important in securing agreement at the 2006 UN General Assembly to begin discussions on the feasibility, scope and parameters of an ATT<sup>67</sup>, and the UK continues to provide leadership in the run-up to the formation of a Group of Governmental Experts in 2008 to take this discussion

Any substantive advances in international transfer controls as a result of Arms Trade Treaty developments are still a considerable distance in the future, and the UK's promotion of better international controls should not be seen as a replacement for better enforcement of controls domestically.

forward. However, any substantive advances in international transfer controls as a result of ATT developments are still a considerable distance in the future, and the UK's promotion of better international controls should not be seen as a replacement for better enforcement of controls domestically.

## THE UGLY 5

### Breaking embargo: China

The Labour Government has approved the export of approximately half a billion pounds worth of licensed goods to China, even though it is the subject of an EU arms embargo. In 2005 the UK granted 238 standard individual (SIELs) and 19 open individual export licences (OIELs) for goods to China including components for tanks, components for military training aircraft and components for radar.

#### Number and value<sup>68</sup> of licences issued<sup>69</sup>

	Total	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997
<b>Number of SIELs</b>	<b>1,453</b>	255	238	180	164	156	108	101	98	93	60
<b>Value of SIELs (£m)</b>	<b>498.5</b>	85.5	61	100	76.5	50	32	51.5	42	Not reported	Not reported
<b>Number of OIELs</b>	<b>136</b>	21	19	13	14	24	10	7	28	Incomplete data	Incomplete data

The UK's interpretation of the embargo restricts exports to 'non-lethal' items; the Government states that it rejects licences for a range of lethal equipment such as guns and bombs, specially designed components for such equipment, some weapons platforms such as military aircraft and helicopters and any equipment likely to be used for internal repression. Yet the UK will export components and related equipment and technology for weapons platforms, and indeed has exported components for tanks, components for combat aircraft, technology for the production of combat aircraft and for the production of military utility helicopters, military communications equipment. All of this equipment, while by itself is technically non-lethal, can be critical for decidedly lethal arms. As the Quadripartite Committee commented in July last year, "we consider that allowing the export of components will enable the Chinese government to build up an offensive capability."<sup>70</sup>

The embargo was put in place in response to the Chinese crackdown on public demonstrations in 1989, however, as suggested by this comment from the Committee, any transfers of military equipment which increase China's offensive military capacity would seem ill-advised not least in light of its aggressive posturing toward Taiwan.<sup>71</sup>

Furthermore, under Labour the UK has licensed arms worth over £40m to Hong Kong, which since the handover in 1997 has been part of China. In 2006, the UK licensed to Hong Kong armoured all-wheel drive vehicles, anti-riot shields, components for machine guns, weapon sights, military navigation equipment and military communications equipment. In 2003 licences were granted for the export of CS hand grenades, stun grenades, demolition charges, machine guns, anti-riot guns and crowd control ammunition, all of which run the risk of being used for domestic repression. Hong Kong, which is not subject to the Chinese embargo, is classed as a special administrative region within China and maintains its own arms transfer control system. However there are concerns that Hong Kong could be used as a conduit to China; for example in 2001 a company in Hong Kong imported strategic high-technology equipment from the US on behalf of the Chinese Government.<sup>72</sup>

# 3

## Why Labour makes 'ugly' arms decisions

A key factor appears to be the Government's relationship with arms companies, most crucially the apparent strong relationship between individual companies and Downing Street.

This section examines the possible reasons why the Labour Government has been prepared to make 'ugly' decisions and has chosen to allow and promote arms exports that contradict its own policies. It looks at the economic, foreign policy, national security and other arguments that may explain why the Government has been motivated to prioritise dubious exports and take other actions that are damaging to its stated policies. A key factor appears to be the Government's relationship with arms companies, most crucially the apparent strong relationship between individual companies and Downing Street.

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### 3.1 Economic arguments

In the 2005 Defence Industrial Strategy White Paper, the Government argued that it promotes arms exports for five reasons. The first three are economic:

1. Defence exports bring commercial benefit to UK companies and around 20 percent of UK defence employment is in export work.
2. Longer production runs also spread fixed overhead costs. The benefit thus accruing to industry may be shared by us in the form of lower prices on future purchases from the same supplier.
3. Defence exports help to maintain key sovereign capabilities in both production capacity and systems engineering skills, which we might otherwise have had to intervene to maintain.<sup>73</sup>

It is true that arms exports bring profits to specific UK companies but there is no evidence to



Defence exports are peripheral to the economic well-being of the UK.

suggest that they bring major benefits to the economy as a whole. Government figures show that the number of people employed from arms exports has decreased from 100,000 when Labour took office to 65,000 in 2004/05<sup>74</sup> – a very small proportion of total people employed in the UK economy. To put this into perspective, as Samuel Brittan has pointed out, “[t]he number of people engaged in defence exports is less than 50,000 and the number of people who would have to find new jobs if defence exports were cut by that amount is much less than the number of people who change jobs in a month or two.”<sup>75</sup> While there may be some discrepancy over estimates of the exact number of people employed in producing defence equipment for export, the essential message is the same: defence exports are peripheral to the economic well-being of the UK.

It should be noted, however, that on occasion more grandiose claims are made in terms of the employment impacts of defence exports. For example, it was recently widely reported that if the proposed BAE Systems contract to supply Eurofighters to Saudi Arabia fell through, 50,000 UK jobs would be lost. However an independent report, commissioned by Eurofighter itself, concluded that across Europe only 11,000 jobs were at stake, of which approximately 5,000 were in the UK.<sup>76</sup>

In 2001, a major study (the York Report) by two independent academics and two Ministry of Defence economists concluded that the economic costs of a 50 percent reduction in military exports would be “relatively small and one off ... as a consequence the balance of arguments about defence exports should depend mainly on non-economic considerations.”<sup>77</sup>

According to the study, for every three jobs lost in the defence sector as a result of the cuts, over a five year period approximately four new jobs would be created in other parts of the economy, as the capital released was put to other uses.<sup>78</sup> Indeed, the Government appeared to endorse this conclusion in its Defence Industrial Strategy, wherein it noted that while “[d]efence exports bring commercial benefit to UK *companies*,”<sup>79</sup> Government support for defence exports is premised on the “pursuit of our broader foreign and security interests and for the direct value to Defence that [defence exports] generate.”<sup>80</sup>

Nevertheless, the second and third arguments do contain elements of economic justification for defence exports. But the economic rationale is problematic in that they can be equally applied to any form of economic endeavour taking place within the economy as a whole. The reason for therefore privileging defence over other sectors is not clear; it would only make sense if defence production is calculated to provide greater benefits to the UK economy than civilian production (and even then only assuming that it is the business of Government to attempt to manage the economy through interventions of this type). At no point is any evidence put forward to support such a contention. If greater economic benefits can be generated by other sectors (for more on this, see below), it would indeed make more sense for the Government to “intervene to maintain”<sup>81</sup> the UK’s “sovereign capabilities in both production capacity and systems engineering skills,”<sup>82</sup> rather than use defence exports as the means to this end.

It is a strange idea to privilege the promotion of military industry over civilian or to believe that military industry may be uniquely capable of creating valuable high-tech jobs. In fact, more and more the reverse is the case: the civilian high-tech sector feeds talent and technology into the military sector.

A much stronger case can be made that arms exports are a cost to taxpayers rather than a benefit.

In reality, a much stronger case can be made that arms exports are a cost to taxpayers rather than a benefit. In 2004, the British American Security Information Council, the Oxford Research Group and Saferworld calculated that arms exports are subsidised to the tune of at least £453m and possibly up to £936m a year (depending on how support for research and development is treated), meaning every job in the sector is subsidised to the tune of at least £7,000 a year.<sup>83</sup> And this ignores the notion of subsidy that is implied by the UK selling arms to countries that are also beneficiaries of UK aid, e.g. India and South Africa. Overall, the economic arguments for arms exports do not hold up.

## THE UGLY 6

### Promoting arms exports: India

It was revealed in June 2002 that the UK had issued dozens of arms export licences to India and Pakistan throughout the period of acute tension between the two countries, and at a time when Tony Blair and other leaders were urging both sides to pull back from the brink of military confrontation over the disputed territory of Kashmir.<sup>84</sup> In 2002, the UK licensed £15m in military equipment to Pakistan and £118m to India,<sup>85</sup> and delivered two fighter/ground attack Harrier aircraft to India from a previous contract.<sup>86</sup> British ministers continued to lobby to sell India 66 Hawk fighter jet trainers and accompanying services, in a deal worth £1.1 billion, eventually concluded in 2004. Ministers claimed the deal did not contradict the Government's criteria as the Hawks were trainer aircraft. Yet they can be refitted as combat aircraft (including to carry tactical nuclear weapons), will be used to train pilots to fly nuclear-equipped aircraft and, as the Head of the Indian Airforce Training Command has said, the Hawk may be used as combat aircraft "should an operational scenario present itself."<sup>87</sup>

The Government backed the deal with significant resources. There were a series of visits by the Defence Secretary, Foreign Secretary, Deputy Prime Minister and Tony Blair himself. Tony Blair met Indian Prime Minister Vajpayee in October 2002 at the height of the Kashmir crisis. While publicly claiming the purpose was to have a "calming influence", he reportedly strongly lobbied on behalf of BAE Systems's Hawks.<sup>88</sup> A spokesperson for Tony Blair said, "we make no apology for supporting a legitimate defence industry."<sup>89</sup>

There were approximately 4,000–5,000 jobs secured by the deal, of which 2,200 were located at the BAE Systems plant at Brough, in East Yorkshire, which is situated within the constituency of the Deputy Prime Minister John Prescott.<sup>90</sup> But given that 44 of the Hawks are to be produced in India, claims of safeguarding UK jobs appear disingenuous: it could equally be argued that the deal is being used to breed future competitors in the jet trainer market.

Moreover, for the year 2002/03 total UK aid to India was over £180 million while for 2003/2004 it was nearly £156 million.<sup>91</sup> It would seem, therefore, that in a little over five years the UK Government will have given the Indian Government enough in bilateral aid to pay for the Hawks.



The UK has licensed over £860m worth of arms to India and over £190m to Pakistan under the Labour government. The volume of authorisations to both sides significantly increased in the two years following tensions in 2002. The UK has provided similar military equipment that could aid combat operations to both sides. Since 2002, Britain has sold both India and Pakistan: components for combat aircraft, components for combat helicopters, components for frigates and components for military communications equipment. Britain has also sold components for air-to-air missiles to Pakistan (in 2003) and air-to-air missile launching equipment to India (in 2006). Many of these are under open licences.<sup>92</sup>

### 3.2 Foreign policy interests

The fourth justification in the White Paper for supporting arms exports relates to foreign policy.

4. Defence exports support defence diplomacy and in some countries may act as a key enabling activity for a bilateral relationship.<sup>93</sup>

While this may be true, it has potentially worrying implications in practice, and it would be useful if the Government were to clarify how this might manifest itself in different circumstances. For example, how does the role of defence exports differ when building relationships with traditionally friendly states (e.g. Norway) as compared to defence diplomacy with countries where the relationship is historically more difficult or complicated (e.g. Libya). Whilst in some cases support to the development of military and law enforcement agencies is important to ensuring the rule of law, increasing the military capacity of certain states through arms exports will risk undermining democratic forces within countries by increasing the domestic power of the state and reinforcing undemocratic and repressive tendencies – UK arms exports to countries such as Indonesia, Turkey and Egypt are all cases in point. In most cases, arming repressive governments or those engaged in war is not in the long-term interests of the British people.

Furthermore, recipients of UK arms exports can have a negative influence on the formation of British foreign policy. In the case of the Government's recent decision to halt the Saudi corruption inquiry, British foreign policy towards Saudi Arabia appears significantly tilted toward placating the UK's largest arms buyer. It seems clear that where very large arms contracts are at stake, far from enabling a bilateral relationship, the buyer wields more influence over the seller's foreign policy than the seller exerts over the buyer.

Defence exports are unlikely, in most cases, to have much impact on relationships with trusted partners. They are more likely to make a difference in circumstances where they are very much a two-edged sword, and the Government should think very carefully about trying to use something that cuts both ways as a point of leverage.

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### 3.3 Enhancing interoperability

The fifth and final justification in the White Paper states:

5. Defence exports contribute to building local operational capability and therefore enhance interoperability with our own forces, especially during peacekeeping missions.<sup>94</sup>

If the UK is concerned about interoperability, it is not clear that fighting its own corner in an increasingly crowded defence equipment marketplace is the best way forward.

This argument is surely of relatively minor significance, and in any event there are other ways to achieve interoperability than the rather unrealistic objective of simply having everybody ‘buy British’. Furthermore, if the UK is concerned about interoperability, it is not clear that fighting its own corner in an increasingly crowded defence equipment marketplace is the best way forward. Better, perhaps, to concentrate on rationalising procurement with states with whom the UK has the most significant defence relationships and with whom joint peacekeeping operations are most likely to take place.

There are also examples of where interoperability is not necessarily in the best interests of the UK. The efforts to persuade India to buy the Hawk jet trainer (*see The Ugly 5, above*) included forcing the UK MoD to purchase the Hawk for its own training needs, so as to demonstrate the UK’s commitment to this particular trainer. By UK Treasury estimates, the whole-life costs of the Hawk to the MoD would be at least £1 billion more than the cost of some competing aircraft<sup>95</sup>, and there were also non-budgetary questions regarding whether the Hawk was the best choice for the UK.<sup>96</sup> As a consequence of this, it may be that Indian and UK pilots will be able to work together more effectively, however it is not clear whether, all things considered, this will have been the best outcome for the UK.

### 3.4 National security

The Government also argues that national security plays a role in supporting exports. In response to the York Report, the Government said that the “Government’s policy of supporting legitimate export orders” is “primarily based on their contribution to our defence and security interests” and help “support a strong UK defence industry and contribute to our friends and allies”. The Government referred to this “national security” argument in July 2002 when introducing a new set of guidelines to be followed in respect of incorporation cases. The release of the guidelines was forced by the decision to authorise the sale of Heads-Up Display Units to the US for incorporation into F16 fighter aircraft that were to be exported to Israel. At the time, it was highly improbable that a licence would have been granted to supply this equipment direct to Israel. In announcing these guidelines, Foreign Secretary Jack Straw said “the Government carefully takes into account the importance of maintaining a strong and dynamic defence relationship with the US. This relationship is fundamental to the UK’s national security as well as to our ability to play a strong and effective role in the world. There are also wider benefits to the UK’s national security of maintaining a strong indigenous defence industrial capability.”<sup>97</sup>

History is full of examples of those who followed an arms export policy based on perceptions of national security, only to discover that as circumstances changed, earlier transfer decisions started to look extremely unwise.

But in much the same way as the Saudi Arabia example discussed above, this case illustrates the way in which the foreign policy or national security concerns of others are able to shape UK policy on arms transfers, rather than the other way around. History is full of examples of those who followed an export policy based on perceptions of national security, only to discover that as circumstances changed, earlier transfer decisions started to look extremely unwise.

It is worth reflecting that all of the reasons so far given by the Government for its support for UK arms exports, while not directly contradicting the Consolidated Criteria to which the UK is committed, tend to consign them to the margins. The Government urgently needs to return to first principles on this issue, whereby the main business of Government with regard to arms exports is to prohibit supply of equipment that would contribute to breaches of human rights and international humanitarian law, or that would undermine regional peace and stability or sustainable development.

## THE UGLY 7

### Arming Iraq

Iraq has recently become a large British arms market again, with British arms worth over £130m licensed for export since 2003. Equipment has included assault rifles, machine guns, semi-automatic pistols and small arms ammunition. In 2004, 21,000 semi-automatic pistols were *delivered* to Iraq.

There are concerns that some equipment 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 possession of Iraqi insurgents. A representative from one of the UK companies involved in the transfer observed that “[t]he police forces are recruiting people off the streets. We don’t know who their loyalties belong to or whether they are the wrong people.” He went to say that “[b]ecause Iraq is in such a mess, there must be kit flying all over place. Everyone must be at it.”<sup>98</sup> The Quadripartite Committee has also voiced concerns over end-use diversion citing statements from the chief of police in Basra reporting that he could only rely on about half of his forces and speculating the most likely source of diversion was from within the Iraqi police force.<sup>99</sup>

In 2005, 72 Shorland armoured personnel carriers were delivered to Iraq. Only time will tell whether Britain is recreating the very same problem it contributed to regarding Iraq in the 1980s – arming it only to see it develop into an enemy or at least a centre of broader instability in the Middle East.

The willingness of Government to support big arms companies may well be the single biggest reason for the gap between policy and practice.

### 3.5 Influence of major arms companies

One reason for supporting arms exports you will not find on the Government's list is the influence wielded over Government by the UK's big arms companies. The Government provides a variety of direct help to these companies, notably through: the Defence Export Services Organisation (DESO) of the MoD, a team of almost 500 civil servants dedicated to selling UK arms around the world<sup>100</sup>;

the provision of taxpayer-backed export credits; and ministerial personal interventions to win key deals. There is also a busy 'revolving door' through which officials move between the big arms companies, the armed forces and the MoD, which helps to reinforce the strong relationships between the Government and the arms companies. For example:

- DESO is typically headed by a seconded defence industry employee. For example, the current head is Alan Garwood, seconded from BAE Systems, to which he is about to return.<sup>101</sup>
- Between 1999 and 2004, 614 officers in the armed forces received approval to take up employment in arms companies.
- At least 19 senior MoD officials have taken employment with arms companies since 1997.
- 38 out of 79 individuals seconded to the MoD between April 1997 and January 2003 came from arms companies (22 from BAE Systems alone).<sup>102</sup>
- Over 200 of DESO's 466 staff are involved in supporting government-to-government transfers,<sup>103</sup> the largest of which is the Al Yamamah deal with Saudi Arabia.

It appears that Tony Blair has personally allowed himself to become the highest lobbyist for arms companies. He reportedly intervened in several deals – the Tanzania radar and the Hawk spares to Zimbabwe, for example – to override other government departments, and undertaken personal visits to India and Saudi Arabia to promote large deals. Robin Cook put it thus: "In my time I came to learn that the Chairman of British Aerospace appeared to have the key to the garden door to Number 10. Certainly I never once knew Number 10 come up with any decision that would be incommoding to British Aerospace, even when they came bitterly to regret the public consequences, as they did in overruling me on the supply of Hawk spares to Zimbabwe."<sup>104</sup>

The willingness of Government to support big arms companies may well be the single biggest reason for the gap between policy and practice. This must change. The Government needs to seize the opportunity presented by the 2007 review of the Export Control Act to implement more rigorous controls on the UK's arms exports, starting with the strict enforcement of the Consolidated Criteria.

**THE UGLY 8****Arming Israel**

The export of military equipment to Israel should be treated with extreme caution. Israel comes up short against the Government's arms exports criteria on several grounds, for example in terms of the risk that:

- equipment might be used for repression (criterion 2)
- equipment might exacerbate regional tensions (consider the war in Lebanon in 2006) or be used "to assert by force a territorial claim" (criterion 4)
- Israel's attitude toward international law (criterion 6) is problematic (consider, for example, occupation of and settlement-building in the Occupied Territories, the building of the 'security fence', and the policy of 'targeted assassinations').

But despite all these issues, the UK has licensed more than £110m of military equipment to Israel under Labour. It should be noted that policy did appear to tighten in 2002, after it was discovered that in breach of written assurances not to use British equipment in the Occupied Territories, Israel was deploying modified Centurion tanks (originally delivered in the 1960s). The number of licences refused and revoked for transfers to Israel rose from 45 in 2001 to 91 in 2002. However, refusals and revocations were back down to 26 by 2003, and in 2006 the number of authorisations reached 202, the most since 2001.<sup>105</sup> Last year, Foreign Office Minister Kim Howells said that British policy since 2002 had been not to export weapons, equipment or components that could be "deployed aggressively" in the Occupied Territories, but added that "almost any piece of equipment ... could be used aggressively."<sup>106</sup>

It is difficult to reconcile this assurance with the UK's actual practice. Since the beginning of 2002 the UK has licensed a range of equipment critical for offensive operations such as components for combat aircraft and for combat helicopters, technology for the use of combat aircraft, components for tanks, components for military utility helicopters, armoured all-wheel drive vehicles, and components for airborne electronic warfare equipment.<sup>107</sup> Licences have also been granted for the transfer to the US of components for incorporation into F16 fighter aircraft ultimately bound for Israel.

# 4

## Recommendations

The coincidence of timing of the review of the Export Control Act and the change in the leadership of the Government creates the ideal opportunity to have a good, hard look at the successes and failings of the current system. This report identifies a significant number of areas that the Government needs to address in order to help to ensure that arms transfers from the UK do not undermine regional peace and stability or sustainable development, or contribute to breaches of human rights and international humanitarian law. Recommendations for Government action include:

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### 4.1 Rigorous application of criteria

The Government should:

- introduce a ‘presumption of denial’ for arms exports towards an agreed and frequently updated list of countries which raise *prima facie* concerns against the Consolidated Criteria
- do more to control the risk of ‘downstream’ proliferation, by improving post-export controls and controls on the transfer of production capacity off-shore, e.g. via licensed production agreements.

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### 4.2 Tackling corruption

The Government should:

- fully implement in letter and in spirit all international and regional commitments on corruption including all provisions of the UN Convention Against Corruption and the OECD Anti-Bribery Convention
- further tighten ECGD disclosure guidelines, and extend the rules on disclosure to the export licensing process, so as to help prevent the payment of excessive commissions or fees



- make the granting of an arms export licence conditional on the presentation by exporting companies of a specific no-bribery pledge
- automatically revoke an export licence, attempt to prosecute, and, where applicable, cancel export credit assistance, if evidence emerges that companies have not adhered to this pledge
- encourage companies to set up their own codes of conduct on anti-corruption in defence procurement and report regularly on those codes
- fully support the Serious Fraud Office (SFO) in its investigations into corruption within the arms industry, and pursue unreservedly prosecutions where evidence emerges of corrupt practice.

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### 4.3 Improving transparency and accountability

The Government should:

- include in its annual and quarterly reports on strategic export controls:
  - more detailed information on individual *licences*, for example on quantities, values, end-use and end-users information and whether the goods are intended for “incorporation”
  - more detailed and comprehensive information on the actual amount, value, end-use and end-users of *exported* goods
- create and maintain a fully searchable, periodically-updated database of all licensing decisions
- carry out a limited trial of prior parliamentary scrutiny of selected export licence applications to see if this presents the constitutional difficulties that the Government has previously claimed.

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### 4.4 Strengthening the UK Export Control Act

The Government should:

- honour the Labour 2001 Manifesto commitment and introduce full extraterritorial controls on arms brokering and trafficking
- implement a system to allow clear and effective monitoring of the end-use of UK arms exports
- ensure that British companies wanting to license the production of weapons overseas should first have to apply to the UK Government for a licence
- ensure that licensed production agreements will contain specific re-export clauses to prevent the export of goods produced under licence to countries of concern
- Introduce a military end-use ‘catch-all’ clause, whereby items not normally requiring a licence could be controlled if for a military end-use or to be part of an item of military equipment

- introduce measures to ensure that overseas subsidiary companies in which a majority shareholding is held by a UK parent or where UK beneficial ownership can be established, should be subject to UK export controls – secondary legislation for embargoed destinations must be modified to apply to all exports from overseas subsidiary companies.

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#### 4.5 Strengthening implementation and enforcement

The Government should:

- commit greater resources for the investigation and enforcement of breaches of the Export Control Act
- attempt wherever possible to prosecute possible offences rather than following a policy of warnings and advice
- examine how to more effectively use civil procedures as a way of preventing and punishing breaches of export control laws
- alert the judiciary to the potential consequences of illicit arms transfers, in order to encourage a tougher sentencing regime where prosecutions occur
- improve outreach to industry to increase awareness of their obligations under UK arms transfer control legislation.

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#### 4.6 Ending subsidy for arms exports

The Government should:

- end public funding for the DESO and defence trade fairs
- cease Ministerial involvement in military export promotion, and instead see their international diplomacy role as focused on conflict prevention and the promotion of international security
- extend the current ECGD rules on not providing export credit support for “unproductive expenditure” from 63 of the world’s least developed countries to all countries.

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#### 4.7 Providing international leadership on export controls

The Government should:

- use every opportunity to push for the earliest possible adoption of the EU Common Position Defining Common Rules Governing the Control of Exports of Military Technology and Equipment (which will replace the EU Code, a draft of which was agreed by EU member state officials in May 2005)
- ensure that its domestic policies support, not undermine, efforts to agree an effective international Arms Trade Treaty.

## Notes

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- 2 This figure was obtained from UK Defence Statistics 2005 and 2006, *Defence Analytical Services Agency*, Table 1.12: Estimates of Total Export Deliveries & Orders: Defence Equipment & Services, <http://www.dasa.mod.uk/natstats>. They provide figures for 1999–2005, the average of which was just over 4.8 bn per year. These have been used as the basis for an estimate for the 10 years (for more on how the UK Defence Statistics are calculated, and some of the problems associated with this figure, see section 2.2).
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**Saferworld is an independent non-governmental organisation that works to prevent armed violence and create safer communities in which people can lead peaceful and rewarding lives.**

As the world's second largest arms exporter, the UK's decisions concerning arms exports are of critical importance. This report looks at the Government's policy and practice in this area over the last ten years. During its term of office, Labour has rewritten the UK's export control laws and shown real leadership internationally. However the typically 'good' official policies have too often been undermined by competing agendas or 'bad' implementation, with the consequence that there has been too much 'ugly' practice. The change in leadership and the review of the Export Control Act present an ideal opportunity for the Government to redeem its ultimately disappointing record on arms exports, and to ensure that Labour's future commitment to an ethical dimension is more than just rhetorical.

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