

08

ANNUAL REPORT

UNITED KINGDOM STRATEGIC EXPORT CONTROLS



BIS | Department for Business
Innovation & Skills



Foreign &
Commonwealth Office



MINISTRY OF DEFENCE

DFID | Department for
International
Development



UNITED KINGDOM STRATEGIC EXPORT CONTROLS

Annual Report 2008

*Presented to Parliament by
the Secretary of State for Foreign and Commonwealth Affairs,
the Secretary of State for International Development,
the Secretary of State for Defence and
the Secretary of State for Business, Innovation and Skills
by Command of Her Majesty
August 2009*

Data about SIELs, OIELs, SITCLs and OITCLs, granted, refused and revoked by country during 2008 is available via the new Strategic Export Controls: Reports and Statistics Website ECO searchable database;
<https://www.exportcontroldb.berr.gov.uk/>.

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Ministerial Foreword

to the Annual Report on Strategic Export Controls 2008

This is the twelfth Annual Report on Strategic Export Controls to be published by this government. It covers UK export control policy for the period January to December 2008. At a time when there is strong public, parliamentary, NGO and media interest in this issue, we remain committed to being as transparent and open as possible about our export licensing decisions and policy. In this way, all stakeholders can be assured that the trade in strategic goods is being handled responsibly.

2008 was another successful year for the export licensing community. The government processed 12,793 Standard Individual Export Licence applications. In parallel, the Department for Business, Innovation and Skills (BIS, formerly BERR) implemented the changes arising from the Post Implementation Review of new export control arrangements introduced in 2004. Legislation extended controls in areas of real concern, including the introduction in April of a new control on 'sting sticks', and (in October) a new three-tiered structure of trade controls which more accurately aligned extra-territorial trade controls to risk. This latter change tightened controls on Small Arms, Man Portable Air Defence Systems (MANPADS) and Cluster Munitions. In addition, the Export Control Order 2008 was laid before Parliament in December 2008, which tightens these controls further.

During 2008, in order to improve compliance levels, the Export Control Organisation formalised procedures for suspending a company's use of Open General Licences where non-compliance on the same issue was found on consecutive visits and in other circumstances where such action is warranted. Early indications are that this is having the desired effect.

In December 2008 Member States of the European Union finally agreed to the adoption of the Common Position, defining common rules governing the control of exports of military technology and equipment. This gives the Consolidated EU and National Arms Export Licensing

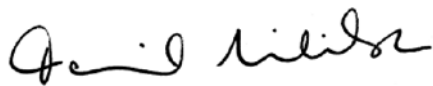
Criteria legal status, and requires all Member States to put in place legislation to cover the activities of brokers and traffickers, as the UK has already done. This government has also been actively pursuing our goal of securing an international Arms Trade Treaty. 2008 saw a series of meetings in New York by a Group of Government Experts (with specialists from 28 countries), culminating in October with another strongly supported resolution at the UN General Assembly. 2009 will see work move back to the General Assembly, which will allow all states, both supportive and sceptical to express their views.

Supporting our troops on the frontline and ensuring that they have the equipment they need for current and possible future operations is of primary importance to the government. A healthy defence industry is vital to ensuring that those capabilities exist. The Government's Defence Industrial Strategy recognises the importance of promoting a dynamic, sustainable and globally competitive defence manufacturing sector in the UK. Our long-term relationship with the defence industry also includes supporting it in its efforts to expand export opportunities. Such exports bring money to the economy, secure jobs and skills, and help sustain the industrial capabilities we need in the UK to ensure our Armed Forces can operate in the way they need.

The administration and enforcement of strategic export controls on military and dual-use goods, including trafficking and brokering offences, continues to be a priority for the government. Enforcement action in the financial year 2008-2009 resulted in 50 seizures, a successful prosecution, and over 22 cases where we prevented the export of goods that could have enhanced the weapons of mass destruction capabilities of other states. HM Revenue and Customs continue to be actively engaged in this field. In addition, we continue to make significant contributions to the multilateral regimes and counter-proliferation initiatives by sharing best practice and undertaking overseas capacity building.

Last year saw the publication of the revised methodology for Criterion 8 which enables DFID to select applications for assessment. This increased transparency in the government's export licensing process has been well received by the Committees on Arms Export Controls and other interest groups.

Each year we seek to improve the content and format of this report, responding to recommendations made by the Committees on Arms Exports Controls and other stakeholders, and adopt best practice from other annual reports. This year we have included further case studies to explain how we approach particular export licence applications, and how we reach decisions. We hope that readers will find this report an informative and useful guide to UK export control policy. We commend it to both Parliament and the public.



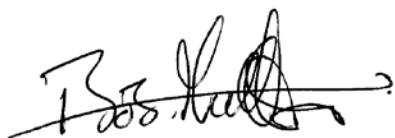
David Milliband (FCO)



Rt Hon Lord Mandelson (BIS)



Douglas Alexander (DFID)



Bob Ainsworth (MOD)

Section 1

Domestic Policy

1.1 OVERVIEW

The UK system for the licensing of strategic export controls is operated by a single export licensing community. This community comprises five government departments: Business, Innovation and Skills (BIS) (formerly BERR and the DTI)¹; the Foreign and Commonwealth Office (FCO); the Ministry of Defence (MOD); the Department for International Development (DFID); and Her Majesty's Revenue and Customs (HMRC).

EXPORT LICENSING COMMUNITY JOINT MISSION STATEMENT

"Promoting global security through strategic export controls, facilitating responsible exports"

Guiding Principles

We shall implement effectively the UK's framework of strategic export controls so as to ensure that sensitive goods and technology are kept out of the wrong hands, by assessing all export licence applications against the Consolidated EU and National Arms Export Licensing Criteria. In so doing we shall facilitate responsible defence exports, as these depend on a sound regime of controls.

We shall administer the licensing system efficiently so that we keep the compliance burden on UK exporters to the minimum. In particular we shall therefore:-

- within the framework of our case-by-case approach, ensure maximum predictability for exporters by taking decisions which are consistent with the Consolidated EU and National Arms Export Licensing Criteria and our policy statements;
- aim to meet our published performance indicators, which set us challenging targets for processing applications in a timely manner;
- be transparent about our performance and operations, including by publishing an Annual Report;
- establish a dialogue with exporters, our customers, to enable us to understand their concerns and them to understand our requirements. We shall support them in complying with the process through services such as BIS's website, and awareness activities and ratings. We shall keep our licence products under review to ensure they remain appropriate as circumstances change; and measure our performance against others, capture best practice via our outreach visits with other licensing authorities, through attendance at international export control seminars, and through feedback from UK industry.

Strategic export controls relate to:

- Items on the UK's Military List
- Dual-Use items listed under EC Regulation 1334/2000 or items caught by military and WMD end-use controls
- The UK Dual-Use List
- Goods controlled under the EU Torture Regulation (EC) No 1236/2005
- Goods which are controlled in the above that come

¹ The Department for Business, Innovation and Skills was created in June 2009. It was created by merging the Department for Business Enterprise and Regulatory Reform (BERR) and the Department for Innovation, Universities and Schools. Previously BERR had replaced the Department for Trade and Industry.

under UN, EU, OSCE and UK sanctions. Any related components, software and technology, including electronic transfers.

BIS's Export Control Organisation (ECO) is the licensing authority for strategic exports in the UK. It sets out the regulatory framework under which licence applications are considered, and the Secretary of State for BIS takes the formal decision to issue or refuse export licence applications, and where necessary to revoke extant licences, in accordance with the applicable legislation and announced policy.

The FCO, MOD and DFID act in a policy advisory capacity, providing the ECO with advice and analysis on the foreign, defence and international development policy aspects relevant to consideration of export licence applications against the Consolidated EU and National Arms Export Licensing Criteria (see table 1.1 for details).

HMRC is responsible for the enforcement of export controls, including looking at potential breaches that may result in a prosecution being brought through the Revenue and Customs Prosecution Office (RCPO) (see section 1.7 below).

1.2 Strategic Export Licence Application Process

Applications for Export, Trade ("brokered") or Transshipment Licences for strategically controlled goods are submitted electronically to BIS's Export Control Organisation (ECO) as the UK's competent licensing authority. Partners Across Government are then consulted as appropriate before a decision is reached on whether to issue or refuse a licence.

FCO provides advice about the current political situation in a destination and guidance about international commitments and obligations. The FCO's Export Licensing Team (ELT) which is housed within the Counter Proliferation Department, carries out an initial assessment of all applications sent to them and, depending on an application's complexity, ELT may then pass them on (for further consideration) to one of several other departments within the FCO, and to our Mission in the country concerned. This process regularly involves consultations with the FCO's International Organisations Department, to ensure that the potential export is not in contravention of our international commitments (Criterion 1). All licence applications to countries where we have concerns about human rights issues (Criterion 2) are referred to the Human Rights, Democracy and Good Governance Group. The FCO's network of overseas posts make a valuable and informed contribution to assessing applications, specifically when assessing licences against Criteria 2 and 3 (which addresses the internal situation of a recipient country) and 4, (which is concerned with the impact on regional stability of a proposed export). Only after completion of this detailed risk assessment is a recommendation then passed back from the FCO to the ECO. Finely balanced

applications are referred to FCO Ministers for a final recommendation.

MOD advice on export licence applications similarly reflects the results of an internal process that brings together advice from a number of areas. This routinely involves seeking the views of those responsible for protecting the capability of the UK's Armed Forces, and specialists from the security and intelligence fields. In addition, MOD has a procedure (the Form 680 process) for ensuring that companies seek clearance to use classified information they hold for the purposes of marketing their products overseas. Companies must also seek such clearance for the supply of classified goods. This procedure also benefits the licensing process, because F680 clearance is refused if there is no prospect of an export licence being approved for a given combination of product and destination.

DFID provides specific expertise and advice in considering applications to those developing countries eligible for concessional loans from the World Bank's International Development Association. DFID considers export licence applications destined to all International Development Association (IDA) eligible countries against Criterion 8, specifically; whether the proposed export would seriously undermine the economy, and whether the export would seriously hamper the sustainable development of the recipient country. DFID's export licensing team carries out an initial assessment of applications passed to them. Depending on any concerns identified, the applications may then be circulated to DFID country offices for further consideration. DFID may ask to see applications in respect of other countries of concern, as the department has a significant interest in exports that might contribute to conflict or human rights abuses.

Table 1.1 Government Resources

| | |
|--------------------------|------------|
| HMRC/RCPO/UKBA Resources | £3,087,500 |
| ECO | £4,011,000 |
| FCO | £450,000 |
| DFID | £100,000 |

1.3 Legislation

The Primary legislation covering the export of strategic goods from the UK is the Export Control Act 2002, as amended. The Act is implemented by secondary legislation ("Orders") under the Act.

The Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003, as amended, reproduced the export controls on physical exports that pre-dated the 2002 Act, but introduced new controls covering the electronic transfer abroad of military technology. This brought controls on military technology

into line with similar European Community (EC) controls on the electronic transfer of dual-use technology.

The Trade in Goods (Control) Order 2003, as amended, introduced controls to cover the trade in military equipment between two overseas countries where any part of the trading activity takes place in the UK whether by a UK person (individual or company) or a foreign visitor or resident. This coverage extends to UK persons operating wholly overseas (i.e. where no part of the deal actually takes place on UK territory) trading in "Restricted Goods" (i.e. Torture Equipment and certain long range missiles and their components) to any destination, or the brokering in controlled military goods to embargoed destinations.

European Council Regulation (EC) 1334/2000 adopted in June 2000, set up a community regime for the control of dual-use items and technology.

In 2007, the government, led by the ECO, began a review of the secondary legislation that was introduced under the Export Control Act 2002. Following a public consultation exercise, the government published responses to the consultation on 6 February and 21 July 2008, and 12 January 2009. As a result of the review, export controls on "sting sticks" (hand held, spiked batons) were introduced under The Export Control (Security and Para-military Goods) Order 2008. The Trade in Goods (Categories of Controlled Goods) Order 2008 introduced a three tier risk-based structure, as set out below;

The New Structure of Trade Controls

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

- **Category B goods** consist of Small Arms and Light Weapons (SALW), Long Range Missiles (LRMs) with a range over 300km (Note: this includes Unmanned Air Vehicles (UAVs) and Man Portable Air Defence Systems (MANPADS) and accessories, ammunition, and specially designed components therefore. "Production" equipment specially designed for MANPADS, field test equipment specially designed for MANPADS and specialised training equipment and simulators for MANPADS are also covered in this category.

- **Category C goods** consist of all goods contained within Schedule 1 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 that do not fall into either of the two categories below, and certain substances for the purpose of riot control or self-protection and related portable dissemination equipment.

Information on all aspects of the review, including the government's responses, can be found at <http://www.berr.gov.uk/consultations/page39910.html> or <http://www.berr.gov.uk/europeandtrade/strategic-export-control/legislation/export-control-act-2002/review/index.html>

1.4 Transparency and Accountability

The parliamentary committees on Arms Export Controls (CAEC) continued to scrutinise export licensing decisions and policy throughout 2008. While the government sought to make as much information as possible available to the public (including classified information relating to quarterly reports), it was obliged to protect some information, much of which is commercially sensitive, which it received as part of the licensing process.

In addition, the government continued to make Ministers available to give oral evidence to the committee. The then Defence Secretary Des Browne gave evidence to the Committee on 17 January 2008. Malcolm Wicks, the then Minister of State for Energy at BERR, appeared before the Committee on 19 May 2008. Transcripts of each of those sessions are available on the Committees on Arms Export Controls (CAEC) pages of the Parliamentary website – (<http://www.Parliament.gov.uk>). The Foreign and Commonwealth Office submitted written evidence on 9 June 2008.

The government is committed to increasing the level of transparency and quality of information it provides to both Parliament and to the general public. We continue to welcome suggestions for improvements from all stakeholders.

1.5 Awareness

As part of the government's extensive awareness campaign on export controls for industry around the UK, thirty eight seminars and training courses were held nationwide during 2008, attended by over 750 people from 300 organisations.

These comprised: beginners' workshops for those new to export controls; Intermediate-level seminars, covering a number of issues including; exporting technology, the different sorts of licences available, company compliance with export control legislation and the UK control lists; an open licences and compliance seminar; control list classification workshops; a new seminar on exporting cryptographic items; and a series of seminars on "Making Better Licence Applications" using the on-line licence application system SPIRE.

On-site training was delivered to 28 companies, an increase of 86% from 2007. Export Control Organisation (ECO) staff also gave a number of presentations over the past year to HM Revenue and Customs, Chambers of Commerce and Trade Associations.

In addition to these general awareness-raising activities, the government seeks to provide updates on specific countries of concern. The government continues to publish, on the ECO website, a list of Iranian entities of potential Weapons of Mass Destruction (WMD) concern. The list is intended to help exporters judge which exports might potentially be of concern on WMD end-use grounds, based on previous licensing decisions, and when they should contact the ECO for advice. Inclusion of an entity on the list does not necessarily indicate that an export licence would be refused, nor does non-inclusion mean that there are no end-use concerns. Exporters are encouraged to contact the ECO whenever they have any suspicions regarding possible WMD end-use.

Exporters continue to make good use of ECO's two web-based search tools which help to identify which products need a licence ("Goods Checker") and, if licensable, whether an open general licence potentially covers the proposed exports ("OGEL Checker"). "Goods Checker" provides a web-based search function across the consolidated UK Strategic Export Control List. "OGEL Checker" assists users who know the rating (control list classification) of their goods and the destination country for the proposed export to find out which Open General Export Licence(s) may cover the export, provided all the conditions can be complied with.

In 2008, over 2,300 individuals from more than 30 countries registered to use the checker tools. There was an average of 108 visits per day to the website, an increase of 40% on the number of visits in 2007. Both of these tools can be accessed at <http://www.ecochecker.co.uk>.

1.6 Compliance

ECO's compliance officers continued to visit companies and individuals holding Open Individual and Open General Licences both for exports and trade activity. The purpose of the visits was to establish whether the terms and conditions of the licences were being adhered to.

The following table shows the instances of non-compliance found at scheduled compliance visits during 2007 and 2008. In most cases these errors, and their causes, had been rectified by the time of the revisit 3-6 months later.

During 2008, ECO formalised procedures for suspending a company's use of Open General Licences where non-compliance on the same issue was found on consecutive visits. Between 16 May (when formal procedures were introduced) and 31 December 2008, 31 warning letters were issued informing the directors of the company what errors had been found at the visit and what steps needed to be taken to ensure compliance at the revisits. On every occasion where this happened in 2008, the revisit showed the company to be fully compliant with the terms of their licences.

1.7 HMRC Resources on enforcement and outreach

HM Revenue and Customs (HMRC) in collaboration with the United Kingdom Border Agency (UKBA) enforces the UK's strategic export controls using a combination of multi-functional teams and specialist strategic export control teams. The majority of HMRC local compliance and UKBA border officers are multi-functional, covering a wide range of fiscal controls as well as other regimes that prohibit or restrict goods imported and exported to and from the UK. All officers are equipped to carry out a range of duties and are supported by specialist teams when necessary.

Table 1.2 Details of Compliance Visits to Open Individual and Open General Licence Holders

| | Categories of misuse found | | | | General lack of knowledge leading to errors |
|------|---|--|-----------------------|-----------------------------------|---|
| | Number of Companies and sites holding open licences | Number of misuses identified in a year | Administrative errors | Unlicensed shipments ¹ | |
| 2007 | 1600 (approx) | 220 | 186 | 34 | 58 |
| 2008 | 1600 (approx) | 219 | 179 | 40 | 59 |

¹ These are cases where the company had no valid licence to cover the goods at the time of the shipment, but did not imply a licence would not have been granted e.g. the company had sent goods to its parent company in an EU country under a licence which only allowed sales to Governments.

HMRC has a full-time permanent Headquarters Policy Unit dealing with strategic export control and sanctions enforcement. In addition, HMRC has two specialist operational teams carrying out criminal investigations and intelligence work in this field. Officers at HMRC's National Clearance Hub undertake checks on customs export declarations and supporting documents for exports from the UK, including checking BIS export licences. Officers within HMRC's Large Business Service and Local Compliance teams audit UK exporters and also carry out pre-export licence checks on intra-EC transfers of controlled goods.

Staff within UKBA Frontier Detection Units carry out physical examinations of cargo at ports and airports, and also enforce passenger controls.

HMRC has continued to strengthen its links with other enforcement agencies in the field of strategic export control, participating in national and EU export control outreach and capacity-building events with a number of key partner countries, including: Croatia, Djibouti, Hong Kong, Jordan, Latvia, New Zealand, Pakistan and Serbia.

1.8 Enforcement actions taken by HMRC

On 25 July 2007, the Prime Minister, Gordon Brown, announced that the government would establish an Executive Agency, the UK Border Agency (UKBA), to provide a unified border force to strengthen our defences against illegal migration and terrorism, whose parent Department is the Home Office.

HMRC in partnership with the UKBA aim to prevent and deter the illegal trade in goods subject to export licensing, by seizing goods found to be in breach of export controls and investigating serious cases. Enforcement of export controls and sanctions continues to be a priority for HMRC. HMRC has enforcement functions in relation to both physical goods and the export of military and WMD technology by intangible means, which encompasses electronic transfer such as e-mail and fax.

HMRC is also responsible for enforcing the trade controls and controls on the provision of technical assistance in relation to the development of WMD.

In addition to the existing export controls, HMRC extended controls in 2008 to enforce recently enhanced United Nations sanctions (UNSCR 1803) against Iran. HMRC continued to work with a number of governments and international counterparts to implement the Proliferation Security Initiative (PSI), which is designed to prevent the proliferation of Weapons of Mass Destruction (WMD) and their missile delivery systems.

1.9 HMRC Seizures

The following table outlines the number of cases where HMRC and UKBA action resulted in the seizure of strategic goods since 2004.

Table 1.3 HMRC Strategic Exports and Sanctions

| Financial Year | Number of Seizures |
|----------------|--------------------|
| 2004-05 | 37 |
| 2005-06 | 34 |
| 2006-07 | 44 |
| 2007-08 | 55 |
| 2008-09 | 50 |

In addition to seizing goods at the frontier, in 2008 HMRC and UKBA took action in 22 cases to prevent the export of goods that could have assisted in countries acquiring a WMD capability.

Revenue and Customs Prosecution Office (RCPO) Prosecutions

The RCPO was established in as an independent prosecuting authority in April 2005. RCPO is a specialist prosecutor whose cases encompass income tax and value added tax (VAT) fraud, excise and duty fraud on oils, tobacco and alcohol, money laundering, strategic exports and drug smuggling. The cases that RCPO prosecute are investigated by either Her Majesty's Revenue and Customs (HMRC) or the Serious Organised Crime Agency (SOCA).

RCPO successfully conducted a number of strategic export prosecutions during the 2007 to 2008 financial year, details of which are included in this 2008 CAEC report.

During the same period three investigations by HMRC resulted in criminal proceedings being commenced by RCPO. These cases await trial in the Crown Court. A further case was prosecuted during the 2008-09 financial year.

At the time of writing a number of other serious cases are still at the investigative stage and RCPO prosecutors are providing HMRC investigators with legal advice in respect of them.

Export control cases often require protracted investigation, including obtaining evidence from abroad and liaison with international partners.

RCPO recognises the importance of dealing effectively with unlawful arms trafficking, deploying staff with the right skills and expertise to prosecute the cases effectively.

RCPO contributes to a number of cross-government multidiscipline groups in relation to the UK's policy on strategic exports. In addition, in 2008 RCPO contributed to and took part in a number of outreach programmes testing export control methods and providing knowledge and assistance to countries developing their own export control programme.

For further information see
<http://www.rcpo.gov.uk/rcpo/index.shtml>

The following table outlines successful prosecutions for breaches of UK strategic export controls in the last five years.

| Financial Year | Goods | Destination | Individual or company | Offence | Penalty |
|----------------|--|--------------------------------|--|--|---|
| 2004-05 | Aircraft parts | Iran | Saroosh Homayouni | Exportation of goods contrary to the Customs and Management Act 1979, Section 68 (2) | 18 months imprisonment (suspended); Banned from being company director for 10 years; asset forfeiture order for £69,980 |
| 2005-06 | Body armour | Pakistan | Praetorian Associates | Exportation of goods contrary to the Customs and Management Act 1979, Section 68 (1) | £2,500 fine |
| 2005-06 | Body armour | Kuwait Iraq Saudi Arabia | Vestguard UK Ltd | Exportation of goods contrary to the Customs and Management Act 1979, Section 68 (1) | £10,000 fine |
| 2006-07 | Body armour and helmets | Kuwait and Iraq | Peace Keeper International Ltd | Exportation of goods contrary to the Customs and Management Act 1979, Section 68 (1) | £10,000 fine |
| 2006-07 | Military helmets and flak jackets | Kuwait | Winchester Procurement Ltd | Exportation of goods contrary to the Customs and Management Act 1979, Section 68 (1) | £8,000 fine |
| 2007-08 | 100g of 2-Diisopropylaminoethyl chloride hydrochloride and 10g Hafnium | Egypt | Avocado Research Chemicals Ltd | Exportation of goods contrary to the Customs and Management Act 1979, Section 68 (1) | £600 fine plus £100 costs |
| 2007-08 | MPT9 Sub-machine Guns | From Iran to Kuwait | John Knight of Endeavour Resources Ltd | Trafficking weapons contrary to Article 9(2) of The Trade in Goods (Control) Order 2003. | 4 years imprisonment and confiscation order of £53,389.51 |
| 2007-08 | Gyro-compasses | Iran | Mehrdad Salashor | Exportation of goods Contrary to the Customs and Excise Management Act 1979, Section 68 (2) | 18 months imprisonment and £432,970 confiscation order under the Proceeds of Crime Act 2002 |
| 2008-09 | 3 Military Land Rovers and 2 Military Unimog Lorries | Sierra Leone | Milestone Trading Ltd | Attempted exportation of goods contrary to the Customs and Management Act 1979, Section 68 (1) | £671 fine plus £200 costs. |

Section 2

International Policy

Non Proliferation Treaties and Export Control Regimes

For domestic policy to be effective, it must reflect our commitments and obligations under international non-proliferation treaties and the regimes and arrangements that supplement them. We rigorously implement our commitments and work actively with partners to ensure that controls are effective.

2.1 Export Control Commitments in 2008

The following table lists the UK's export control regimes and non-proliferation commitments, and their areas of coverage. Also shown in the lists are other international organisations involved directly in export controls. Annex D lists the year in which the export control regime was established and current membership.

| Areas of coverage | Commitment |
|--|---|
| Nuclear: | <ul style="list-style-type: none">• Treaty on the non-proliferation of Nuclear Weapons (NPT)• The Zangger Committee• Nuclear Suppliers Group (NSG) |
| Chemical and Biological: | <ul style="list-style-type: none">• The Chemical Weapons Convention (CWC)• Organisation for the Prohibition of Chemical Weapons (OPCW)• The Biological and Toxins Weapons Convention (BTWC)• The Australia Group |
| WMD Delivery Systems | <ul style="list-style-type: none">• The Missile Technology Control Regime (MTCR) |
| Conventional Weapons | <ul style="list-style-type: none">• The Wassenaar Arrangement (WA)• The Ottawa Convention |
| Other Organisations involved directly in Strategic Export Controls | <ul style="list-style-type: none">• United Nations (UN), including the UN Security Council• G8 Initiatives• European Union (EU)• Organisation for Security and Co-operation in Europe (OSCE) |

2.2 Countries subject to Embargo or Other Restrictions

The following table lists UN, EU, OSCE and other restrictions on the export of items

| Table 2.2 Export restrictions by country | | |
|--|------------------------|---|
| Country | Source | Instrument |
| Armenia & Azerbaijan | OSCE | Decision of the Committee of Senior Officials of the OSCE 28/02/92 |
| Burma | EU | Common Position 2007/750/CFSP (19/11/2007) |
| Burundi | UN [embargo on Rwanda] | UNSCR 997 (1995) |
| China | EU | Declaration by the Madrid European Council 27/06/89. |
| Cote d'Ivoire | UN EU | UNSCR 1782 (2007) Common Position 2007/761/CFSP (23/11/2007) |
| DRC | UN EU | UNSCR 1771 (2007) UNSCR 1807 (2008) Common Position 2008/369/CFSP (15/5/2008) EC Regulation 1209/2005 (27/07/2005) |
| Iran | UN EU | UNSCR 1803 (2008) UNSCR 1747 (2007) UNSCR 1737 (2006) Common Position 2008/632/CFSP (8.8.2008) Council Regulation (EC)No 423/2007 |
| Iraq | UN EU | UNSCR 1546 (2004) UNSCR 1483 (2003) UNSCR 661 (1990) Declaration 56/90 (4/8/90) Common Position 2003/495/CFSP |

Table 2.2 (continued)

| Country | Source | Instrument |
|--------------|--|---|
| Liberia | UN EU | UNSCR 1792 (2007) Common Position 2008/109/CFSP EC Reg 234/2004 (10/2/2004) |
| North Korea | UN EU | UNSCR 1718 (2006) Common Position 2006/795/CFSP EC Reg 329/2007 |
| Rwanda | UN | UNSCR 1749/2007 (28/03/2007) |
| Sierra Leone | UN EU | UNSCR 1171 (1998) EU Common Position 1998/409/CFSP (29/06/1998) |
| Somalia | UN | UNSCR 1844 (2008) |
| Sudan | UN EU | UNSCR 1591 (2005) EU Common Position 2005/411/CFSP 2008/369/CFSP |
| Tanzania | UN embargo on Rwanda (applies to the sale and supply of arms to neighbouring States) | UNSCR 997 (1995) |
| Uganda | UN embargo on Rwanda (applies to the sale and supply of arms to neighbouring States) | UNSCR 997 (1995) |
| Uzbekistan | EU | Common Position 2007/843/CFSP (10/11/2008) |
| Zimbabwe | EU | Common Position (2004/161/CFSP) 2008/135/CFSP (19/02/2007) |

In addition, it is UK policy to take into account the moratorium on the import, export and manufacture of light weapons when considering relevant licence applications to export small arms and light weapons to ECOWAS Member States. The Moratorium applies to pistols, rifles,

shotguns, sub-machine guns, carbines, machine guns, anti-tank missiles, mortars and howitzers up to 85mm and ammunition and spare parts for the above by ECOWAS states (Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo) when assessing licence applications. The ECOWAS moratorium was declared on 1 November 1998 and a code of conduct on its implementation was agreed on 24 March 1999.

2.3 EU Code of Conduct and the Common Position

On 8 December 2008 the Council adopted Common Position 2008/944/CFSP “defining common rules governing control of exports of military technology and equipment”. This legally binding instrument builds on and replaces the 1998 EU Code of Conduct on Arms Exports.

2.4 Assessment of Export Licence Applications

The Consolidated EU and National Arms Export Licensing Criteria (Since December 2008 an EU Common Position) sets out eight criteria against which every export licence application (ELA) is assessed. If an ELA does not meet the strict measures of the criteria, then the export will be refused.

Table 2.3 Consultation requirements

Criterion One

When assessing an ELA under Criterion One the International Organisations Department (IOD) at the Foreign and Commonwealth Office must be consulted to confirm whether the country of final destination is currently subject to any embargoes or other restrictions.

Criterion Two

When assessing an ELA under Criterion Two, British Diplomatic Posts, Geographical Desks and the Human Rights Democracy and Governance Group (HRDGG) at the Foreign and Commonwealth Office must be consulted if the end destination of a proposed export is on HRDGG’s “List of Countries of Concern”.

Criterion Three

When assessing an ELA under Criterion Three, the Foreign and Commonwealth Office (FCO) should be consulted to assess the risk of a potential export provoking or prolonging armed conflict or aggravating existing tensions or conflicts in the country of final destination.

Table 2.3 (continued)

Criterion Four

When assessing an ELA under Criterion Four, the views from staff at the British Diplomatic Posts in the country of destination should be sought to assess the peace, security and stability in the region. The Ministry of Defence (MOD) should also be consulted to establish if the proposed export could be used for a purpose other than legitimate national security.

Criterion Five

When assessing an ELA under Criterion Five the Ministry of Defence (MOD) must be consulted to consider whether a proposed export could have an impact on the security of the UK, UK assets overseas and the security of allies, EU member states and other friendly countries.

Criterion Six

When assessing an ELA under Criterion Six the Foreign and Commonwealth Office (FCO) should be consulted to assess the behaviour of the buyer country with regard to the international community, in particular its attitude to terrorism, the nature of its alliances and respect for international law.

Criterion Seven

When assessing an ELA under Criterion Seven the Ministry of Defence (MOD) must be consulted if the proposed export could have a military end-use or if there are concerns about the military capabilities of the importing country. An assessment is also made of whether the goods could be diverted to an undesirable end-user in either the importing country or to an undesirable end-user in another state.

Criterion Eight

When assessing an ELA under Criterion Eight, the Department for International Development (DFID) must be consulted if the importing country is on the International Development Association (IDA) list http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/IDA/0,,contentMDK:20054572~menuPK:3414210~pagePK:51236175~piPK:437394~theSitePK:73154_00.html (AnnexG), and the value of the application exceeds the threshold set by the Criterion 8 methodology. DFID then considers the potential impact of the proposed export on the sustainable development of the recipient country.

Once the ELA has been fully assessed by the relevant Government Departments, BIS makes the formal decision. An ELA could be approved or refused on a complete or partial basis, and the refusal could be based on more than one criteria. If new information comes to light after an ELA has been approved that casts doubt on the approval, then the export licence could be revoked.

The following section aims to give an insight into how HMG assesses a licence application on a “case-by-case” basis in five separate case study scenarios. The case studies are based on actual export licence applications but for reasons of commercial confidentiality not all details have been included.

Iraq – Case Study

General trade sanctions against Iraq, except prohibitions related to the sale or supply of arms and related materiel, were revoked by UN Security Council resolution (“UNSCR”) 1483 (2003); implemented in UK legislation on 14 June 2003 by the Iraq (United Nations Sanctions) Order 2003 [SI 2003/1519]. UNSCR 1546 (2004) continued the embargo on arms and related material against Iraq, but provided an exemption for equipment required by the Government of Iraq or the Multinational Force to serve the purposes of UNSCR 1546 (2004).

In addition to observing the UK’s international obligations under UN arms embargoes (Criterion 1), the Government will also look closely at Criteria 2, 3, 5 and 7 of the Consolidated EU and National Arms Export Licensing Criteria when considering licence applications for exports to Iraq.

In 2008, 62 SIELs, 1 OIEL, 20 SITCLs and one OITCL were approved for exports to Iraq, while 4 SIELs and 3 OITCLs were refused.

Of the licences approved, all SIELs were for military equipment (including assault rifles, general purpose machine guns and semi-automatic pistols). The licences were approved for a number of end uses including personnel security protection and diplomatic protection. Where the end user was a private entity contracted to the government of Iraq or Multinational Force, there was a requirement to provide end user assurances and government of Iraq or Multinational Force end user certification for the proposed export. In these cases the government consulted the British Embassy in Baghdad and satisfied itself that the appropriate certification had been presented, and that the exports fell within the exemptions to the arms embargo imposed by UNSCR 1546 (2004) because they were required by the Government of Iraq or the Multinational Force to serve the purposes of the resolution.

These applications were subject to a high degree of scrutiny, and the final decisions were taken at a Ministerial level.

Nepal – Case Study

Nepal is not currently subject to any embargoes or other trade restrictions. During 2008, the internal situation in Nepal changed significantly. Successful democratic elections were held in April 2008 for a Constituent Assembly in which former Maoist rebels participated. The Communist Party of Nepal (Maoist) (CPN-M) won more than a third of the Assembly’s 601 seats, making it the largest party, and in August 2008 it formed a coalition government, led by the former Maoist rebel leader, Pushpa Kamal Dahal. The government promised to implement the remainder of the November 2006 Comprehensive Peace Agreement. But progress has been slow, particularly on the most pressing and difficult issue of the integration into the security forces, or rehabilitation into civilian life, of the 19,600 Maoist combatants registered by the UN. Risks of a return to conflict remain. As of June 2009, the combatants and their weapons remain in cantonments under the supervision of the UN Monitoring Mission in Nepal (UNMIN). The Nepal Army remains in barracks, apart from those troops participating in UN peacekeeping missions overseas – Nepal is the fourth largest troop contributor to UN missions. A multi-party Special Committee on Integration formed to find a way forward started work in February 2009.

We carefully considered all export licence applications destined for Nepal against Criteria 2 (human rights) and 7 (risk of diversion). The government continues to have human rights concerns about the Nepalese security forces, which have a history of human rights violations, and concerns that past transgressions and the culture of impunity have not been fully addressed by the Nepalese authorities.

In 2008, 2 SIELs and 1 SITCL were approved for Nepal, while none were refused. Equipment approved included military helmets and components for body armour for use by humanitarian organisations, and night vision goggles which were approved for use by the Nepalese police during their deployment on peacekeeping operations in Darfur, Sudan – where the ability to effectively operate at night is critical both for ensuring the safety of the Internally Displaced Persons camps and conducting effective patrols. The government attaches a high priority to the African Union/United Nations Hybrid Mission in Darfur (UNAMID), which is one of the most difficult the UN has ever undertaken. The UK is working closely with UN, African Union and international partners to help UNAMID improve security. We continue to press the UN and Sudan for the rapid and effective deployment of UNAMID.

Nepal – Case Study *(continued)*

The government was satisfied, after seeking advice from the FCO, the MOD and DFID, that all licences were subject to a high degree of scrutiny and were consistent with the Consolidated Criteria based on the information available at the time, and with full consideration of the criteria of concern. Where necessary the final decision was taken at a Ministerial level. For relevant licences, the British Embassy in Kathmandu, the geographical lead department on Nepal and the Human Rights, Democracy and Governance Group of the FCO were also consulted.

Turkmenistan – Case Study

Turkmenistan remains a country of major concern with regard to human rights. There have been some modest improvements in the human rights situation, but further action is needed to meet internationally accepted standards. Though the pace of reforms has slowed somewhat, there remains a readiness for dialogue with the international community over Turkmenistan's fulfilment of its human rights obligations. The UK continues to work through the EU's human rights dialogue and the EU's Central Asia strategy, which supports good governance, the rule of law and human rights.

All export licence applications destined for Turkmenistan are considered against the Criteria, in particular Criteria 2 (human rights) and 7 (risk of diversion).

In 2008 an export licence was received for dual-use radio jamming equipment for the Turkmenistan Ministry of National Security. We were informed that the equipment was ordered by the Ministry of National Security for use by a military unit. Little further information on the end use of the equipment was provided. This application raised concerns with regards to Turkmenistan's human rights record, clarity over the final end user and end use of the equipment. To judge the risk of this equipment being used in human rights abuses, we consulted our Embassy in Ashgabat, the geographical lead department on Turkmenistan and the Human Rights and Good Governance Group.

Turkmenistan – Case Study *(continued)*

Post informed us that the goods were very similar to equipment already used on a daily basis by the Turkmen authorities in order to monitor the public. Separately, the Human Rights and Good Governance Department advised that there are severe restrictions on privacy and basic freedoms, with journalists who co-operate with foreign media being subject to harassment and arbitrary detention. A recent high profile example arose during the EU/Turkmen human rights dialogue in June 2008, when a journalist working for Radio Free Europe was picked up by the security services, moved from prison to prison and allegedly tortured. He was eventually released after international pressure.

With minimal information on the end user and without further clarity over the end use, the FCO assessed that, under the Consolidated Criteria, a clear risk existed that these goods could be used for internal repression, as the equipment had a clear application in intercepting calls and locating and tracking individuals, which the Turkmen authorities are known to employ. The application was therefore refused under Criterion 2.

Libya – Case Study

We remain concerned by the human rights situation in Libya. In particular, freedom of expression and treatment of detainees continue to be areas of concern. However, the past five years have seen an improvement in Libya's human rights record. One indication of this improvement is the increased co-operation international human rights organisations have received from the Libyan government. A number of these organisations have been able to visit Libya to assess the human rights situation in-country. The UK continues to look for ways in which we can work with the Libyan Government to improve human rights in Libya.

An export licence was received for Armoured Personnel Carriers and components for the Libyan police. We were informed they would be used to transport and protect officers in crowd control situations, such as sporting events. We have concerns with Libya's human rights record. Particularly relevant was an incident in 2006 where the police handled a riot situation poorly resulting in the deaths of civilians. To judge the risk of this equipment being used in human rights abuse, such as this, we consulted our Post in Tripoli and the FCO Human Rights and Good Governance Group.

Libya – Case Study (*continued*)

Post informed us that a UK based company had carried out training with the relevant unit of the Libyan Police Force in Public Order Tactics and command, based on UK policing methods and ethos. This was evaluated as successful in June 2007 by the UK MOD. The vehicles covered by the licence were destined for this trained unit.

Whilst a risk remained that these vehicles could be used in poorly managed crowd control situations, it was assessed that the training provided sufficiently mitigated the risk, and that the vehicles and the training combined gave the Libyan authorities the ability to exercise control without resort to lethal force. There remain wider human rights risks in Libya, but it was judged very unlikely that these vehicles would be used to carry out abuses. As a result it was concluded, with reference to the Consolidated Criteria, that there was not a clear risk that these vehicles would be used for internal repression and the licence was approved.

Footnote: For this case study to be relevant we have included details of the end-user. This information is not normally given, but it was decided it was appropriate in this instance.

2.5 Arms Trade Treaty

As one of the world's major arms exporting countries, the UK is committed to a responsible arms trade.

The UK continues to play a leading role in work towards a legally binding international Arms Trade Treaty (ATT) to prevent the unregulated trade in conventional arms. One of our priorities is to ensure that globally traded arms are not used to exacerbate conflict. We also want to ensure that international human rights law, international humanitarian law and sustainable development criteria are reflected in an ATT.

What the UK has done to take forward an ATT in 2008?

In the period February – August 2008 we participated in three meetings of 28 experts convened by the UN to consider an ATT. We helped balance the views of sceptics and supporters to gain agreement for a report, which at the end of this process, called for further UN work towards an ATT.

What would the Arms Trade Treaty (ATT) do?

An Arms Trade Treaty would be a legally binding agreement between States that they will all use high standards in assessing whether to export conventional arms. This will help regulate the global arms market and

prevent weapons reaching the hands of terrorists, insurgents and human rights abusers. For example, this would stop weapons reaching those who use them to:

- undermine stability and democracy
- undermine development
- abuse human rights.

Non-Governmental Stakeholders

We work closely with our NGO partners, particularly through the Control Arms campaign, to raise awareness of an ATT domestically and globally. During 2008 we supported their activities in Africa and the Caribbean where NGOs held successful seminars and conferences on the ATT, and their continuing advocacy campaigns in countries where there is reluctance to support the UN ATT process.

“The ATT presents the UN with a new way to address the relationship between conflict, poverty, human rights, development and trade”.

Anna Macdonald, Conflict and Humanitarian Campaign Manager, Oxfam in the FCO newsletter “News and Views” September/October 2008 edition

On 9 September 2008 the Foreign Secretary launched the current phase of the UK's ATT campaign and highlighted the wider benefits of an ATT to leaders of international trade groups, faith groups, civil society and academia. He reiterated that the UK would take forward work towards an ATT in the UN as a matter of priority. (<http://uk.youtube.com/ukforeignoffice>)

In early October 2008 the UK introduced, with our six co-author partners (Australia, Argentina, Costa Rica, Finland, Kenya and Japan), a new UN Resolution to take forward work on an ATT in 2009.

On 31 October, despite reluctance by some countries to move forward so quickly, we received overwhelming support for the resolution; 116 countries agreed to co-sponsor it, and a total of 147 (of 192) countries voted in favour.

In December, at the UNGA vote on the ATT, 131 countries voted in favour (nearly 90%) and only 1 voted against. There were 19 abstentions.

Further information about the UK's work towards an ATT can be found on the FCO website: <http://www.fco.gov.uk/en/fco-in-action/counter-terrorism/weapons/arms-trade-treaty/>

2.6 Small Arms and Light Weapons

Our objective is to tackle the humanitarian and developmental consequences of the uncontrolled spread

and accumulation of small arms and light weapons. We acknowledge that states have an inherent right of self-defence and therefore that the responsible trade in arms is legitimate. But illicitly traded small arms and light weapons are instrumental in the deaths of hundreds of thousands of people annually and promote criminal activities such as drug trafficking and the financing of organised crime. So we are working to stop the destabilising accumulation of weapons, destroy excess stocks, and tackle illicit weapons transfers.

The main international instrument on small arms is the UN Programme of Action (UNPoA) to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects. The UK is committed to its full implementation.

At the UNPoA third Biennial meeting of States in New York in July 2008, the UK pushed for more action on illicit brokering. The meeting agreed a set of strong recommendations to implement the findings of the Group of Governmental Experts that had met in 2006 and 2007. The UK also produced leaflets explaining how we are able to channel assistance to other countries to help them take forward work under the UNPoA. This was welcomed by a large number of States, UN agencies and civil society.

In addition the UK continues to seek to establish common norms and principles, primarily through regional and sub-regional co-operation on transfer controls, and to work closely with our NGO and international partners to ensure this work is as effective as possible.

The FCO works closely with partners in DfID and MOD to: address the long term structural causes of conflict; manage regional and national tension and violence; and support post-conflict reconstruction through a Security Sector Small Arms and Light Weapons Strategy.

Since 2001 the UK has provided over £35 million in support of projects, often implemented through our NGO and UN partners, to reduce the demand for, and availability of, small arms and light weapons.

Security Sector SALW Strategy Projects in 2008

- Helped mainstream small arms and light weapons control and reduction measures into wider defence relations, foreign policy, conflict, security and development programmes;
- Supported the implementation of national plans and regional and international agreements to control small arms and light weapons, including the UN PoA;
- Supported the Nairobi-based Regional Centre on Small Arms (RECSA), which helps countries in central and eastern Africa to strengthen their controls on small arms;
- Assisted with weapons destruction programmes;
- Supported internationally renowned research and analysis, in particular the Small Arms Survey, which published its 2008 yearbook in August on the themes of risk and resilience, including an overview of the burden of armed violence; and
- Supported a series of assessments by Saferworld of current legislation regarding transfer controls.

To promote better small arms control, the UK also:

- Played a key role in a process within the Organisation for Economic Co-operation and Development (OECD) to draft programming guidance for donor countries on how to control small arms and reduce armed violence in poor countries; and
- Participated in discussions about, and provided funding for, small arms and light weapons activity under the auspices of the UN Institute for Development and Research, UN Office for Disarmament Affairs, the EU, the Organisation for Security and Co-operation in Europe (OSCE), and the Wassenaar Arrangement.

2.7 EU Torture Regulation

The UK applies the most rigorous controls to a wide range of items which have been specifically identified as having a use in torture. Such items are covered by the EU Torture Regulation (EC) No 1236/2005, and are category A goods under UK Trade Controls, which means that we also control their trading, advertising, general promotion, and any other acts calculated to promote their supply when undertaken by a UK person anywhere in the world. This is in addition to obligations under the EU Regulation.

Responses to the 2007 consultation as part of the Export Control Act review convinced us that we needed to go further. We therefore have decided to try to negotiate an EU end-use control on torture equipment. This would enable EU member states to licence – and refuse – the export of any goods intended for use in torture. This is to ensure that the EU as a whole will operate to the same standards and that UK exporters cannot circumvent the control simply by exporting from other EU countries. We have begun the process of trying to gain support for this proposal within the EU; initial signs are encouraging.

2.8 Cluster Munitions

On 3 December 2008 the UK joined over ninety countries in signing the Convention on Cluster Munitions (CCM). The CCM achieved our shared aim of banning the use, production, transfer and stockpiling of cluster munitions that cause unacceptable harm to civilians. This is one of the most significant new arms control agreements in recent years. It will make a real difference to the lives of those affected by these weapons by preventing their future use and proliferation, and facilitating international assistance to clear contaminated areas, and to provide support for victims.

We are proud of the leading role the UK played in bringing about this strong humanitarian focused convention. The Prime Minister's announcement that the UK would support a ban on all cluster munitions broke the deadlock in the final negotiations that took place in Dublin from 18-30 May 2008.

Although the CCM is not yet in force, we have begun to implement key provisions, including the prohibition on transfers. Under the new trade controls announced by the Department for Business, Enterprise and Regulatory Reform (BERR) (now BIS) on 1 October 2008 cluster munitions were classified as category A goods, making them subject to the most stringent trade controls. Trading between two overseas countries where any part of that trading takes place within the UK, or is carried out by UK persons, will be controlled, as will any act calculated to promote their supply or delivery.

The Government is committed to the UK ratifying the Convention as soon as feasible. Before ratification the necessary criminal offences will need to be enacted into domestic law to prevent any activity prohibited under the Convention from taking place on territory, or by a person, under UK jurisdiction or control. A Bill will be brought before Parliament as soon as parliamentary time allows.

2.9 Wassenaar Arrangement

The 14th Plenary Meeting of the Wassenaar Arrangement (WA) was held in Vienna in December 2008. Delegates discussed the issue of "Destabilising Accumulations of Conventional Weapons", MANPADS, Re-export controls and Outreach activities.

The Plenary was concerned about the acquisition of Man Portable Air Defence Systems (MANPADS) by unauthorised users. The WA will continue these discussions in order to strengthen export controls on MANPADS, and to promote the WA Elements on Export controls of MANPADS to non-participating states.

The WA continues to place a high priority on transparency and outreach to non-participating states and international organisations, with the aim of promoting robust export controls throughout the world.

The Plenary also agreed to a number of changes to the control lists. These included changes to entries for Submersible Vehicles and new controls relating to Jamming Equipment for Improvised Explosive Devices. UK experts played a leading part in the Technical Working Groups that drew up the recommendations.

The next regular WA plenary meeting will take place in Vienna in December 2009. For further information see www.wassenaar.org.

2.10 UN Register of Conventional Arms

The UN Register of Conventional Arms is a voluntary global reporting instrument, intended to create greater transparency in international arms transfers and help identify any excessive build-up of arms in particular countries or regions. The United Nations Register currently covers seven categories of conventional weapons, namely: battle tanks; armoured combat vehicles; large-calibre artillery systems; combat aircraft; attack helicopters; warships (including submarines); and missiles and missile-launchers (including man-portable air defence systems). There is an additional background section of the Register for countries to report national holdings of Small Arms and Light Weapons.

The UK reports annually to the UN on all exports of military equipment in these categories and will again provide this information by June 2009. Whilst all reporting to the UN Register is voluntary, the UK continues to see the importance of regular and comprehensive reporting, and actively encourages all UN member states to participate with similar levels of transparency.

2.11 Nuclear Suppliers Group

Since its foundation in 1975, the Nuclear Suppliers Group (NSG) has sought to reduce global nuclear proliferation by controlling the export and re-transfer of materials that may be applicable to nuclear weapons development. It also promotes effective safeguards and the protection of existing nuclear materials.

In May 2008, the NSG Plenary was held in Berlin, Germany. Throughout the year the 45 participating governments (PGs) made significant progress on key nuclear supply issues, such as seeking tougher controls on transfers of enrichment and reprocessing items, and establishing an Additional Protocol as a condition of supply for all Part 1 items. (Part 1 items, also known as 'trigger list' items, are items especially designed and prepared for nuclear uses). UK experts also continued to play a key role in Technical Working Groups, where discussions focused on areas such as stable isotope separation and dimensional inspection machines.

The NSG held an extraordinary Plenary in Vienna in September 2008 to negotiate and reach consensus on an exemption for India to the NSG Part 1 Guidelines. This brings India further into the nuclear non-proliferation regime by allowing controlled nuclear trade to Indian facilities under IAEA Safeguards. This was a key achievement for the Group, and particularly for the UK who had worked hard to reach consensus.

2.12 Australia Group

The Australia Group is an export control regime established in 1985 that aims to prevent the proliferation of WMD, specifically chemical and biological agents and dual-use manufacturing equipment. It is not legally binding. The Australia Group's principal objective is to use export licensing measures to ensure that exports of certain chemicals, biological agents, and dual-use chemical and biological manufacturing facilities and equipment, do not contribute to the spread of chemical and biological weapons. There are currently 41 members of the Australia Group, including the EU. All Australia Group members are also States Parties to the Chemical Weapons Convention (CWC) and Biological and Toxic Weapons Convention (BTWC), and the support for these conventions and their aims remains the overriding objective of the Australia Group. By co-ordination of export control measures, the Australia Group participants fulfil their obligations under the CWC and BTWC totally. One of the tools the Australia Group uses to control chemical and biological agents, facilities and manufacturing is the Australia Group control list which is a list of the non-permissible agents. This can be found on the official Australia Group website <http://www.australiagroup.net/en/controllists.html>

The UK believes that international cooperation in the CWC and BTWC are key to defeating the threat of chemical and biological weapons. And by the UK working with and through the Australia Group, the export of materials which create WMDs are monitored and better controlled.

2.13 The Missile Technology Control Regime (MTCR)

Since its establishment in 1987, the Missile Technology Control Regime (MTCR) has made a significant contribution to international efforts on the non-proliferation of missiles.

In November 2008, the MTCR plenary meeting was held in Canberra, Australia. The 34 participants exchanged information and discussed trends in missile developments around the world, noting the growing risk of proliferation of WMD and their means of delivery. Of most concern was missile proliferation in Northeast Asia, South Asia and the Middle East, and in particular the Iranian and North Korean missile programme. Participants reaffirmed their determination to strengthen export controls and to maintain their relevance in the light of rapid changes

in relevant technology. Participants also exchanged information on their outreach to non-participants.

2.14 Outreach

Outreach activities to promote effective export controls are an extremely important tool in the fight against proliferation. The UK works closely with the EU, the USA and others in this work. Outreach can take several forms, including bilateral work by the UK, or multilateral efforts through institutions within the EU, the Wassenaar Arrangement and other export control regimes such as the MTCR. Teams of officials from various government departments conduct export control visits (outward) and host delegations from invited countries (inward), addressing practical and policy issues surrounding export licensing and enforcement. Activities in 2008 typically included seminars and visits (both inward and outward) covering such topics as the UK's export licensing system, industry awareness, capacity building, and customs procedures. Officials from all of the UK government departments in the export licensing community are routinely involved in outreach work.

In the period since the last Annual Report, UK officials have undertaken outreach activities with Brazil, China (including the Special Autonomous Region of Hong Kong), Djibouti, Israel, Jordan, Latvia, Malaysia, New Zealand, Pakistan and SEE States (including Serbia, Croatia, Bosnia and Herzegovina, Albania and Moldova) and Thailand.

2.15 Gifted Equipment

The government may agree to gift new and surplus equipment to overseas governments in support of our wider security and foreign policy aims. All gifting proposals are assessed against the Consolidated EU and National Arms Export Licensing Criteria by relevant government departments. When gifts are approved, the transfer of the equipment from the UK takes place under Crown Immunity. The list of gifts approved by HMG in 2008 is set out below in Table 2.4.

Table 2.4 Equipment gifted by the Government in 2008

| Country | Recipient | Total cost | Description |
|--------------------------|---|----------------------------|--|
| Lebanon | Lebanese Armed Forces | £396,540 | 660 ballistic combat helmets and other protective equipment |
| Pakistan | Pakistan | £6.0M £1.5M £184,900 | 2 Mi17 helicopters 2 Dragon portable search lights 2 Transac bomb disposal response vehicles and operator accessories 2 Land Rover Defender vehicles 1 HazMat-ID |
| Guyana | Guyana | £20,785 | 50 Tactical Vests |
| Darfur | Darfur | £4.0M | Funding contribution to US for UNAMID |
| Oman | Oman | £49,431 | 3 Challenger 1 steering units |
| Bolivia | Bolivia | £100,000 | 300 ballistic combat helmets |
| E Caribbean | Regional Security System in Eastern Caribbean | £243,608 | 1 Sea Ark boat 1 Zodiac RHIB boat 1 Ford F150 vehicle and tools and accessories |
| Turks and Caicos Islands | Turks and Caicos Islands Police Marine Unit | \$143,372US | 1 Zodiac RHIB boat |
| Belize | Belizian Defence Force | £32,000 | 30 Bedford 4 tonne vehicles |
| Poland | Museum of Polish Aviation Krakow | £7,000 | 1 SEPECAT Jaguar GR1 |
| USA | Sequoia Research Corp | £50.00 | 2 electronic boxes and spare leads |
| Algeria | Command of the National Genarmerie | £77,000 | 1 recoilless disruptor and cartridges |
| Afghanistan | Afghan Territorial Force | £58,000 | 34 Night Vision Goggles |
| Czech Republic | Czech Republic | £200,000 | 4000 flares |
| Sierra Leone | Sierra Leone | Not recorded | 80 Barrett radios |

Section 3

Export Licensing Decisions during 2008

3.1 Background to export licence decisions

In assessing applications for individual licences, on the basis of the information supplied by the exporter, officials in the Export Control Organisation (ECO) will first determine whether or not the items are controlled and, if so, under which entry in the relevant legislation; the relevant alphanumeric entry is known as the “rating” of the items. Items and activities subject to control for strategic reasons are as follows¹:

- Exports of items entered in Part 1 (the UK military list) and Part 2 of Schedule 1, and Articles 8, 9 and 10 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003, as amended. The text is at Annex H.
- Trading activities and goods specified in the Trade in Goods (Control) Order 2003 (as amended). This Order was amended by the Trade in Goods (Categories of Controlled Goods) Order 2008, which introduced three risk based categories of goods (A, B and C).
- Trading activities and goods specified in The Trade in Controlled Goods (Embargoed Destinations) Order 2004 (as amended).
- The provision of technical assistance is controlled where the provider knows or has been made aware that the technical assistance will be used for “any relevant use” outside the EU.
- Items that the exporter has been told, knows or suspects are or may be intended for “any relevant use”. This is the “WMD end-use” or “catch-all” control and goods controlled for these reasons are given the rating “End-Use”.

¹ A new consolidated Order, the Export Control Order 2008 was made on 15th December 2008 but did not enter into force until 6th April 2009. This introduces a number of changes to controls to reflect the outcome of the 2007 review and public consultation, and consolidate all the existing secondary legislation into one Order.

- The transfer of technology by any means is controlled where the person making the transfer knows or has been made aware that the technology is for “any relevant use”² outside the EU.
- Exports of items entered in Council Regulation (EC) 1334/2000, as amended (the Dual Use Regulation adopted in June 2000) setting up a Community regime for the control of exports of dual-use items and technology. A brief summary of the dual-use list categories and sub-categories is at Annex I.
- Exports of items entered in Council Regulation (EC) 1236/2005 (the “Torture” Regulation) setting up a Community Regime **concerning trade in certain equipment and products which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.**
- Components or production equipment that the exporter has been told, knows or suspects are or may be intended for a military end-use³ in a country subject to certain types of arms embargo, or for use as parts or components of military list items which have been exported in breach of United Kingdom export controls. This is the “Military End-Use” control.

Where an item or activity is controlled, the exporter or trader must apply to the ECO for an export or trade control licence.

² “any relevant use” means use in connection with the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological or nuclear weapons or other nuclear explosive devices, or the development, production, maintenance or storage of missiles capable of delivering such weapons. *Please note that this definition changed to “WMD purposes” from 6th April 2009.*

³ i.e. a: incorporation into military items listed in the military list;
b: use of production, test or analytical equipment and components therefore, for the development, production or maintenance of military list items; or
c: use of any unfinished products in a plant for the production of military list items.

Notes on Refusals Data

A simple comparison of the numbers of licences issued or refused in this period compared to that reported in previous Annual Reports is not necessarily an indicator that circumstances have changed, or concerns increased, in the destination in question. Levels of refusals might for example be influenced by companies taking the view that an application was likely to be refused when assessed against the published criteria and so deciding not to apply; they are now better able to judge that likelihood as we publish refusal statistics by destination. More generally, the number and nature of the applications received in total or in relation to particular destinations can vary widely from one period to the next, and this is driven by many factors, including business factors outside the Government's control.

General Note on Licensing Data

3.2 Standard individual export licences, open individual export licences, standard individual trade control licences and open individual trade control licences.

Licensing data by destination for 2008, including information about the SIELs, OIELs, SITCLs, and OITCLs, granted, refused and revoked during 2008. This data is also available via the new ECO searchable database <https://www.exportcontroldb.berr.gov.uk>.

This section of the Report gives information on the various types of licences, as well as information on appeals against licensing decisions during this period. Information on the number of applications processed can be found at the end of this section, as well as a breakdown by final status.

SIELs generally allow shipments of specified items to a specified consignee up to the quantity or value specified by the licence. Such licences are generally valid for two years where the export will be permanent. Where the export is temporary, for example for the purposes of demonstration, trial or evaluation, the licence is generally valid for one year only and the items must be returned to the UK before the licence expires. A licence is not required for the majority of transshipments through the UK en route from one country to another **pre-determined destination** providing certain conditions are met. Most other transshipments can be made under one of the Open General Transshipment Licences provided in all cases that the relevant conditions are met. **Certain goods or destinations feature on an exempted list and in these cases** a Standard Individual Transshipment Licence (SITL) is required (there is no Open Individual Transshipment Licence).

The information on SIELs included in this section of the report has been compiled using the Export Control Organisation's computer databases. The databases were interrogated during the compilation of the report to identify the status of all applications on which a decision

was taken during the period covered by the Report. In a small number of cases, there may be a subsequent change of status. There are two main reasons for such changes: a licence issued during the period may have been revoked, for example because of the imposition of trade sanctions or an arms embargo; or a decision during the period to refuse a licence might be overturned because the applicant later appealed successfully. In addition, information is also provided in Annex G on the number of items of equipment in the UN Register of Conventional Arms categories covered by SIELs issued during the period, provided that the contract has come into force.

A Standard Individual Trade Control Export Licence (SITCL) is specific to a named trader and covers involvement in the trading of a set quantity of specific goods between a specified overseas source and overseas destination country with a specified consignor, consignee and end-user. SITCLs will normally be valid for two years. Upon expiry, either by time or because the activity has taken place, the licence ceases to be valid. Should further similar activity need to take place, a further licence must be applied for. Trade Controls only apply to goods specified in Schedule 1 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003 and paragraphs 1 to 3 of Schedule 1 and paragraph 2 of Schedule 3 to the Trade in Goods (Control) Order 2003 and do not apply to software and technology. OIELs are concessionary licences that are specific to an individual exporter and cover multiple shipments of specified items to specified destinations and/or, in some cases, specified consignees. OIELs are generally valid for a period of five years, with the exception of Dealer to Dealer OIELs that are valid for three years. There are no Open Individual Transshipment Licences. It should be noted that the refusal of an application for an OIEL, amendment to exclude particular destinations and/or items or the revocation of an OIEL does not prevent a company from applying for SIELs covering some or all of the items concerned to specified consignees in the relevant destinations. Clearly, however, the factors that led to the original decision would be taken into account in the decision on any such application.

An Open Individual Trade Control Export Licence (OITCL) is specific to a named trader and covers involvement in the trading of specific goods between specified overseas sources and overseas destination countries and/or specified consignor(s), consignee(s) and end-user(s). OITCLs are generally valid for two years. It should be noted that the refusal of an application for an OITCL, amendment to exclude particular destinations and/or items, or the revocation of an OITCL does not prevent a company from applying for SITCLs covering some or all of the items concerned to specified consignees in the relevant destinations. Clearly, however, the factors that led to the original decision would be taken into account in the decision on any such application.

Information on licences processed during 2008:

| Table 3.1 No of SIELs: | | 2008 |
|------------------------|--|------|
| Issued | | 9760 |
| Revoked | | 17 |
| Refused | | 203 |
| NLR* | | 1291 |
| Withdrawn/Stopped | | 1458 |

*No Licence Required

| Table 3.2 No of SITLs: | | 2008 |
|------------------------|--|------|
| Issued | | 6 |
| Revoked | | 0 |
| Refused | | 0 |
| NLR | | 1 |
| Withdrawn/Stopped | | 9 |

| Table 3.3 No of OIELs** | | 2008 |
|------------------------------|--|------|
| Issued | | 176 |
| Revoked/Reduced | | 0 |
| Refused/Removed | | 0 |
| NLR | | 0 |
| Withdrawn/Stopped/Unsuitable | | 181 |

** includes Dealer to Dealer OIELs

| Table 3.4 No of SITCLs | | 2008 |
|------------------------|--|------|
| Issued | | 117 |
| Revoked | | 0 |
| Refused | | 8 |
| NLTR*** | | 2 |
| Withdrawn/Stopped | | 53 |

*** No Trade Licence Required

| Table 3.5 No of OITCLs | | 2008 |
|------------------------|--|------|
| Issued | | 24 |
| Revoked | | 0 |
| Refused | | 1 |
| NLTR | | 1 |
| Withdrawn/Stopped | | 18 |

3.3 Information on SIELs, SITLs, OIELs, SITCLs and OITCLs

The entry for each destination on the Strategic Export Controls: Reports and Statistics website: <http://www.exportcontrols.berr.gov.uk> contains the following information:

For SIELs:

- Total value of all applications in respect of which a SIEL was issued for the export of items to the destination concerned during the period, whether the export concerned was permanent or temporary. The total value will be rounded up to the nearest pound. It should be noted that the value of exports that are actually made under the licences concerned is likely to be less than shown because some of these licences will not be used to make all of the exports authorised and others will not be used at all. In addition, some items are exported only temporarily and later returned to the UK.
- The number of licences issued, refused or revoked, split into Military List, other items and both (covering licences with military and other goods) categories. A (T) at the beginning of a line indicates a Temporary export licence.

For Incorporation:

- Information on goods licensed under SIELs for incorporation and onward export from the destination country is provided in the same format as all other SIELs, and includes the same level of information. An aggregated summary of the destinations the goods will ultimately be sent to after incorporation is given.

For Items covered by Council Regulation 1236/2005 (the "Torture" Regulation):

- Information provided under this heading is displayed in the same way as for standard SIELs.

For SITLs:

- Information on SITLs is provided in the same format as for SIELs. The items covered by SITLs issued only pass through the UK and it would therefore be misleading to include a 'value' for these licences in the report.

For OIELs:

- The number of licences issued, refused or revoked. A (T) indicates a Temporary export licence.
- As OIELs cover multiple shipments of specified goods to specified destinations or specified consignees, exporters holding OIELs are not asked to provide details of the value of goods they propose to ship and it is therefore not possible to provide

information on the total value of goods licensed under OIELs issued.

For SITCLs:

- A summary of the items or activities authorised by the licence is given.
- As SITCLs cover the trading of specific goods which are being exported from overseas source countries to overseas destination countries, there is no physical export from the UK, and traders are not asked to provide information on values.

For OITCLs:

- A summary of the items or activities authorised by the licence are given.
- As OITCLs cover the trading of specific goods which are being exported from overseas source countries to overseas destination countries, exporters holding OITCLs are not asked to provide details of the value of goods they propose to trade. It is therefore not possible to provide information on the total value of goods to which those trading activities related.

Special OIELs:

There are three special categories of OIELs:

Media OIELs

Media OIELs authorise the export of protective clothing and equipment, mainly for the protection of aid agency workers and journalists, in areas of conflict. In addition to military helmets and body armour, the licence includes NBC protective items, non-military 4WD civilian vehicles with ballistic protection and specially designed components for any of these items. The licence permits these items to be exported to all destinations on a temporary basis only, i.e. the items must be returned to the United Kingdom when no longer required. During this reporting period, one Media OIEL was issued.

Continental Shelf OIELs

Continental Shelf OIELs authorise the export of controlled goods to the UK sector of the Continental Shelf for the use only on, or in connection with, offshore installation and associated vessels. During the period of this report, two were issued.

Global Project Licences

Global Project Licences (GPLs) were introduced by Framework Agreement (FA) partners, including the UK, to streamline the arrangements for licensing military goods and technologies between FA Partners (France, Germany, Italy, Spain, Sweden and UK) where these transfers relate to their participation in specific collaborative defence projects. In relation to

the collaborative project, each Partner State will, as appropriate, issue their own GPLs to permit transfers of specified goods and technology where these are required for that programme. The GPLs operate on a similar basis to UK Open Individual Export Licences, and applications for GPLs are assessed against the Consolidated Criteria in the UK, and against the EU Code of Conduct in other Framework Partner countries. None were issued in 2008.

3.4 Transfer of Technology and Technical Assistance Licences

These licences are issued for the transfer of technology and provision of technical assistance under Articles 8, 9 and 10 of the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003, as amended. During this reporting period, one OIEL was issued, none were refused, revoked, or rated as no licence required. No SIELs were issued, refused, revoked or rated as no licence required.

3.5 Refusals and revocations

There were 211 such decisions on SIELs and SITCLs in 2008. Within the information relating to each destination, refusals and revocations for both Military and Dual Use goods are grouped by reference to the Rating (control entry) and, where applicable, the Consolidated EU and National Arms Export Licensing Criteria (attached at Annex A) which justified their refusal. In addition, table 3.6 gives a consolidated overview of the number of times on which each Criterion was used for all destinations. In a number of cases, the refusals/revocations were made for more than one reason and the Criteria that are quoted may exceed the number of refused cases. Some licences were refused principally because of the application of national controls or policy commitments.

Table 3.6 Reasons for Refusals and Revocations of SIEL & SITCL applications

| Reason* | Number |
|---|--------|
| Criterion 1 – UK's international obligations and commitments under non-proliferation Treaties and Conventions and export control regimes, particularly with regard to proliferation of weapons of mass destruction or ballistic missiles. | 103 |
| Criterion 1 – UK's commitments and obligations to observe UN, EU or OSCE arms embargoes | 10 |
| Criterion 1 – Existence of national embargoes or policy commitments | 3 |
| Criterion 1 – UK's obligations under the Ottawa Convention and the 1998 Land Mines Act | 0 |
| Criteria 2 – Risk of use for internal repression | 24 |
| Criteria 3 – Risk of contributing to internal tensions or conflict in the recipient country | 25 |
| Criteria 4 – Preservation of regional stability | 13 |
| Criteria 5 – National security of the UK, of allies, EU Member States and other friendly countries | 17 |
| Criteria 6 – Behaviour of the buyer country with regard to the international community | 0 |
| Criteria 7 – Risk of diversion or re-export to undesirable end-users | 56 |
| Criteria 8 – Compatibility of the arms exports with the technical and economic capacity of the recipient country | 0 |

* The total will be higher than the number of refusals as more than one Criteria can be used to refuse an application.

The information above does not include reasons for decisions to refuse OIELs or OITCLs in full or in part, to amend the coverage of an OIEL to exclude particular destinations and/or goods or to revoke an OIEL. OIELs and OITCLs are concessionary licences, and a decision to exclude a particular destination does not preclude a company from applying for SIELs or SITCLs covering some or all of the goods concerned to specified consignees in the relevant destinations.

3.6 Appeals

This section provides information on all appeals against a decision to refuse an application for a SIEL or SITCL, or against a decision to revoke a SIEL or SITCL. An appeal is

featured based upon the date of the appeal, not the date of the original licence application. The government has a target of processing 60% of appeals within 20 working days from receipt of all relevant information from the appellant and 95% in 60 working days. Decisions to refuse licences are not taken lightly, and only in those cases where refusal is clearly justified is a final decision taken to refuse. In this context, appeals against refusals will often raise difficult and complex issues. Appeals are considered at an independent and more senior level than the original licence application. Every effort is made to deal with all appeals as expeditiously as possible. However, the time taken can be lengthy due to the need to examine afresh all relevant information.

There is no provision in the licensing procedure for a formal appeal against refusal or revocation decisions on OIELs or OITCLs. This is because such decisions do not prevent a company from applying for SIELs or SITCLs.

In total, there were 44 appeals heard in 2008 against the original decision to refuse an application for a SIEL and one against the decision to refuse a SITCL. There were no appeals against the revocation of a SIEL or SITCL. The appeals against the original decisions on 35 applications were refused; the appeals against the original decisions on 8 applications were upheld, and licences were issued. One appeal was withdrawn by the exporter.

3.7 Open General Licences

Open General Licences (OGLs) allow the export or trade of specified controlled goods by any company, removing the need for exporters to apply for an individual licence, provided the shipment and destinations are eligible and that certain conditions are met. Most OGLs require the exporter or trader to register with the Export Control Organisation in advance before they make use of them, and the companies are subject to compliance visits from the ECO to ensure that all the conditions are being met. Failure to do so can result in the licence being withdrawn. There was one such withdrawal in 2008, that of John Knight who was successfully prosecuted for moving machine guns between two countries outside the UK without a licence to do so, his application for a licence having been refused. His ability to use Open Licences has been withdrawn for the period of his prison sentence and will be reviewed at the end of that time. There are also a small number of Open General Transshipment Licences (OGTLs) for which registration is not required. All OGLs remain in force until they are revoked. A complete list of OGLs is at Table 3.7.

Note: Council Regulation (EC) No.1334/2000 on the export of dual – use items and technology entered into force on 28 September 2000. Annex II of the Regulation introduced a new Community General Export Authorisation (CGEA). The CGEA is the Community

equivalent of an UK OGEL and is directly applicable in all EU Member States. This allows the export of a range of Dual Use goods controlled under EC Reg 1334/2000 to those countries listed in the CGEA.

The Regulation was subsequently amended by Council Regulation (EC) No. 394/2006, and Council Regulation (EC) No 1183/2007 (the "Amending Regulations") which entered into force on 12th April 2006 and 21 November 2007 respectively. The Amending Regulations made changes to Annex I, II and IV of the Regulation that automatically changed the scope of the CGEA.

Table 3.7: List of open general export licences

| Name | Made | Into Force | Revoked |
|--|----------------------|----------------------|----------|
| 1. Military Goods: Government or Nato End-Use | 24.05.07 11.06.08 | 11.06.07 20.06.08 | 20.06.08 |
| 2. Military Components | 24.05.07 11.06.08 | 11.06.07 20.06.08 | 20.06.08 |
| 3. Technology for Military Goods | 24.05.07 11.06.08 | 11.06.07 20.06.08 | 20.06.08 |
| 4. Export After Repair/replacement under warranty: Military Goods | 24.05.07 11.06.08 | 11.06.07 20.06.08 | 20.06.08 |
| 5. Export After Exhibition or Demonstration: Military Goods | 29.09.06 11.06.08 | 02.10.06 20.06.08 | 20.06.08 |
| 6. Export for Exhibition: Military Goods | 29.09.06 11.06.08 | 02.10.06 20.06.08 | 20.06.08 |
| 7. Military Surplus Vehicles | 29.09.06 | 02.10.06 | |
| 8. Export For Repair/Replacement Under Warranty: Military Goods | 29.09.06 11.06.08 | 02.10.06 20.06.08 | 20.06.08 |
| 9. Historic Military Goods: | 29.09.06 11.06.08 | 02.10.06 20.06.08 | 20.06.08 |
| 10. Vintage Aircraft | 01.05.04 | 01.05.04 | |
| 11. Accompanied Personal Effects: Sporting Firearms | 01.05.04 | 01.05.04 | |
| 12. Military Goods: For Demonstration | 24.05.07 | 11.06.07 | |
| 13. Exports or transfers in support of UK Government Defence contracts | 28.07.06 11.06.08 | 30.07.06 20.06.08 | 20.06.08 |
| 14. Access overseas to Software Technology for Military Goods: Individual Use Only | 04.04.07 11.06.08 | 23.04.07 20.06.08 | 20.06.08 |
| 15. Military and dual-use Goods: UK Forces Deployed in non-embargoed destinations | 29.09.06 11.06.08 | 02.10.06 20.06.08 | 20.06.08 |
| 16. Military and dual-use Goods: UK Forces Deployed in embargoed destinations | 04.04.07 11.06.08 | 23.04.07 20.06.08 | 20.06.08 |
| 17. Turkey | 01.05.04 | 01.05.04 | |
| 18. Computers | 04.04.07 | 23.04.07 | |
| 19. Technology for Dual-Use Items | 01.05.04 | 01.05.04 | |
| 20. Export After Repair/replacement Under warranty: Dual-Use Items | 01.05.04 | 01.05.04 | |
| 21. Export After Exhibition: Dual-Use Items | 04.04.07 | 23.04.07 | |
| 22. Low Value Shipments | 01.05.04 | 01.05.04 | |
| 23. X (covering specified dual-use items) | 04.04.07 11.06.08 | 23.04.07 20.06.08 | 20.06.08 |

Table 3.7: (continued)

| Name | Made | Into Force | Revoked |
|--|----------------------------------|----------------------------------|----------------------|
| 24. Chemicals | 04.04.07 11.06.08 | 23.04.07 20.06.08 | 20.06.08 |
| 25. Export For Repair/Replacement under Warranty: Dual-Use Items | 04.04.07 | 23.04.07 | |
| 26. Cryptographic Development | 04.04.07 | 23.04.07 | |
| 27. Dual-Use Items: Hong Kong Special Administrative Region (HKSAR) | 07.03.05 | 11.03.05 | |
| 28. Oil and Gas Exploration: Dual-Use Items | 04.04.07 | 23.04.07 | |
| 29. OGTL (Dual-Use Goods: HKSAR) | 04.04.07 | 23.04.07 | |
| 30. Open General Transhipment Licence | 24.05.07 11.06.08 | 11.06.07 20.06.08 | 20.06.08 |
| 31. Open General Transhipment Licence (Sporting Guns) | 04.04.07 | 23.04.07 | |
| 32. Open General Transhipment Licence (Postal Packets) | 04.04.07 | 23.04.07 | |
| 33. Open General Trade Control Licence (Category C Goods) | 09.07.07 11.06.08 25.09.08 | 16.07.07 20.06.08 01.10.08 | 20.06.08 01.10.08 |
| 34. Software and Source Code for Military Goods | 04.06.07 11.06.08 | 11.06.07 20.06.08 | 20.06.08 |
| 35. Exports of non-lethal military and Dual-use goods: To UK Diplomatic Missions or Consular Posts | 24.05.07 11.06.08 | 11.06.07 20.06.08 | 20.06.08 |
| 36. Open General Trade Control Licence (Small Arms) | 25.09.08 | 01.10.08 | |

3.8 Performance in processing licence applications

The Export Control Organisation sets out the government's commitments to exporters in a Service and Performance Code. The performance target is to provide a response on 70% of applications for SIELs within 20 working days, and 95% within 60 working days. The targets apply as soon as the applicant has supplied full documentation necessary to support their application.

| Table 3.8 SIELs Processing Performance | | | |
|--|------|------|------|
| | 2008 | 2007 | 2006 |
| Finalised within 20 working days | 73% | 79% | 82% |
| Finalised within 60 working days | 95% | 98% | 99% |

The performance target for SITCLs is to provide a response within 20 working days, and 60% of all SITCL applications were dealt with within this target.

The targets do not apply to applications for:

- OIELs because of the very wide variation in the goods and destination coverage of such licences.
- OITCLs because of the wide variation in goods or activities, sources and destinations covered by such licences.
- applications for licences to export goods that are subject to control solely because of United Nations sanctions.

Rating requests

Provided full technical specifications are provided, the Export Control Organisations also responds to requests from exporters for advice on whether or not a licence is required to export specific goods. During the period, 4732 such requests were received. 71% of these were completed within our published target time of ten working days, or twenty if we had to consult colleagues in other government departments.

Licensing performance

Table 3.9 Performance of HM Government

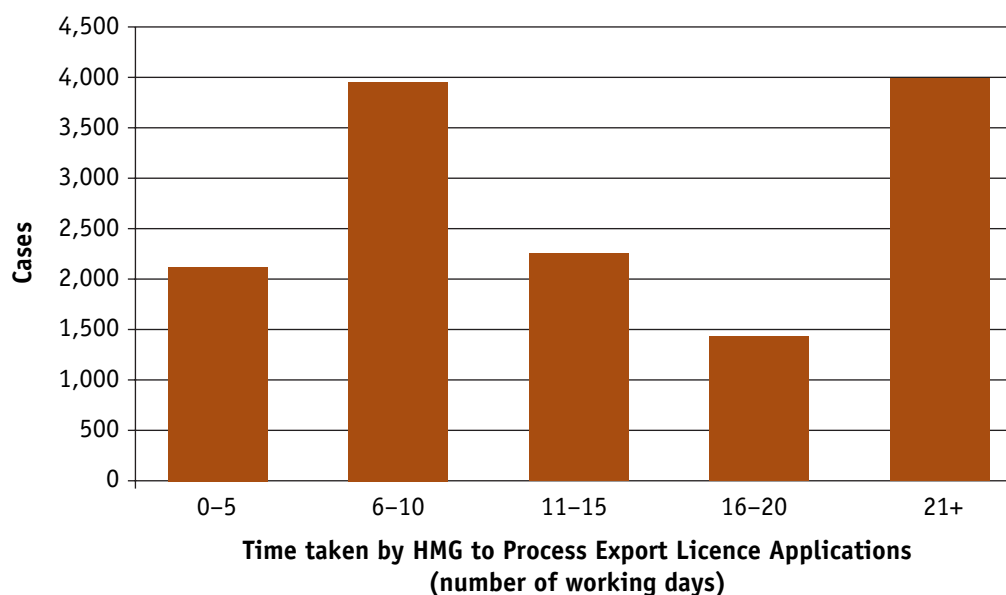


Table 3.9 gives a breakdown of the performance in the period of government against the two main published SIELs targets (70% in 20 working days and 95% in 60 working days).

Table 3.10 Appeals performance

| | 2008 | 2007 | 2006 |
|--|------|------|------|
| Appeals finalised within 20 working days | 69% | 61% | 58% |
| Appeals finalised within 60 working days | 90% | 100% | 83% |

The government has a target of processing 60% of appeals within 20 working days from receipt of all relevant information from the appellant and 95% in 60 working days. These targets do not apply to appeals concerning goods that are controlled solely because of UN Sanctions. Of the 44 appeals decided in 2008, none fell into this category (there was 1 appeal against a refused SITCL application). One appeal was withdrawn by the exporter concerned. The remaining 43 appeals heard in 2008 are the basis for the achievement against targets set out in table 3.10.

Section 4

Military Equipment

4.1 Government to Government Exports

Disposals

The Government disposes of certain military equipment that is surplus to the requirements of the UK Armed Forces. Such disposals are arranged by the Ministry of Defence's (MOD) Disposal Services Authority (DSA). UK export licensing coverage for these is obtained either by industry or by the customer. Table 4.3 gives by destination the equipment type and quantity of such exports.

| Country | Type of Equipment | Quantity |
|-------------|---|----------|
| Belgium | Spares for military helicopters | – |
| Belize | Blank ammunition | – |
| Brazil | Naval spares | – |
| Denmark | Spares for military helicopters | – |
| Chile | Type 23 frigate – former-HMS Marlborough. | 1 |
| | Naval spares | – |
| Estonia | Sandown Class Mine Counter Measure Vessel (MCMV) – former HMS Inverness | 1 |
| Germany | Spares for military helicopters | – |
| Netherlands | Spares for military helicopters and ground support | – |
| Norway | Spares for military helicopters | – |

Table 4.2 Other Overseas Transfers

| Country | Type of Equipment | Quantity |
|---------------------|---|----------|
| Turkey ¹ | Type 42 destroyers – former-HM Ships Cardiff and Newcastle sold to Leyal Ship Recycling in Turkey | 2 |

Government-to-Government projects

The Government has agreements with the Governments of Saudi Arabia and Kuwait for the supply of equipment and services. UK export licensing coverage for these exports is obtained by industry. Information by destination on the equipment type and quantity of such exports is shown in Table 4.3.

Saudi Arabia – The UK's main Government-to-Government supply agreement is with the Kingdom of Saudi Arabia. This has provided for the supply of Tornado, Hawk and PC-9 aircraft and mine countermeasure vessels with their associated weapons, in-service support and facilities. During 2008, the project predominantly provided ongoing support for equipment already in service.

Kuwait – There is also a Government-to-Government supply agreement in place with Kuwait. This currently includes the supply of spares, refurbished and repaired Hawk engines and modules, Naval workshop equipment, support to the Starburst and Sea Skua missile systems and Wargame Support Services.

Table 4.3 is a summary of exports that arose from activity by the DSA or the MOD project offices for Saudi Arabia and Kuwait. All goods are exported under licence obtained by industry or the customer. Where a Standard Individual Export Licence (SIEL) is issued or the value of such exports is collected, that information is included in Sections 3 and 4 of this Report and the corresponding Quarterly Report.

¹ HM Ships Cardiff and Newcastle were not sold for defence use, but to be recycled.

Government-to-Government transfers of equipment
between 1 January and 31 December 2008

Table 4.3 Government-to-Government Projects

| Country | Type of Equipment | Quantity |
|--------------|---|----------|
| Kuwait | Spares, refurbished and repaired Hawk engines and modules, workshop equipment, Starburst and Sea Skua missile system support and Wargame Support Services | – |
| Saudi Arabia | Components and spares for aircraft and their systems, components for naval vessels and their systems, and components for munitions. | – |

Annex A

European Council Common Position defining common rules governing the control of exports of military technology and equipment

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

COUNCIL COMMON POSITION 2008/944/CFSP

Of

8 December 2008

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty of the European Union, and in particular Article 15 thereof,

Whereas:

- (1) Member States intend to build on the Common Criteria agreed at the Luxembourg and Lisbon European Councils in 1991 and 1992, and on the European Union Code of Conduct on Arms Exports adopted by the Council in 1998.
- (2) Member States recognise the special responsibility of military technology and equipment exporting States.
- (3) Member States are determined to set high common standards which shall be regarded as the minimum for the management of, and restraint in, transfers of military technology and equipment by all Member States, and to strengthen the exchange of relevant information with a view to achieving greater transparency.
- (4) Member States are determined to prevent the export of military technology and equipment which might be used for internal repression or international aggression or contribute to regional instability.
- (5) Member States intend to reinforce cooperation and to promote convergence in the field of exports of military technology and equipment within the framework of the Common Foreign and Security Policy (CFSP).
- (6) Complementary measures have been taken against illicit transfers, in the form of the EU Programme for Preventing and Combating Illicit Trafficking in Conventional Arms.
- (7) The Council adopted on 12 July 2002 Joint Action 2002/589/CFSP on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons.
- (8) The Council adopted on 23 June 2003 Common Position 2003/468/CFSP¹ on the control of arms brokering.
- (9) The European Council adopted in December 2003 a strategy against the proliferation of weapons of mass destruction, and in December 2005 a strategy to combat illicit accumulation and trafficking of Small Arms and Light Weapons (SALW) and their ammunition, which imply an increased common interest of Member States of the European Union in a coordinated approach to the control of exports of military technology and equipment.
- (10) The UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects was adopted in 2001.
- (11) The United Nations Register of Conventional Arms was established in 1992.

¹ OJ L 156, 25.6.2003, p. 79.

- (12) States have a right to transfer the means of self-defence, consistent with the right of self-defence recognised by the UN Charter.
- (13) The wish of Member States to maintain a defence industry as part of their industrial base as well as their defence effort is acknowledged.
- (14) The strengthening of a European defence technological and industrial base, which contributes to the implementation of the Common Foreign and Security Policy, in particular the Common European Security and Defence Policy, should be accompanied by cooperation and convergence in the field of military technology and equipment.
- (15) Member States intend to strengthen the European Union's export control policy for military technology and equipment through the adoption of this Common Position, which updates and replaces the European Union Code of Conduct on Arms Exports adopted by the Council on 8 June 1998.
- (16) On 13 June 2000, the Council adopted the European Union Common Military List, which is regularly reviewed, taking into account, where appropriate, similar national and international lists².
- (17) The Union must ensure the consistency of its external activities as a whole in the context of its external relations, in accordance with Article 3, second paragraph of the Treaty; in this respect the Council takes note of the Commission proposal to amend Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual use items and technology³,

HAS ADOPTED THIS COMMON POSITION:

Article 1

1. Each Member State shall assess the export licence applications made to it for items on the EU Common Military List mentioned in Article 12 on a case-by-case basis against the criteria of Article 2.
2. The export licence applications as mentioned in paragraph 1 shall include:
 - applications for licences for physical exports, including those for the purpose of licensed production of military equipment in third countries,
 - applications for brokering licences,

- applications for "transit" or "transshipment" licences,
- applications for licences for any intangible transfers of software and technology by means such as electronic media, fax or telephone.

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

Article 2

Criteria

1. Criterion One: Respect for the international obligations and commitments of Member States, in particular the sanctions adopted by the UN Security Council or the European Union, agreements on non-proliferation and other subjects, as well as other international obligations

An export licence shall be denied if approval would be inconsistent with, inter alia:

- (a) the international obligations of Member States and their commitments to enforce United Nations, European Union and Organisation for Security and Cooperation in Europe arms embargoes;
- (b) the international obligations of Member States under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention;
- (c) the commitment of Member States not to export any form of anti-personnel landmine;
- (d) the commitments of Member States in the framework of the Australia Group, the Missile Technology Control Regime, the Zangger Committee, the Nuclear Suppliers Group, the Wassenaar Arrangement and The Hague Code of Conduct against Ballistic Missile Proliferation.

2. Criterion Two: Respect for human rights in the country of final destination as well as respect by that country of international humanitarian law
 - Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, Member States shall:
 - (a) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used for internal repression;
 - (b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the military technology or equipment, to

² Last amended 10 March 2008, OJ C 98, 18.4.2008, p. 1.
³ OJ L 159, 30.6.2000, p. 1.

countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe; For these purposes, technology or equipment which might be used for internal repression will include, inter alia, technology or equipment where there is evidence of the use of this or similar technology or equipment for internal repression by the proposed end-user, or where there is reason to believe that the technology or equipment will be diverted from its stated end-use or end-user and used for internal repression. In line with Article 1 of this Common Position, the nature of the technology or equipment will be considered carefully, particularly if it is intended for internal security purposes. Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

- Having assessed the recipient country's attitude towards relevant principles established by instruments of international humanitarian law, Member States shall:

- (c) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law.

3. Criterion Three: Internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts

Member States shall deny an export licence for military technology or equipment which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.

4. Criterion Four: Preservation of regional peace, security and stability

Member States shall deny an export licence if there is a clear risk that the intended recipient would use the military technology or equipment to be exported aggressively against another country or to assert

by force a territorial claim. When considering these risks, Member States shall take into account inter alia:

- (a) the existence or likelihood of armed conflict between the recipient and another country;
- (b) a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force;
- (c) the likelihood of the military technology or equipment being used other than for the legitimate national security and defence of the recipient;
- (d) the need not to affect adversely regional stability in any significant way.

5. Criterion Five: National security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries

Member States shall take into account:

- (a) the potential effect of the military technology or equipment to be exported on their defence and security interests as well as those of Member State and those of friendly and allied countries, while recognising that this factor cannot affect consideration of the criteria on respect for human rights and on regional peace, security and stability;
- (b) the risk of use of the military technology or equipment concerned against their forces or those of Member States and those of friendly and allied countries.

6. Criterion Six: Behaviour of the buyer country with regard to the international community, as regards in particular its attitude to terrorism, the nature of its alliances and respect for international law

Member States shall take into account inter alia the record of the buyer country with regard to:

- (a) its support for or encouragement of terrorism and international organised crime;
- (b) its compliance with its international commitments, in particular on the non-use of force, and with international humanitarian law;
- (c) its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament conventions referred to in point (b) of Criterion One.

7. Criterion Seven: Existence of a risk that the military technology or equipment will be diverted within the buyer country or re-exported under undesirable conditions

In assessing the impact of the military technology or equipment to be exported on the recipient country and the risk that such technology or equipment might be diverted to an undesirable end-user or for an undesirable end use, the following shall be considered:

- (a) the legitimate defence and domestic security interests of the recipient country, including any participation in United Nations or other peace-keeping activity;
- (b) the technical capability of the recipient country to use such technology or equipment;
- (c) the capability of the recipient country to apply effective export controls;
- (d) the risk of such technology or equipment being re-exported to undesirable destinations, and the record of the recipient country in respecting any re-export provision or consent prior to re-export which the exporting Member State considers appropriate to impose;
- (e) the risk of such technology or equipment being diverted to terrorist organisations or to individual terrorists;
- (f) the risk of reverse engineering or unintended technology transfer.

8. Criterion Eight: Compatibility of the exports of the military technology or equipment with the technical and economic capacity of the recipient country, taking into account the desirability that states should meet their legitimate security and defence needs with the least diversion of human and economic resources for armaments

Member States shall take into account, in the light of information from relevant sources such as United Nations Development Programme, World Bank, International Monetary Fund and Organisation for Economic Cooperation and Development reports, whether the proposed export would seriously hamper the sustainable development of the recipient country. They shall consider in this context the recipient country's relative levels of military and social expenditure, taking into account also any EU or bilateral aid.

Article 3

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

Article 4

1. Member States shall circulate details of applications for export licences which have been denied in accordance with the criteria of this Common Position together with an explanation of why the licence has been denied. Before any Member State grants a licence which has been denied by another Member State or States for an essentially identical transaction within the last three years, it shall first consult the Member State or States which issued the denial(s). If following consultations, the Member State nevertheless decides to grant a licence, it shall notify the Member State or States issuing the denial(s), giving a detailed explanation of its reasoning.
2. The decision to transfer or deny the transfer of any military technology or equipment shall remain at the national discretion of each Member State. A denial of a licence is understood to take place when the Member State has refused to authorise the actual sale or export of the military technology or equipment concerned, where a sale would otherwise have come about, or the conclusion of the relevant contract. For these purposes, a notifiable denial may, in accordance with national procedures, include denial of permission to start negotiations or a negative response to a formal initial enquiry about a specific order.
3. Member States shall keep such denials and consultations confidential and not use them for commercial advantage.

Article 5

Export licences shall be granted only on the basis of reliable prior knowledge of end use in the country of final destination. This will generally require a thoroughly checked end-user certificate or appropriate documentation and/or some form of official authorisation issued by the country of final destination. When assessing applications for licences to export military technology or equipment for the purposes of production in third countries, Member States shall in particular take account of the potential use of the finished product in the country of production and of the risk that the finished product might be diverted or exported to an undesirable end user.

Article 6

Without prejudice to Council Regulation (EC) No 1334/2000, the criteria in Article 2 of this Common Position and the consultation procedure provided for in Article 4 are also to apply to Member States in respect of dual-use goods and technology as specified in Annex 1 to Council Regulation (EC) No 1334/2000 where there are serious grounds for

believing that the end-user of such goods and technology will be the armed forces or internal security forces or similar entities in the recipient country. References in this Common Position to military technology or equipment shall be understood to include such goods and technology.

Article 7

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

Article 8

1. Each Member State shall circulate to other Member States in confidence an annual report on its exports of military technology and equipment and on its implementation of this Common Position.
2. An EU Annual Report, based on contributions from all Member States, shall be submitted to the Council and published in the "C" series of the Official Journal of the European Union.
3. In addition, each Member State which exports technology or equipment on the EU Common Military List shall publish a national report on its exports of military technology and equipment, the contents of which will be in accordance with national legislation, as applicable, and will provide information for the EU Annual Report on the implementation of this Common Position as stipulated in the User's Guide.

Article 9

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

Article 10

While Member States, where appropriate, may also take into account the effect of proposed exports on their economic, social, commercial and industrial interests, these factors shall not affect the application of the above criteria.

Article 11

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

and equipment export control policies and on the application of the criteria.

Article 12

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

Article 13

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

Article 14

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

Article 15

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

Article 16

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

Done at Brussels, 8 December 2008

*For the Council
The President*

Annex B

User's Guide to European Council Common Position defining common rules governing the control of exports of military technology and equipment

Note: Annex B, pp 39 to 76, is extracted from the Secretariat's User's Guide to Council Common Position 2008/944/CFSP and do not represent the complete document.

CHAPTER 3 – CRITERIA GUIDANCE

Introduction to all criteria best practices

The purpose of these best practices is to achieve greater consistency among Member States in the application of the criteria set out in Article 2 of Council Common Position 2008/944/CFSP by identifying factors to be considered when assessing export licence applications. They are intended to share best practice in the interpretation of the criteria rather than to constitute a set of instructions; individual judgement is still an essential part of the process, and Member States are fully entitled to apply their own interpretations. The best practices are for the use of export licensing officials and other officials in government departments and agencies whose expertise inter alia in regional, legal (e.g. human rights law, public international law), technical, development as well as security and military related questions should inform the decision-making process.

These best practices will be reviewed regularly, or at the request of one or more Member States, or as a result of any future changes to the wording of the criteria contained in Article 2 of Council Common Position 2008/944/CFSP.

Section 1: Best practices for the interpretation of Criterion One

How to apply Criterion One

3.1.1. Council Common Position 2008/944/CFSP applies to all exports of military technology or equipment by Member States, and to dual use items as specified in Article 6 of the Common Position. Thus a priori Criterion One applies to exports to all recipient countries without any distinction. However, the best practices follow the principle that if there is a risk of breach of international commitments or obligations of Member States or the Community as a whole, a careful analysis of Criterion One should be carried out.

The purpose of Criterion One is to ensure in particular that the sanctions decreed by the UN, OSCE or EU, agreements on non-proliferation and other disarmament agreements, as well as other international obligations, are respected. All export licences should be assessed on a case-by-case basis and consideration should be given to Criterion One where there are concerns over the inconsistency with international commitments or obligations.

3.1.2. **Information sources:** Information on the risk of breach of international commitments or obligations shall be, first of all, sought from foreign affairs desk officers dealing with the particular country and with respective non-proliferation, disarmament or export control agreements. Equally recommended is the opinion of Member States diplomatic missions and other governmental institutions, including intelligence sources.

A common EU base of information includes country EU HOMs reports, the EU denials database, EU Watchlist, and EU Council conclusions/statements on respective countries or security issues. List of UN, OSCE and EU embargoed countries are updated regularly by the Council of the European Union and can be reached through regular information systems. The general guidelines on EU non-proliferation policy can be found in the EU Strategy against the proliferation of weapons of mass destruction, and non-proliferation clauses in bilateral agreements.

Documentation from the United Nations and other relevant organisations such as IAEA and OPCW would be helpful in defining requirements of particular international regimes or agreements, as well as in determining policy of the recipient country in this aspect.

A list of relevant Internet websites is contained in Annex 1 to this section.

Elements to consider when forming a judgement

3.1.3. Criterion One provides that an export licence shall be denied if approval would be inconsistent with, inter alia:

(a) the international obligations of Member States and their commitments to enforce United Nations, Organisation for Security and Cooperation in Europe and European Union arms embargoes

Member States should check the stated or probable destination of export and the location of end user against the embargoes enforced by UN, OSCE and EU. As the list of embargoed countries, non-state entities and individuals (such as terrorist groups and individual terrorists) is subject to regular changes, the utmost care should be given to take recent developments into account.

Countries, non-state entities and individuals subject to UN, OSCE and EU sanctions overlap to a large extent. However, the list of goods (both military and dual use) under several embargoes towards the same end-user may vary and the restrictions imposed may be either mandatory or non-mandatory. To assure unified EU interpretation of the scope of legally binding UN sanctions, relevant Security Council resolutions are incorporated into the EU law in the form of a Council Common Position, and, where required, a Council Regulation. Thus, in case of uncertainties concerning interpretation of mandatory UN sanctions, EU sanctions lists should be consulted. As far as non-legally binding UN and OSCE sanctions are concerned, the interpretation is left to Member States.

When forming a judgement on issuing a licence, in order to avoid conflict with their international obligations, Member States should follow the strictest restrictions that are binding or applicable to them.

(b) the international obligations of Member States under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention

TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS (NPT)

The NPT is a legally binding treaty. It acknowledges that States Parties have the right to participate in the fullest possible exchange of equipment, material and related information for peaceful uses of nuclear energy. However, Article I of the NPT puts an obligation on nuclear-weapon-States (NWS) not to transfer to any recipient whatsoever nuclear weapons or other nuclear devices. Under Article III paragraph 2 of the NPT, nuclear-weapon-States and non-nuclear-weapon-States (NNWS) undertook not to transfer source or special fissionable material or equipment or material especially designed or prepared for the processing, use or production of special fissionable material, to any NNWS for peaceful purposes unless these items are subject to appropriate (IAEA) safeguards.

Items, material and equipment falling under the scope of the Treaty (Article I and III) :

- nuclear weapons or other nuclear explosive devices;
- source or special fissionable material;
- equipment or material especially designed or prepared for the processing, use or production of special fissionable material.

The NPT does not give a definition or specify detailed lists of the above devices and items. As for nuclear weapons or other nuclear explosive devices an UNIDIR¹ publication gives the following definition: "A nuclear weapon is a weapon consisting of a nuclear explosive and a delivery system; nuclear explosive is a device that releases energy through nuclear fission or fission and fusion reaction (delivery system for nuclear explosives could be aerial bombs, ballistic and cruise missiles, artillery shells, naval mines and torpedoes, and landmines)". For definition of the source or special fissionable material one should refer to the Statute of the IAEA (Article XX). Relevant information on nuclear and nuclear dual-use items and technologies can be found in the control lists of

¹ *Coming to terms with security, A Lexicon for Arms Control, Disarmament and Confidence Building (2004)*, UNIDIR Publication.

the Nuclear Suppliers Group and the Zangger Committee, as well as in the EU Common Military List (category ML 7a) and Annex I of Council Regulation EC No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology, as well as relevant Council Regulations imposing sanctions against certain countries..

When forming a judgement on issuing a licence for goods and technologies covered by the NPT, Member States should take into consideration whether the country of destination is a State Party to the NPT and the necessary IAEA safeguards are in force.

BIOLOGICAL AND TOXIN WEAPONS CONVENTION (BTWC)

The BTWC is a legally binding treaty that bans the development, production, stockpiling, acquisition and retention of biological and toxin weapons and their means of delivery. However, it should be noted that under Article X of the Convention States Parties have the right to participate in the fullest possible exchange of equipment, material and related information if it is intended for peaceful purposes.

The scope of the BTWC covers the following items (Article I):

- microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes;
- weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

The BTWC itself does not include a detailed list of the above items. Relevant information can be found in the EU Common Military List (ML 7), in the Australia Group control lists and in Annex I of Council Regulation EC No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology.

When forming a judgement on issuing a licence for goods and technologies covered by the BTWC, it should be taken into consideration that, according to BTWC:

- Export applications for biological agents of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes are to be denied. (Possible peaceful purposes could be disease control or public health measures.)

- The transfer of any type of conventional weapon, military equipment or means of delivery designed to use such agents for hostile purposes or in armed conflict is forbidden.

CHEMICAL WEAPONS CONVENTION (CWC)

The CWC is a legally binding treaty that bans the development, production, stockpiling, transfer and use of chemical weapons, and also stipulates their timely destruction. At the same time, it underlines the right of States Parties to participate in the international exchange of scientific information, chemicals and equipment for the purposes not prohibited in the Convention.

Chemical weapons are defined in Article II of the CWC as follows, together or separately:

- toxic chemicals (chemicals that can cause death, temporary incapacitation) and their precursors, except where intended for purposes not prohibited under the CWC;
- munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified above, which would be released as a result of the employment of such munitions and devices;
- any equipment specifically designed for use directly in connection with the employment of munitions and devices specified above.

The CWC has a comprehensive Annex on chemicals. The Annex forms an integral part of the Convention. Relevant information can also be found in the EU Common Military List (ML 7), in the Australia Group control lists and in Annex I of Council Regulation EC No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology.

When forming a judgement on issuing a licence for goods covered by the CWC, Member States should consider the following but non-exhaustive list of elements:

- General obligation of States Parties is to deny the transfer of chemical weapons as specified in Article II of the CWC.
- The CWC Annex on chemicals comprises three so-called Schedules (chemical lists). The transfer regime for Schedule 1, Schedule 2 and Schedule 3 is detailed respectively in Part VI, Part VII and Part VIII of the CWC Verification Annex. Given the fact that there is overlap between ML7 of the EU Common Military List and the CWC Schedules, as a first step it should be determined whether the ML7 chemical agent

or precursor in question is on the CWC schedules or not. Subsequently in case of an export application for a CWC schedule chemical the transfer rules as set out in the corresponding Part of the CWC Verification Annex should be followed.

- Research, medical, pharmaceutical or protective purposes are not prohibited under CWC.

(c) the commitment of Member States not to export any form of anti-personnel landmine

The most comprehensive international instrument dealing with anti-personnel mines is the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (so called Ottawa Convention). State Parties to the Convention took on the obligation, among others, not to export anti-personnel mines, except for the purpose of destruction. In addition, they agreed not to assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party.

Some countries, although not State Parties to the Ottawa Convention, announced an export moratorium on anti-personnel landmines.

When forming a judgement on issuing a licence, in accordance with their international obligations, Member States who are State Parties to the Ottawa Convention or, alternatively, took on the political obligation not to export anti-personnel landmines, shall refuse such an export, unless it is deemed for purpose of destruction.

(d) the commitments of Member States in the framework of the Australia Group, the Missile Technology Control Regime, the Zangger Committee, the Nuclear Suppliers Group, the Wassenaar Arrangement and the Hague Code of Conduct Against Ballistic Missile Proliferation

Council Regulation (EC) No 1334/2000 of 22 June 2000 sets up a Community regime for control of exports of dual-use items and technology. The regulation contains in the annex a total list of all products subject to export controls and a list of the most critical dual-use products, which are subject to even more stringent rules. These lists could be used as a reference for most of the items covered by the Australia Group, the Missile Technology Control Regime, the Zangger Committee, the Nuclear Suppliers Group, the Wassenaar Arrangement and The Hague Code of Conduct against Ballistic Missile Proliferation.

THE AUSTRALIA GROUP (AG)

The AG is an informal arrangement. Participants do not undertake any legally binding obligations: the effectiveness of the cooperation between participants depends solely on their commitment to chemical and biological weapons (CBW) non-proliferation goals and national measures aiming at preventing the spread of CBW.

The AG “no undercut policy” is the core element of the members’ commitments intended to ensure a common approach to controls on CBW-related exports. If one member denies an export of an AG-listed item for CBW non-proliferation reasons, all other members agree not to approve essentially identical export license applications without first consulting with the member that issued the original denial.

The transfer of AG-controlled chemicals or biological agents should only be authorized when the exporting member country is satisfied that there will be no CBW-related end use.

When forming a judgement on issuing a transfer licence, Member States should consider the following but non-exhaustive list of elements:

- The significance of the transfer in terms of the potential development, production or stockpiling of chemical or biological weapons;
- Whether the equipment, material, or related technology to be transferred is appropriate for the stated end-use;
- Whether there appears to be a significant risk of diversion to chemical or biological weapons programs;
- Whether a transfer has been previously denied to the end-user or whether the end-user has diverted for purposes inconsistent with non-proliferation goals any transfer previously authorized;
- Whether there are good grounds for suspecting that the recipients have been engaged in clandestine or illegal procurement activities;
- Whether there are good grounds for suspecting, or it is known, that the recipient state has or is pursuing chemical or biological warfare programs;
- Whether the end-user is capable of securely handling and storing the item transferred;
- Whether the exported goods are not intended for re-export. If re-exported, the goods would be properly controlled by the recipient government and satisfactory assurances that

its consent will be secured prior to any retransfer to a third country would be obtained;

- Whether the recipient state as well as any intermediary states have effective export control systems;
- Whether the recipient state is a party to the Chemical Weapons Convention or Biological and Toxin Weapons Convention and is in compliance with its obligations under these treaties;
- Whether governmental actions, statements, and policies of the recipient state are supportive of chemical and biological weapons non-proliferation and whether the recipient state is in compliance with its international obligations in the field of non-proliferation.

MISSILE TECHNOLOGY CONTROL REGIME (MTCR)

The MTCR is an informal arrangement between countries which share the goals of non-proliferation of unmanned delivery systems capable of delivering weapons of mass destruction, and which seek to co-ordinate national export licensing efforts aimed at preventing their proliferation. The MTCR rests on adherence to common export policy guidelines (the MTCR Guidelines) applied to an integral common list of controlled items (the MTCR Equipment, Software and Technology Annex). Each member country has implemented the Guidelines in accordance with its national legislation and decisions on transfer applications are taken at the national level.

In the evaluation of transfer applications for Annex items, Member States shall take the following factors into account:

- Concerns about the proliferation of weapons of mass destruction;
- The capabilities and objectives of the missile and space programs of the recipient state;
- The significance of the transfer in terms of the potential development of delivery systems (other than manned aircraft) for weapons of mass destruction;
- The assessment of the end use of the transfers. Where the transfer could contribute to a delivery system for weapons of mass destruction, transfers should only be authorised on receipt of appropriate assurances from the Government of the recipient State that:
 - The items will be used only for the purpose stated and that such use will not be

modified nor the items modified or replicated without the prior consent of the authorising Government;

- Neither the items nor replicas nor derivatives thereof will be re transferred without the consent of the authorising Government;
- The applicability of relevant multilateral agreements;
- The risk of controlled items falling into the hands of terrorist groups and individuals.

If a denial is issued by another member country for an essentially identical transfer, all other members agree not to approve essentially identical export license applications without first consulting with the member that issued the original denial.

THE NUCLEAR SUPPLIERS GROUP (NSG)

NSG is an informal arrangement, whose members seek to contribute to the non-proliferation of nuclear weapons through the implementation of Guidelines for nuclear exports and nuclear related exports. The NSG Guidelines are implemented by each Participating Government in accordance with its national laws and practices. Decisions on export applications are taken at the national level in accordance with national export licensing requirements.

The Basic Principle is that suppliers should not authorise transfers of equipment, materials, software, or related technology identified in the Annex:

- for use in a non-nuclear-weapon state in nuclear explosive activity or an unsafeguarded nuclear fuel-cycle activity, or
- in general, when there is an unacceptable risk of diversion to such an activity, or when the transfers are contrary to the objective of averting the proliferation of nuclear weapons, or
- when there is an unacceptable risk of diversion to acts of nuclear terrorism.

In considering whether to authorise nuclear or nuclear-related transfers, in accordance with NSG, Member States should exercise prudence in order to carry out the Basic Principle and should take relevant factors into account, including:

- Whether the recipient state is a party to the NPT or to the Treaty for the Prohibition of Nuclear Weapons in Latin America, or to a similar international legally-binding nuclear non-proliferation agreement, and has an IAEA

safeguards agreement in force applicable to all its peaceful nuclear activities;

- Whether any recipient state that is not party to the NPT, Treaty for the Prohibition of Nuclear Weapons in Latin America, or a similar international legally-binding nuclear non-proliferation agreement has any unsafeguarded nuclear fuel-cycle activity, which is not subject to IAEA safeguards;
- Whether the nuclear related technology to be transferred is appropriate for the stated end-use and whether that stated end-use is appropriate for the end-user;
- Whether the nuclear related technology to be transferred is to be used in research on or development, design, manufacture, construction, operation, or maintenance of any reprocessing or enrichment facility;
- Whether governmental actions, statements, and policies of the recipient state are supportive of nuclear non-proliferation and whether the recipient state is in compliance with its international obligations in the field of non-proliferation;
- Whether the recipients have been engaged in clandestine or illegal activities; and
- Whether a transfer has not been authorised to the end-user or whether the end-user has diverted for purposes inconsistent with the Guidelines any transfer previously authorised.
- Whether there is reason to believe that there is a risk of diversion to acts of nuclear terrorism;
- Whether there is a risk of retransfers of equipment, material, software, or related technology identified in the Annex or of transfers on any replica thereof contrary to the Basic Principle, as a result of a failure by the recipient State to develop and maintain appropriate, effective national export and transshipment controls, as identified by UNSC Resolution 1540.

THE WASSENAAR ARRANGEMENT (WA)

WA on Export Controls for Conventional Arms and Dual-Use Goods and Technologies is an informal export control regime. Membership in WA does not create legal obligations for Participating States. The decision to transfer or deny transfer of any item is the sole responsibility of each Participating State. All measures with respect to the Arrangement are taken in accordance with national legislation and policies, and are implemented on the basis of national discretion.

National policies, including decisions to approve or refuse license, are guided by Best Practices, Guidelines or Elements agreed within the Arrangement. To date Participating States have adopted Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons, Statement of Understanding on Intangible Transfers of Software and Technology, Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW), Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS) and Statement of Understanding on Control of Non-Listed Dual-Use Items².

In considering whether to authorise transfers of goods listed by WA, Member States should take into account that principle commitments under WA include:

- Maintaining national export controls on items listed in the Control Lists;
- Exchanging, on a voluntary basis, information that enhances transparency on arms transfers, as well as on sensitive dual-use goods and technologies;
- For items in Munitions list exchanging information every six months on deliveries to non-participating states of conventional arms;
- For items in the Dual-Use List notifying all licences denied to non-participating states, on an aggregate basis, twice per year;
- For items in the List of Sensitive Items and the List of Very Sensitive Items, notifying all licences denied to non-participating states on an individual basis and all licenses issued to non-participating states, on an aggregate basis, twice per year;
- Notifying Participating States of an approval of a licence which has been denied by another Participating State for an essentially identical transaction during the last three years (undercut notification). The decision to transfer or deny transfer of any item is the sole responsibility of each Participating State.

ZANGGER COMMITTEE

The Zangger Committee is an informal arrangement which significantly contributes to the interpretation of article III, paragraph 2, of the Nuclear Non-Proliferation Treaty (NPT) and thereby offers guidance to all parties to the Treaty.

² For full texts of these documents please see the WA Website (<http://www.wassenaar.org/guidelines>).

In the evaluation of transfer applications for items covered by the Zangger Committee, Member States shall take the following factors into account:

- Provision of source or special fissionable material to any non-nuclear-weapon State for peaceful purposes is not allowed unless the source or special fissionable material is subject to safeguards under an agreement with the International Atomic Energy Agency (IAEA);
- If the Government wishes to supply source or special fissionable material for peaceful purposes to such a State, it will:
 - specify to the recipient State, as a condition of supply, that the source or special fissionable material, or special fissionable material produced in or by the use thereof shall not be diverted to nuclear weapons or other nuclear explosive devices; and
 - satisfy itself that safeguards to that end, under an agreement with the Agency and in accordance with its safeguards system, will be applied to the source or special fissionable material in question;
- In the case of direct exports of source or special fissionable material to non-nuclear-weapon States not party to the NPT, the Government will satisfy itself, before authorising the export of the material in question, that such material will be subject to a safeguards agreement with the IAEA as soon as the recipient State takes over responsibility for the material, but no later than the time the material reaches its destination;
- The Government, when exporting source or special fissionable material to a nuclear-weapon State not party to the NPT, will require satisfactory assurances that the material will not be re-exported to a non-nuclear-weapon State not party to the NPT unless arrangements are made for the acceptance of IAEA safeguards by the State receiving such re-export;
- An Annual Return regarding exports of source and fissionable material to non-nuclear-weapon States not party to the NPT shall be submitted.

HAGUE CODE OF CONDUCT AGAINST THE PROLIFERATION OF BALLISTIC MISSILES (HCoC)

The HCoC is a politically binding non-proliferation instrument which addresses the problem of ballistic missiles capable of delivering WMD. A central aim of the Code is to increase transparency and confidence among Subscribing States by implementing specific confidence building measures, namely pre-launch notifications of ballistic missile and space-launch vehicle launches and annual declarations of ballistic missile and space launch vehicle policies.

When forming a judgement on issuing a licence, Member States should take into consideration whether or not a state has subscribed to the HCoC and its core principles:

- The urgency to prevent and curb the proliferation of ballistic missiles capable of delivering WMD;
- The importance of strengthening multilateral disarmament and non-proliferation instruments;
- The recognition that States should not be excluded from utilising the benefits of space for peaceful purposes, but that in doing so, they must not contribute to the proliferation of ballistic missiles capable of delivering WMD;
- The necessity of appropriate transparency measures on ballistic missile and space launch vehicle programmes.

3.1.4. Arriving at a judgement. Based on the assessment presented above, Member States will reach a judgement as to whether the export would represent a breach of international commitments and obligations of the Member State or the Community, and if it should be refused.

ANNEX 1 (to Chapter 3 Section 1)

Non-exhaustive list of Internet websites of relevant information sources includes:

List of EU sanctions (DG External Relations, Council of the EU):

http://ec.europa.eu/comm/external_relations/cfsp/sanctions/measures.htm

List of embargoes in force (SIPRI):

<http://www.sipri.org/contents/armstrad/embargoes.html>

International Atomic Energy Agency (NPT):

www.iaea.org

The United Nations Office at Geneva (Disarmament, BTWC):

www.unog.ch

Organisation for the Prohibition of Chemical Weapons (CWC):

www.opcw.org

International Campaign To Ban Landmines:

www.icbl.org

Geneva International Centre for Humanitarian Demining:

www.gichd.ch

Australia Group:

www.australiagroup.net

MTCR:

www.mtcr.info

Zangger Committee:

www.zanggercommittee.org

Nuclear Suppliers Group:

www.nuclearsuppliersgroup.org

Wassenaar Arrangement:

www.wassenaar.org

Hague Code of Conduct against the Proliferation of Ballistic Missiles (HCoC):

<http://www.bmeia.gv.at/en/foreign-ministry/foreign-policy/disarmament/weapons-of-mass-destruction/hcoc.html>

Section 2: Best practices for the interpretation of Criterion Two

How to apply Criterion Two

3.2.1 Common Position 2008/944/CFSP applies to all exports of military technology or equipment by Member States, and to dual use items as specified in Article 6 of the Common Position. Thus a priori Criterion Two applies to exports to all recipient countries without any distinction. However, because Criterion Two establishes a link with the respect for human rights as well as respect for international humanitarian law in the country of final destination, special attention should be given to exports of military technology or equipment to countries where there are indications of human rights violations or violations of international humanitarian law.

3.2.2 **Information sources:** A common EU base of information sources available to all Member States consists of EU HOMs reports, EU human rights fact sheets and in certain cases EU Council statements/conclusions on the respective recipient countries. These documents normally already take into account information available from other international bodies and information sources. However, because of the essential case-by-case analysis and the specificity of each licence application, additional information might be obtained as appropriate from:

- Member States diplomatic missions and other governmental institutions,
- Documentation from the United Nations, the ICRC and other international and regional bodies,
- Reports from international NGOs,
- Reports from local human rights NGOs and other reliable local sources,
- Information from civil society.

Furthermore the EU has designed and adopted specific guidelines to serve as a framework for protecting and promoting human rights in third countries, such as the Guidelines on the death penalty, torture, children and armed conflict and human rights defenders. A non-exhaustive list of relevant internet websites is contained in Annex I.

Elements to consider when forming a judgement

3.2.3 **Key concepts:** Examination of Criterion Two reveals several key concepts which should be taken into account in any assessment, and which are highlighted in the following text.

“Having assessed the recipient country’s attitude towards relevant principles established by international human rights instruments, Member States shall:

- (a) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used for internal repression.
- (b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of military technology or equipment, to countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe;
 - Having assessed the recipient country’s attitude towards relevant principles established by instruments of international humanitarian law, Member States shall:
- (c) deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law.”

For these purposes, military technology or equipment which might be used for internal repression will include, *inter alia*, military technology or equipment where there is evidence of the use of this or similar technology or equipment for internal repression by the proposed end-user, or where there is reason to believe that the equipment will be diverted from its stated end-use or end-user and used for internal repression. In line with Article 1 of this Common Position, the nature of the equipment will be considered carefully, particularly if it is intended for internal security purposes. Internal repression includes, *inter alia*, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

In assessing whether there is a clear risk that a proposed export might be used for internal repression Member States should consider the current and past record of the proposed end-user with regard to respect for human rights and that of the recipient country in general. The latter includes the policy line of recipient country’s government; recent significant developments, including *inter alia* impact of “fight against terrorism”; effective protection of human rights in constitution; human rights training among key actors (e.g. law enforcement agencies); impunity for human rights violations; independent monitoring bodies and national institutions for promotion or protection of human rights.

3.2.4. **International human rights instruments:** A non-exhaustive list of the main international and regional instruments is contained in Annex II.

These instruments and their respective additional protocols represent the main international norms and standards in the areas of human rights and fundamental freedoms. They guarantee civil and political rights (such as inter alia right to life; prohibition of slavery and forced labour; liberty and security of person; equality before the law; fair trial and effective remedy; freedom of expression and information; freedom of assembly; freedom of movement; freedom of thought, conscience and religion; right to seek and enjoy asylum); women's rights; children's rights; non-discrimination; rights of minorities and indigenous peoples; economic, social and cultural rights.

3.2.5 *The recipient country's attitude:* The following indicators should, as appropriate, be taken into account when assessing a country's respect for, and observance of all human rights and fundamental freedoms:

- The commitment of the recipient country's Government to respect and improve human rights and to bring human rights violators to justice;
- The implementation record of relevant international and regional human rights instruments through national policy and practice;
- The ratification record of the country in question with regard to relevant international and regional human rights instruments;
- The degree of cooperation with international and regional human rights mechanisms (eg UN treaty bodies and special procedures);
- The political will to discuss domestic human rights issues in a transparent manner, for instance in the form of bilateral or multilateral dialogues, with the EU or with other partners including civil society

3.2.6 *Serious violations of human rights:* In the Vienna Declaration and Programme of Action adopted at the World Conference on Human Rights in Vienna in June 1993, the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law was reaffirmed. Equally reaffirmed were the principles of universality, indivisibility, interdependence and interrelatedness of all human rights.

Regarding the qualification of a human rights violation as "serious", each situation has to be assessed on its own merits and on a case-by-case basis, taking into account all relevant aspects. Relevant factor in the assessment is the character/nature and consequences of the actual violation in question. Systematic and/or widespread violations of human rights underline the seriousness of the human rights situation. However, violations do not have to be systematic or widespread

in order to be considered as "serious" for the Criterion Two analysis. According to Criterion Two, a major factor in the analysis is whether the competent bodies of the UN, the EU or the Council of Europe (as listed in Annex III) have established that serious violations of human rights have taken place in the recipient country. In this respect it is not a prerequisite that these competent bodies explicitly use the term "serious" themselves; it is sufficient that they establish that violations have occurred. The final assessment whether these violations are considered to be serious in this context must be done by Member States. Likewise, the absence of a decision by these bodies should not preclude Member States from the possibility of making an independent assessment as to whether such serious violations have occurred.

3.2.7 *Internal repression, clear risk, "might", case by case:* The text of Criterion Two gives an ample set of examples of what constitutes internal repression. But assessing whether or not there is a clear risk that the proposed export might be used to commit or facilitate such acts requires detailed analysis. The combination of "clear risk" and "might" in the text should be noted. This requires a lower burden of evidence than a clear risk that the military technology or equipment will be used for internal repression.

An analysis of clear risk must be based upon a case-by-case consideration of available evidence of the history and current prevailing circumstances in the recipient state/regarding the proposed end-user, as well as any identifiable trends and/or future events that might reasonably be expected to precipitate conditions that might lead to repressive actions (e.g. forthcoming elections). Some initial questions that might be asked are:

- Has the behaviour of the recipient state/ the proposed end-user been highlighted negatively in EU Council statements/conclusions?
- Have concerns been raised in recent reports from EU Heads of Mission in the recipient state/regarding the proposed end-user?
- Have other international or regional bodies (e.g. UN, Council of Europe or OSCE) raised concerns?
- Are there consistent reports of concern from local or international NGOs and the media?

It will be important to give particular weight to the current situation in the recipient state before confirming any analysis. It may be the case that abuses have occurred in the past but that the recipient state has taken steps to change practices in response to domestic or international pressure, or an internal change in government. It might be asked:

- Has the recipient state agreed to external or other independent monitoring and/or investigations of alleged repressive acts?

- If so, how has it reacted to/implemented any findings?
- Has the government of the recipient state changed in manner that gives confidence of a change in policy/practice?
- Are there any EU or other multilateral or bilateral programmes in place aimed at bringing about change/reform?

Mitigating factors such as improved openness and an on-going process of dialogue to address human rights concerns in the recipient state may lead to the possibility of a more positive assessment. However, it is important to recognise that a lengthy passage of time since any highly publicised instances of repression in a recipient state is not on its own a reliable measure of the absence of clear risk. There is no substitute for up-to-date information from reliable data sources if a proper case-by-case assessment is to be made.

3.2.8 The nature of the military technology or equipment is an important consideration in any application. It is vital that any assessment of equipment under Criterion Two be realistic (i.e. are the items in question really useable as a tool of repression?). But it is also important to recognise that a wide variety of equipment has a track record of use to commit or facilitate repressive acts. Items such as Armoured Personnel Carriers (APCs), body armour and communications/surveillance equipment can have a strong role in facilitating repression.

3.2.9 The end-user is also a strongly linked consideration. If intended for the police or security forces, it is important to establish to exactly which branch of these forces in a recipient state the items are to be delivered. It should also be noted that there is no strict rule as to which branches of the security apparatus may have a role in repression. For example, the army may have a role in many states, while in others it may have no record of such a role.

Some initial questions might include:

- Is there a record of this equipment being used for repression in the recipient state or elsewhere?
- If not, what is the possibility of it being used in the future?
- Who is the end-user?
- What is the end-user's role in the recipient state?
- Has the end-user been involved in repression?
- Are there any relevant reports on such involvement?

3.2.10 The relevant principles established by instruments of international humanitarian law. International humanitarian law (also known as the "law

of armed conflict" or "law of war") comprises rules which, in times of armed conflict, seek to protect people who are not or are no longer taking part in the hostilities (e.g. civilians and wounded, sick and captured combatants), and to regulate the conduct of hostilities (i.e. the means and methods of warfare). It applies to situations of armed conflict and does not regulate when a State may lawfully use force. International humanitarian law imposes obligations on all parties to an armed conflict, including organised armed groups.

The main principles of international humanitarian law applicable to the use of weapons in armed conflict are the rules of distinction, the rule against indiscriminate attacks, the rule of proportionality, the rule on feasible precautions, the rules on superfluous injury or unnecessary suffering and the rule on environmental protection.

The most important instruments of international humanitarian law are the four Geneva Conventions of 1949 and their Additional Protocols of 1977. They are complemented by treaties on particular matters including prohibitions of certain weapons and the protection of certain categories of people and objects, such as children and cultural property (see Annex IV for a list of the main treaties).

Relevant questions regarding the ratification and national implementation of international humanitarian law treaties include:

- Ratification of the four Geneva Conventions of 1949 and their Additional Protocols of 1977.
- Ratification of other key treaties of international humanitarian law
- Ratification of treaties that contain express prohibitions or limitations on transfers of specific weapons.
- Has the recipient country adopted national legislation or regulations required by the international humanitarian law instruments to which it is a party?

3.2.11 Serious violations of international humanitarian law include grave breaches of the four Geneva Conventions of 1949. Each Convention contains definitions of what constitutes grave breaches (Articles 50, 51, 130, 147 respectively). Articles 11 and 85 of Additional Protocol I of 1977 also include a broader range of acts to be regarded as grave breaches of that Protocol. For the list of these definitions, see Annex V. The Rome Statute of the International Criminal Court includes other serious violations of the laws and customs applicable in international and non-international armed conflict, which it defines as war crimes (Article 8, sub-sections b, c and e; for the full text of the Rome statute, see <http://www.un.org/law/icc/statute/romefra.htm>).

- Have violations been committed by any actor for which the State is responsible? (e.g. state organs,

including the armed forces; persons or entities empowered to exercise elements of government authority; persons or groups acting in fact on its instructions or under its direction or control; violations committed by private persons or groups which it acknowledges and adopts as its own conduct.)

- Has the recipient country failed to take action to prevent and suppress violations committed by its nationals or on its territory?
- Has the recipient country failed to investigate violations allegedly committed by its nationals or on its territory?
- Has the recipient country failed to search for and prosecute (or extradite) its nationals or those on its territory responsible for violations of international humanitarian law?
- Has the recipient country failed to cooperate with other States, ad hoc tribunals or the International Criminal Court in connection with criminal proceedings relating to violations of international humanitarian law?

3.2.12. **Clear risk.** A thorough assessment of the risk that the proposed export of military technology or equipment will be used in the commission of serious violations of international humanitarian law should include an inquiry into the recipient's past and present record of respect for international humanitarian law, the recipient's intentions as expressed through formal commitments and the recipient's capacity to ensure that the equipment or technology transferred is used in a manner consistent with international humanitarian law and is not diverted or transferred to other destinations where it might be used for serious violations of this law.

Isolated incidents of international humanitarian law violations are not necessarily indicative of the recipient country's attitude towards international humanitarian law and may not by themselves be considered to constitute a basis for denying an arms transfer. Where a certain pattern of violations can be discerned or the recipient country has not taken appropriate steps to punish violations, this should give cause for serious concern.

[Common Article 1 of the Geneva Conventions is generally interpreted as conferring a responsibility on third party States not involved in an armed conflict to not encourage a party to an armed conflict to violate international humanitarian law, nor to take action that would assist in such violations, and to take appropriate steps to cause such violations to cease. They have a particular responsibility to intervene with States or armed groups over which they might have some influence. Arms producing and exporting States can be considered particularly influential in "ensuring respect"

for international humanitarian law due to their ability to provide or withhold the means by which certain serious violations are carried out. They should therefore exercise particular caution to ensure that their export is not used to commit serious violations of international humanitarian law.]

Relevant questions to be considered include:

- Is there national legislation in place prohibiting and punishing violations of international humanitarian law?
- Has the recipient country put in place requirements for its military commanders to prevent, suppress and take action against those under their control who have committed violations of international humanitarian law?
- Has the recipient country ratified the Rome Statute of the International Criminal Court?
- Does the recipient state cooperate with other States, ad hoc tribunals or the International Criminal Court in connection with criminal proceedings relating to violations?
- Is there an established minimum age for the recruitment (compulsory and voluntary) of persons into the armed forces?
- Have legal measures been adopted prohibiting and punishing the recruitment or use in hostilities of children?
- Does the recipient country educate and train its military officers as well as the rank and file in the application of the rules of international humanitarian law? (e.g. during military exercises)
- Has international humanitarian law been incorporated in military doctrine and military manuals, rules of engagement, instructions and orders?
- Are there legal advisers trained in international humanitarian law who advise the armed forces?
- Have the same measures been taken to ensure respect for international humanitarian law by other arms bearers which operate in situations covered by international humanitarian law?
- Have mechanisms been put in place to ensure accountability for violations of international humanitarian law committed by the armed forces and other arms bearers, including disciplinary and penal sanctions?
- Is there an independent and functioning judiciary capable of prosecuting serious violations of international humanitarian law?
- Is there a risk of a sudden or unexpected change of government or authority structures that could adversely affect the recipient's willingness or ability to respect international humanitarian law? (e.g.

disintegration of State structures)

- Does the end user have the capacity to use the equipment in accordance with international humanitarian law? (e.g. if military weapons are transferred to arms bearers other than the armed forces operating in situations covered by international humanitarian law, have they been trained in international humanitarian law?)
- Does the end user have the capacity to maintain and deploy this technology or equipment? (If not, there may be reasonable concern as to how it will be used and over diversion to other actors.)
- Does the stated end-user have adequate procedures in place for stockpile management and security, including for surplus arms and ammunition?
- Are theft and leakages from stockpiles or corruption known to be a problem in the recipient country?
- Is illicit trafficking of weapons a problem in the recipient country? Do groups involved in illegal arms trafficking operate in the country?
- Are border controls adequate in the recipient country or are the borders known to be porous?
- Does the recipient country have an effective arms transfer control system in place? (Import, export, transit, and transshipment.)
- Is the recipient the actual 'end user' of the military technology or equipment, will it accept verification of this and will it undertake not to transfer these to third parties without the authorisation of the supplier State.

3.2.13 **Diversión.** The question of internal diversion also needs consideration. There may be clues to this in the nature of the military technology or equipment and the end-user. It might be asked:

- Does the stated end-user have a legitimate need for this military technology or equipment? Or are the items in question more appropriate to another branch of the security apparatus?
- Would we issue a licence if the end-user were another part of the security apparatus of the recipient state?
- Do the different branches of the security forces have separate procurement channels? Is there a possibility that equipment might be redirected to a different branch?

3.2.14 **Arriving at a judgement.** Based on information and assessment of elements suggested in paragraphs 3.2.3 – 3.2.13 above Member States will reach a judgement on whether the proposed export should be denied on the basis of Criterion Two.

ANNEX I (to Chapter 3 Section 2)

INTERNET WEBSITES OF RELEVANT INFORMATION SOURCES INCLUDE:

Office of the United Nations High Commissioner for Human Rights (www.ohchr.org)
United Nations (www.un.org; <http://untreaty.un.org>)
International Committee of the Red Cross (www.icrc.org)
Council of Europe (www.coe.int)
European Union (<http://europa.eu>)
Organization for Security and Co-operation in Europe (www.osce.org)
Organization of American States (www.oas.org)
African Union (www.africa-union.org)
Amnesty International (www.amnesty.org)
Human Rights Watch (www.hrw.org)
Fédération internationale des ligues des droits de l'homme (www.fidh.org)
Organisation mondiale contre la torture (www.omct.org)
Association for the Prevention of Torture (www.apt.ch)
International Commission of Jurists (www.icj.org)

OTHER INFORMATION SOURCES INCLUDE:

International Criminal Court and ad hoc tribunals
International agencies operating in the recipient state
International Crisis Group
Coalition to Stop the Use of Child Soldiers
Small Arms Survey
SIPRI and other research institutes
Military manuals (instructions to armed forces)

ANNEX II (to Chapter 3 Section 2)

CORE INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS

UNITED NATIONS:

International Covenant on Economic, Social and Cultural Rights (CESCR);
International Covenant on Civil and Political Rights (CPR);
Optional Protocol to the International Covenant on Civil and Political Rights (CPR-OP1);
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty (CPR-OP2-DP);
International Convention on the Elimination of All Forms of Racial Discrimination (CERD);

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW-OP);

Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);

Optional Protocol to the Convention Against Torture (CAT-OP);

Convention on the Rights of the Child (CRC);

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OP-AC);

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC-OP-SC);

1951 Convention on the Status of Refugees;

1967 Protocol relating to the status of refugees;

Rome Statute of the International Criminal Court

REGIONAL INSTRUMENTS:

WITH RESPECT TO MEMBER STATES OF THE COUNCIL OF EUROPE:

European Convention on Human Rights, including protocols 6 and 13 concerning the abolition of the death penalty;

European Convention for the Prevention of Torture;

WITH RESPECT TO MEMBER STATES OF THE ORGANIZATION OF AMERICAN STATES:

Inter-American Convention on Human Rights;

Additional Protocol to the American Convention of Human Rights in the area of Economic, Social and Cultural Rights, Protocol of San Salvador;

Protocol to the American Convention on Human Rights to abolish the death penalty;

Inter-American Convention on Forced Disappearance of Persons;

Inter-American Convention to Prevent and Punish Torture;

WITH RESPECT TO MEMBER STATES OF THE AFRICAN UNION:

African Charter on Human and People's Rights;

Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and Peoples' Rights;

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa;

African Charter on Rights and Welfare of the Child;

WITH RESPECT TO MEMBER STATES OF THE ARAB LEAGUE:

Arab Charter on Human Rights

ANNEX III (to Chapter 3 Section 2)

COMPETENT BODIES OF THE UN, THE COUNCIL OF EUROPE OR THE EU TO ESTABLISH SERIOUS VIOLATIONS OF HUMAN RIGHTS ARE:

UNITED NATIONS:

The General Assembly (including country-specific resolutions)

The Security Council

Human Rights Council and the Economic and Social Council

The Office of the United Nations High Commissioner for Human Rights

Special procedures and other mandate-holders

The treaty bodies

COUNCIL OF EUROPE:

The Ministerial Committee of the Council of Europe
Parliamentary Assembly

European Court of Human Rights

The Council of Europe Commissioner for Human Rights

European Commission against Racism and Intolerance (ECRI)

European Committee for the Prevention of Torture (CPT)

EUROPEAN UNION:

The European Council

Statements by CFSP bodies

Country-specific common positions and declarations of the EU

EU Annual human rights report

EU HOMs human rights reports and EU human rights fact sheets

Resolutions and declarations by the European Parliament

ANNEX IV (to Chapter 3 Section 2)

MAIN TREATIES OF INTERNATIONAL HUMANITARIAN LAW

Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949.

Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949.

Convention (III) relative to the Treatment of Prisoners of War. Geneva, 12 August 1949.

Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts. Geneva, 8 June 1977.

Declaration provided for under article 90 of Additional Protocol I: Acceptance of the Competence of the International Fact-Finding Commission.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts. Geneva, 8 June 1977.

Convention on the Rights of the Child, New York, 20 November 1989.

Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, New York, 25 May 2000.

Rome Statute of the International Criminal Court, 17 July 1998.

Convention for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954.

First Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 14 May 1954.

Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, The Hague, 26 March 1999.

Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques, New York, 10 December 1976.

Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and Warfare, Geneva, 17 June 1925.

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, opened for signature in London, Moscow and Washington, 10 April 1972.

Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects. Geneva, 10 October 1980.

- Protocol on Non-Detectable Fragments (Protocol I to the 1980 Convention)
- Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-traps and Other Devices, 10 October 1980 (Protocol II to the 1980 Convention)
- Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons, 10 October 1980. (Protocol III to the 1980 Convention)
- Protocol on Blinding Laser Weapons, 13 October 1995. (Protocol IV to the 1980 Convention)
- Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II as amended to the 1980 Convention).
- Amendment to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, 21 December 2001.
- Protocol on Explosive Remnants of War, 28 November 2003 (Protocol V to the 1980 Convention)

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, Paris 13 January 1993.

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Oslo, 18 September 1997.

ANNEX V (to Chapter 3 Section 2)

Grave breaches specified in the 1949 Geneva Conventions and in Additional Protocol I of 1977

| Grave breaches specified in the four 1949 Geneva Conventions (Art. 50, 51, 130, 147 respectively) | Grave breaches specified in the third 1949 Geneva Convention (Art. 130) | Grave breaches specified in the fourth 1949 Geneva Convention (Art. 147) |
|--|---|---|
| <ul style="list-style-type: none"> - wilful killing; - torture or inhuman treatment, including biological experiments; - wilfully causing great suffering or serious injury to body or health; - extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly (this provision is not included in Art. 130 third 1949 Geneva Convention). | <ul style="list-style-type: none"> - compelling a prisoner of war to serve in the forces of the hostile Power; - wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in the Convention. | <ul style="list-style-type: none"> - compelling a protected person to serve in the forces of the hostile Power; - wilfully depriving a protected person of the rights of fair and regular trial prescribed in the Convention; - unlawful deportation or transfer or unlawful confinement of a protected person; - taking of hostages. |

Grave breaches specified in the Additional Protocol I of 1977 (Art. 11 and Art. 85)

Article 11:

Any wilful act or omission which seriously endangers the physical or mental health or integrity of any person who is in the power of a Party other than the one on which he depends and which either violates any of the prohibitions in paragraphs 1 and 2 or fails to comply with the requirements of paragraph 3 shall be a grave breach of this Protocol.

Article 85 (2):

Acts described as grave breaches in the Conventions are grave breaches of this Protocol if committed against persons in the power of an adverse Party protected by Articles 44, 45 and 73 of this Protocol, or against the wounded, sick and shipwrecked of the adverse Party who are protected by this Protocol, or against those medical or religious personnel, medical units or medical transports which are under the control of the adverse Party and are protected by this Protocol

Grave breaches specified in the Additional Protocol I of 1977 (Art. 11 and Art. 85)

Article 85 (3):

In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:

- making the civilian population or individual civilians the object of attack;
- launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;
- launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects;
- making non-defended localities and demilitarised zones the object of attack;
- making a person the object of an attack in the knowledge that he is *hors de combat*,
- the perfidious use of the distinctive emblem of the red cross and red crescent or other protective signs;

Article 85 (4):

In addition to the grave breaches defined in the preceding paragraphs and the Conventions, the following shall be regarded as grave breaches when committed wilfully and in violation of the Conventions or the Protocol:

- the transfer by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
- unjustifiable delay in the repatriation of prisoners of war or civilians;
- practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination;
- making the clearly recognised historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples and to which special protection has been given by special arrangement, for example, within the framework of a competent international organization, the object of attack, causing as a result extensive destruction thereof, and when such historic monuments, works of art and places of worship are not located in the immediate proximity of military objectives or used by the adverse party in support of its military effort;
- depriving a person protected by the Conventions or by Protocol of the rights of fair and regular trial.

Section 3: Best practices for the interpretation of Criterion Three

How to apply Criterion Three

3.3.1 Council Common Position 2008/944/CFSP applies to all exports by Member States of military technology or equipment included in the EU Common Military List, and to dual use items as specified in Article 6 of the Common Position. Criterion Three applies to all recipient countries without distinction. However, these best practices follow the principle that if there is an armed conflict or if there are internal tensions in the country of destination, a careful analysis should be carried out of the risk of this proposed export provoking or prolonging the conflict or aggravating the existing tensions and escalating them into a wider conflict. If the analysis shows a risk of this happening, a restrictive approach should be adopted towards the export licence under consideration. Particular attention should be given to the role of the end-user in this conflict. All export licences should be assessed on a case-by-case basis and consideration should be given to Criterion Three where there are concerns over the existence of tensions or armed conflicts.

3.3.2 **Information sources:** Information on whether there is a risk that the equipment would provoke or prolong armed conflicts, or aggravate existing tensions or conflicts in the country of final destination, should be sought from a Member State's mission in the country concerned, as well as from the Foreign Ministry country desk.

A common EU base of information sources available to all Member States consists of EU HOMs reports, EU reports, and in some cases, EU Council statements/conclusions on the respective recipient country. The EU Watchlist contains destinations that may deserve particular attention with respect to Criterion Three. When consulting other Member States on their denials to an area of concern, Member States are encouraged to share their analysis and interpretation of the internal situation in the country of final destination.

Wider internet and intelligence reports – from national intelligence services – are also helpful, especially when assessing the possible increase in capabilities.

Additional information can be obtained from:

- Local UN/EU/OSCE missions
- Documentation from the UN (UNGA, UNSC), International Criminal Court and/or other international and regional bodies;
- Research institutes (e.g. SIPRI)
- Reports from international NGOs;
- Information from local and regional NGOs / civil society.

A non-exhaustive list of relevant internet websites is contained as Annex I.

Elements to consider when forming a judgement

3.3.3 **Key concepts:** Examination of Criterion Three reveals several key concepts which should be taken into account in any assessment, and which are highlighted below.

Internal situation

“Internal situation” refers to the economic, social and political developments and stability within the borders of the country of final destination. Common Position 2008/944/CFSP elsewhere also refers to the “country of final destination” as the “recipient country”.

Function of the existence of tensions or armed conflicts

“Tensions” refers to unfriendly or hateful relations between different groups, or groups of individuals, of the society based either on race, colour, sex, language, religion, political or other opinion, national or social origin, interpretation of historic events, differences in economic wellbeing or ownership of property, sexual orientation, or other factors. Tensions could be at the origin of tumult or violent actions, or a cause for the creation of private militia not controlled by the State.

“Armed conflicts” refers to the escalation of the tensions between above mentioned groups to the level in which any of the groups uses arms against others.

In considering an export licence application the competent authority must assess the internal situation of the country of destination; possible participation and role of the end-user in the internal conflict or tensions and the probable use of the proposed export in the conflict. In assessing the potential risks in the country of final destination the competent authority might ask the following questions:

- What is the end-use of the proposed export (military technology or equipment)? Would the export be used to enforce internal security or to continue with the hostilities?
- Is the military equipment or technology intended to support internationally-sanctioned peace-keeping/peace enforcing operations or humanitarian interventions?
- Is the end-user participating or closely related to a party involved in the armed conflict within the country? What is the role of the end-user in the conflict?
- If components or spares are being requested, is the recipient state known to operate the relevant system in armed conflict in the country?

- Have there been recent reports that the existing tensions might be aggravating? Is there a risk that the existing tensions might turn into an armed conflict when one or more of the participants gain access to the military technology or equipment to be exported?
- Is the country of final destination subject to regional or UN embargoes because of the internal situation in the country (see also criterion1)?

The nature of the equipment

The nature of equipment will impact the judgement of whether to approve or refuse a licence. Consideration should be given as to whether the technology or equipment to be exported actually is related, directly or indirectly, to the tensions or conflicts in the country of final destination. This will be all the more important when there already is an existing armed conflict.

Some questions to consider might be:

- Is the export in nature such, that it is or could be used in an armed conflict within the country of final destination?
- Is there a risk that the existing internal tensions might turn into an armed conflict when the proposed end-user obtains access to this military technology or equipment?

The end-user

The end-user also plays an important role in the analysis. If there are concerns related to Criterion Three, it is important to establish exactly for which branch of the armed forces, police or security forces the export is intended. For example, in a recipient country the army and police might be involved in an armed conflict in which the navy has no role. In this respect, the risk of internal diversion should also be considered.

More complex cases arise when equipment may be going to a research institute or private company. Here a judgement should be made on the likelihood of diversion, and the views on Criterion Three should be based on the other criteria, specifically concerns related to Criterion Seven, the risk of diversion.

The following might be considered:

- What is the end-user's role in the country of final destination? Is the end-user part of the problem, or rather attempting to be part of the solution?
- Is the end-user involved in the internal armed conflict or tensions?
- Are there any relevant reports of such involvement?

3.3.4 *Arriving at a judgement*

Based on information and the over-all risk assessment as suggested in the paragraphs above, Member States will reach a judgement on whether the proposed export should be denied on the basis of Criterion Three.

ANNEX I (to Chapter 3 Section 3)

Non-exhaustive list of Internet websites of relevant information sources include:

United Nations
(www.un.org/peace/)

1540 Committee
(<http://disarmament2.un.org/Committee1540>)

OSCE/arms controls
(www.osce.org/activities/13014.html)

European Union
(www.consilium.europa.eu)

Section 4: Best practices for the interpretation of Criterion Four

How to apply Criterion Four

3.4.1 Common Position 2008/944/CFSP applies to all exports by Member States of military equipment and technology included in the EU Common Military List and to dual use items as specified in Article 6 of the Common Position. Criterion Four applies to all recipient countries without distinction. However, these best practices follow the principle that where there is a greater risk of regional conflict, greater scrutiny of Criterion Four is required than in cases where there is a lesser risk. All export licences should be assessed on a case-by-case basis and consideration given to Criterion Four where there are concerns over the preservation of peace, security and stability in the region.

The purpose of Criterion Four is to ensure that any export does not encourage, aggravate, provoke or prolong conflicts or tensions in the region of the intended recipient country. The criterion makes a distinction between the intention to use the proposed export for aggressive as opposed to defensive purposes. The criterion is not intended to preclude exports to countries that are (potential) victims of aggression or a threat of aggression. A careful assessment would need to be carried out as to whether there are sound indications of an intention by the intended recipient country to use the proposed export to attack, potentially attack or threaten to attack another country.

3.4.2 *Information sources*

Information on whether the equipment is a risk to the preservation of the regional peace, security and stability should be sought from a Member State's mission in the country concerned, as well as from Foreign Ministry country desks; both desks responsible for the recipient country and those responsible for the threatened/aggressor country.

A common EU base of information sources available to all Member States consists of EU HOMs reports, EU reports, and in some cases, EU Council statements/conclusions on the respective recipient country and the region. Extensive use of the EU SitCen (Country Risk Assessment) could be made. The EU Watchlist contains destinations that may deserve particular attention with respect to Criterion Four. When consulting other Member States on their denials to an area of concern, the Member States are encouraged to share their analysis and interpretation of the regional situation.

The wider internet and intelligence reports – from national intelligence services – are also helpful, especially when assessing the possible increase in capabilities.

Additional information can be obtained from:

- Local UN/EU/OSCE missions
- Documentation from the UN (UNGA, UNSC, UN Arms register), International Criminal Court and/or other international and regional bodies;
- Research institutes (e.g. SIPRI)
- Reports from international NGOs;
- Information from local and regional NGOs / civil society.

A non-exhaustive list of relevant internet websites is contained as Annex I.

Elements to consider when forming a judgement

3.4.3 *Key concepts*

Preservation of regional peace, security and stability

Member States shall deny an export licence if there is a clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim.

All nations have the right to defend themselves according to the UN Charter. This criterion addresses the issue of whether the recipient state has intentions to use or threaten to use the proposed export aggressively against another country. An assessment should therefore be made of the recipient's intentions, as well as whether the import is an appropriate and proportionate response to the recipient country's need to defend itself, to ensure internal security, and assist in international peace-keeping and humanitarian operations.

Licence applications to sensitive and potentially sensitive destinations are carefully assessed on a case-by-case basis, especially when the export destination regards a country that is or has been involved in armed conflict. When analysing whether there is a clear risk, the history of armed conflict and the current prevailing circumstances in the recipient state and the region should be taken into consideration, as well as any identifiable trends and/or future events that might reasonably be expected to heighten tensions or lead to aggressive actions.

The wording "shall deny" in this criterion means that if in the assessment of a licence application it has been established that there is a clear risk that the proposed export would be used aggressively against another country or to assert by force a territorial claim, the export licence must be denied regardless of the outcome of the analysis with respect to the other criteria set out in Article 2 of the Common Position, or any other considerations.

When considering these risks, Member States will take into account inter alia:

(a) the existence or likelihood of armed conflict between the recipient and another country

For the purposes of this element, a judgement will have to be made as to whether there is a clear risk that this equipment will be used in an existing armed conflict between the recipient country and its neighbours or another conflict in the region. Where there is no armed conflict, the regional situation should be considered. Growing tensions in the region, increased threats of conflict or weakly held peace arrangements are examples of where there is a likelihood of a conflict, putting the preservation of the regional peace, security and stability at risk. In these cases, a judgement would need to be made as to whether there is a clear risk that supplying this piece of equipment would hasten the advent of conflict, for instance by giving the recipient country an advantage over its neighbours or others in the region. Where the equipment to be exported will add to the military capability of the recipient country, a judgement will have to be made as to whether there is a clear risk that this equipment will prolong an existing conflict or bring simmering tensions into armed conflict.

The following questions are indicators that may be taken into consideration as appropriate:

- Is there an existing conflict in the region?
- Is the current situation in the region likely to lead to an armed conflict?
- Is the threat of conflict theoretical / unlikely or is it a clear and present risk?

(b) a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force;

An assessment should be made on whether there is a clear risk that the recipient country will by armed conflict or threat of force assert a territorial claim on a neighbouring country. Such a territorial claim might be stated as an official position or be voiced by official representatives or relevant political forces of the recipient country and could relate to land, sea or air space. The neighbouring country does not have to be the direct neighbour of the recipient country.

When making a judgement any recent claims by the recipient country on another's territory should be factored in. Where the recipient country has tried in the past to pursue by force a territorial claim or is threatening to pursue a territorial claim, a judgement should be made as to whether it seems probable that the equipment would be used in such a case and as to whether it would give the recipient country an additional capability to try to pursue this claim by force, thus destabilising the region.

The following questions are indicators that may be taken into consideration as appropriate:

- Is the recipient country pursuing a claim against the territory of a neighbouring country?
- Has a territorial claim led to conflict in the region, or underlying tensions between the recipient country and its neighbours?
- Has the recipient country tried to resolve the issue through peaceful means, has it tried in the past to assert by force its territorial claim, or has it threatened to pursue its territorial claim by force?

(c) the likelihood of the military technology or equipment being used other than for the legitimate national security and defence of the recipient

When assessing this element of Criterion Four, the exporting state should estimate whether the recipient state has expressed an aggressive military doctrine, and the likelihood of the requested equipment being used in accordance with this doctrine. The exporting state should also estimate whether the requested equipment is compatible with, or constitutes a necessary addition to or replacement of, existing armament systems in the defence forces of the recipient state. It may also be relevant to take into account the quantity and quality of the equipment to be exported.

(d) the need not to affect adversely regional stability in any significant way

A judgement on this criterion will have to be made on whether supplying the recipient country with the equipment will significantly improve its military capability, and if it does, would a neighbouring country as a result be put under threat of conflict. Where there are existing tensions in the region, would supplying this equipment enhance the recipient country's capability by introducing a new piece of equipment into the region which could threaten a neighbouring country.

The following questions are indicators that may if appropriate be taken into consideration:

- Why does the recipient wish to acquire the military equipment or technology?
- Is this equipment simply a replacement or for maintenance for existing items that might be old or in disrepair, or is the recipient developing new capabilities, such as a significantly improved air strike capability?

The nature of the equipment

The nature of the equipment to be exported will impact the judgement of whether to approve or refuse a licence. Consideration should be given as to whether there is a clear risk that the equipment can be used in a conflict between the recipient country and its neighbours. This will be used to a greater extent where there are regional

tensions or armed conflicts. Where tensions exist, the type of equipment is all the more important as the equipment could significantly increase the recipient country's capability to move to armed conflict or threaten armed conflict. Could a neighbouring country be moved to increase its arms imports due the export of this equipment? Given tensions in certain regions, an export could be seen as an increase in threat to a neighbouring country, and thus consideration of this question becomes vital.

Some questions to consider might be:

- Would the recipient's capability be enhanced by the export, and if so, would it be enhanced to the point where an existing power balance would be upset? Given the circumstances in the recipient country and its intentions, would an enhanced capability present a clear risk of hastening the advent of conflict?
- Would a neighbouring country feel threatened by the military technology or equipment to be exported?
- Is there a risk that the existing regional tensions might turn into an armed conflict when one or more of the participants obtains access to this military technology or equipment?
- Is the export in nature such, that it is or could be used in an armed conflict within the region? What is the likelihood of this equipment being used in a conflict?

The end-user

A judgement would have to be made on whether the end user would allow this equipment to be used in a manner inconsistent to Criterion Four. If it is going directly to the military/government, a decision has to be made on whether the equipment will be used in any military action against another country.

More complex cases arise when the military technology or equipment may be going to a research institute or private company. Here a judgement should be made of the likelihood of diversion, and views on Criterion Four should be based on the other criteria, specifically concerns related to Criterion Seven, the risk of diversion.

The following might be considered:

- Is the export likely to be deployed in conflict with a neighbouring state? Or would it most likely go to the Police or a UN contribution, or some other branch of the security forces not directly connected to the Criterion Four concern?

3.4.4 **Arriving at a judgement:** Based on the information and assessment of elements suggested in the guidance above, Member States will reach a

judgement as to whether the proposed export should be denied on the basis of Criterion Four.

ANNEX I (to Chapter 3 Section 4)

Non-exhaustive list of Internet websites of relevant information sources include:

United Nations
(www.un.org/peace/)

1540 Committee
(<http://disarmament2.un.org/Committee1540>)

OSCE/arms controls
(www.osce.org/activities/13014.html)

European Union
(www.consilium.europa.eu)

Section 5: Best practices for the interpretation of Criterion Five

How to apply Criterion Five

3.5.1. Council Common Position 2008/944/CFSP applies to all exports by Member States of military technology or equipment included in the EU Common Military List, and to dual use items as specified in Article 6 of the Common Position.; without any restrictions on destination. The extent of its application is also valid for Criterion Five. Unlike the other seven criteria, which draw Member States' attention to a particular aspect of the country of destination deemed to be a source of risk, Criterion Five requires the Member States to carry out an analysis focused on a parameter specific to them: their national security and that of friends, allies and other Member States. The objective of Criterion Five is to prevent an export of military technology or equipment from affecting the national security of Member States, allied or friendly countries. Exports will have to be evaluated in the light of Criterion Five, without prejudice to compliance with the other criteria set by the Common Position.

Two points must be subject to analysis before any licence is issued:

- (a) the potential impact of the operation on the security and defence interests of friends, allies or other Member States, without prejudice to observance of the other criteria, particularly Criteria Two and Four;
- (b) the consequences of the export on the **operational security** of the armed forces of Member States and of friendly or allied countries;

3.5.2. **Information sources:** The information relating to the **national security of Member States and of territories whose external relations are the responsibility of a Member State, and to defence interests**, come mainly from the following sources:

- Charter of the United Nations;
- NATO Treaty * 3;
- OSCE: Conference on Security and Cooperation in Europe (Helsinki Final Act 1975); Principles governing conventional arms transfers (25 November 1993)
- Council of Europe;
- Brussels Treaty, establishing the Western European Union *;
- Treaty on European Union; the basic CFSP texts (“A secure Europe in a better world. European Security Strategy”);
- National or regional texts: defence agreements;

3 The references followed by an asterisk concern certain Member States of the EU only. Cf. Section 3.5.6 below.

assistance agreements; military cooperation agreements; alliances, etc.

Since security and defence agreements are usually confidential, the Member States may, when dealing with a specific application likely to fall within the scope of Criterion Five, consult their friends and allies directly in order to deepen their analysis of the possible impact of the export on security and defence interests.

Elements to consider when forming a judgement

3.5.3 **Key concepts.** The heading of Criterion Five reads as follows: “**National security of the Member States and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries**” 4.

3.5.4. **National security.** **National security** refers to the capability of the Member States to ensure territorial integrity, protect the population and preserve national security interests as well as the resources and supplies deemed essential for its subsistence and its independence vis-à-vis all kinds of threats and attacks.

National security is closely linked to the security of Europe. **The European Security Strategy adopted by the European Council in December 2003** defined the spectre of threats to the security of the European Union. These include: terrorism (religious extremism, electronic networks); proliferation of weapons of mass destruction; regional conflicts (violent or frozen conflicts which persist on our borders, threatened minorities); State failure (corruption, abuse of power, weak institutions, lack of accountability, civil conflict); organised crime (cross-border trafficking in drugs, women, illegal migrants and weapons, maritime piracy).

National security must also be assessed by taking account of **international (or collective) security**, which is among the aims pursued by the Charter of the United Nations. The latter provides that **regional systems of collective security** are lawful, provided that such arrangements are consistent with the purposes and principles of the universal system (Article 52). It recognises the **inherent right of individual or collective self-defence** (Article 51).

3.5.5. **Territories whose external relations are the responsibility of a Member State.** The territories in question may be assimilated to the following types:

- The territories covered by **Article 5 of the NATO Treaty**, which defines the geographical scope of an armed attack which might trigger the mechanism of military assistance between the parties;

4 This phrase is taken over and adapted from one of the principles governing conventional arms transfers adopted by the OSCE: “Each participating State will avoid transfers which would be likely to threaten the national security of other States and of territories whose external relations are the internationally acknowledged responsibility of another State.” (principle 4(b)(ii)).

- The Outermost Regions (ORs): the four French overseas departments (ODs) (Guadeloupe, French Guiana, Martinique, Réunion); the Portuguese autonomous regions of the Azores and Madeira in the Atlantic Ocean; the Spanish autonomous community of the Canary Islands in the Atlantic Ocean;
- The overseas countries and territories, covered by Articles 182 to 188 of the Treaty on the European Community (TEC), and listed in Annex II to the TEC: Greenland, New Caledonia and Dependencies, French Polynesia, French Southern and Antarctic Territories, Wallis and Futuna Islands, Mayotte, Saint Pierre and Miquelon, Aruba, Netherlands Antilles, Anguilla, Cayman Islands, Falkland Islands, South Georgia and the South Sandwich Islands, Montserrat, Pitcairn, Saint Helena and Dependencies, British Antarctic Territory, British Indian Ocean Territory, Turks and Caicos Islands, British Virgin Islands, Bermuda;
- The European territories to which the provisions of the TEC apply under certain conditions (Article 299(4) and (6) of the TEC).

3.5.6. **Allied countries.** Allied countries may be defined as the States associated by a treaty or an international agreement providing for a **solidarity clause or a mutual defence clause**. A solidarity clause provides for the mobilisation of all the instruments available to the States parties, including military means, if one of them is the victim of a terrorist attack or of a natural or man-made disaster. A collective defence clause stipulates that in the event of an armed attack on one of the States parties, the others have an obligation to give it aid and assistance by all the means in their power, whilst observing the specific character of their security and defence policy.

Article 5 of the **North Atlantic Treaty establishing the Atlantic alliance** or Article 5 of the **Brussels Treaty establishing the Western European Union** are examples of mutual defence clauses. The draft Treaty establishing a Constitution for Europe makes provision for a solidarity clause and a defence clause. Such clauses may also be included in bilateral defence agreements, but these are not generally published.

Most of the EU Member States are members of NATO, apart from Sweden, Ireland, Cyprus, Malta, Austria and Finland.

The WEU includes ten EU Member States (France, Germany, Italy, United Kingdom, Belgium, Netherlands, Luxembourg, Portugal, Spain, Greece) which are also members of NATO ⁵.

⁵ Established in 1992, associate member status within the WEU allows for inclusion of those States which are members of NATO but which were not then members of the Union. There are 6 associate members (Turkey, Norway, Iceland, Poland, Czech Republic, Hungary). All the WEU observer States are members of the EU but not of NATO, except for Denmark (member of NATO

3.5.7. **Friendly countries.** The description “friendly countries” is less precise than “allied countries”. Generally speaking, it is likely to apply to countries with which the Member State maintains a close and/or long-standing bilateral relationship, particularly in the field of defence and security, or with which it shares values and interests and pursues common objectives.

To determine whether a country may be described as a friend by a particular Member State, the Member States may check for the existence of a body of positive evidence, including: the number of persons holding dual nationality, the presence of European nationals, the existence of a language community, the number of trade agreements and cooperation agreements, etc.

The text of Criterion 5 reads as follows:

“Member States shall take into account:

- (a) *the potential effect of the military technology or equipment to be exported **on their defence and security interests** as well as those of Member States and those of friendly and allied countries, while recognizing that this factor cannot affect consideration of the criteria on respect for human rights and on regional peace, security and stability;*
- (b) *the risk of use of the military technology or equipment concerned **against their forces** or those of friends, allies or other Member State.”*

3.5.8. **Criterion 5a**

3.5.8.1. **The meaning of the potential effect of export**

(a) **Positive effect**

If the proposed export helps to reinforce the national security, in particular the defence and security interests, of friends, allies and other Member States, the assessment will be favourable *a priori* without prejudice to the analysis which will have to be conducted in terms of Criteria Two and Four.

(b) **Negative effect**

If, on the other hand, export would directly or indirectly threaten the defence and security interests of friends, allies and other Member States, the *a priori* assessment will be unfavourable.

The assessment will take into account in particular:

- The maintenance of strategic balance;
- The offensive nature of the equipment exported;
- The sensitivity of the material;
- The increase in operational performance which would

and the EU but not of the WEU). There are 5 observer States: Denmark, Ireland, Austria, Sweden, Finland.

- be brought about by the material exported;
- The deployability of the equipment exported and/or the deployability conferred by that equipment;
- The end use of the material;
- The risk that the material will be diverted.

3.5.8.2. *Defence and security interests*

When analysing the risk to their defence and security interests and to those of allies, friends and other Member States, Member States must not fail to take into account the possible impact on the security of their forces when deployed out of area.

Moreover, this assessment will be without prejudice to compliance with the other Criteria.

3.5.9. *Criterion 5b*

The operational risk is analysed as follows:

- (a) Is there a direct threat to the security of the forces of a Member State or those of a friendly or allied country?

The threat may be permanent or temporary. The Member State will consider very carefully those applications where the final recipient is in a region known to be unstable, in particular where the export is for armed forces which might not always be under total or permanent control. In time such instability is likely to give rise to a threat for our forces or for those of an ally or friend, particularly where such forces are present in the region for military cooperation or peace-keeping operations.

In sum, if an export is liable to engender a direct threat to the security of the forces of a Member State or of an allied or friendly country, who are present either in the country of final destination or in a neighbouring country, the *a priori* assessment will be unfavourable. The same approach will be used to ensure the security of international peace-keeping forces.

- (b) **Is there a risk that the military technology or equipment will be diverted** to a force or body which is hostile to the interests or forces of a Member State, friend or ally?

This risk is analysed in the same way as those mentioned in Criterion Seven. The exporting country will take account of the existence of terrorist groups, organisations engaged in armed struggle against those currently in power, or organised crime networks which might use the equipment in activities which could affect the security of the forces of the Member States and of allied or friendly countries, as well as that of international peace-keeping forces, or which might use such equipment in a way that would be inconsistent with one of the other criteria set by the Common Position.

- (c) Does the recipient country have the technical capacity to use the equipment?

Technical capacity refers to the ability of the recipient country to make effective use of the equipment in question, both in material and human terms. It also refers to the technological level of the recipient country and its operational capacity, and generally to the standard of performance of its equipment.

Consequently, examination of the compatibility of an export of military technology or equipment with respect to this technical capacity should include consideration of whether it is opportune to deliver to the recipient equipment which is more sensitive or sophisticated than the technological means and operational needs of the recipient country.

In order to determine this compatibility, Member States could consider the following questions:

- Does the recipient country have the military infrastructure to be able to make effective use of the equipment?
 - Is the technological level of the equipment requested proportionate to the needs expressed by the recipient country and to its operational capacity?
 - Is similar equipment already in service well maintained?
 - Are enough skilled personnel available to be able to use and maintain the equipment?⁶
- (d) To take their analysis of the operational risk into greater depth, especially for particularly sensitive cases, the Member States could carry out **impact studies** on a case-by-case basis, drawing on any relevant information which might be exchanged between the Member States, friends or allies. These studies will aim to establish the presence of national, European, and international forces, and those of friends or allies, in the various regions of the world, and also to evaluate the reality of the risk that the equipment or technology to be exported will be used against those forces.

These impact studies could include the following questions:

- In its analysis of the reality of the risk, the Member State will in particular take into account:
 - The nature of the equipment: whether it is directly offensive in character, the technological superiority which it would confer on the forces possessing it, its autonomy of use, the increase in operational performance which the equipment would allow;

⁶ For instance, are a high proportion of the country's engineers and technicians already working in the military sector? Is there a shortage of engineers and technicians in the civilian sector that could be aggravated through additional recruitment by the military sector?

- Any distinctions in the doctrine for the use of the equipment, depending on the user;
- The nature of the operations: war between conventional forces, asymmetric war, civil war, etc.
- In its analysis of the risk of diversion, the Member State will in particular take into account:
 - Whether the equipment can be easily diverted, then easily used even by non-military agents, and/or incorporated into other systems;
 - Whether the equipment can be adapted for military use, or used to modify other equipment for military use (in particular, to transform non-lethal equipment into a lethal weapon);
 - Some equipment could be the subject of special attention under this heading, in particularly small arms and light weapons (including MANPADS) and night-vision and light-intensifying equipment;
 - In this respect, operations with increased control measures (marking and traceability, on-site inspection) or in the fight against dissemination (destruction of old stocks, quantity surveillance mechanism) will receive a less restrictive *a priori* assessment.

3.5.10. *Arriving at a judgement*

Depending on the information and the assessment of the factors suggested in paragraphs 3.5.8, 3.5.9 and 3.5.10 above, the Member States will reach a judgement on whether the proposed export should be denied on the basis of Criterion 5.

ANNEX I (to Chapter 3 Section 5)

INFORMATION SOURCES

EU (European Union)
http://europa.eu/index_en.htm

UN (United Nations)
<http://www.un.org/english/>

OSCE (Organisation for Security and Cooperation in Europe)
<http://www.osce.org/>

NATO (North Atlantic Treaty Organisation)
<http://www.nato.int/home.htm>

WEU (Western European Union)
<http://www.weu.int/index.html>

Section 6: Best practices for the interpretation of Criterion Six

How to apply Criterion Six

3.6.1. Common Position 2008/944/CFSP applies to all exports by Member States of military equipment or technology included in the EU Common Military List, and to dual use items as specified in Article 6 of the Common Position. Thus, generally speaking, Criterion Six applies to exports directed to all non EU recipient countries.

However, because Criterion Six establishes a link to the behaviour of the recipient country with regard to the international community, special attention should be given to those countries which represent reasons of concerns because of their attitude to terrorism, the nature of their alliances and respect for international law.

3.6.2. **Information sources.** A common EU base of information sources available to all Member States consists of EU Heads of Mission (HOMs) reports, EU Council statements/conclusions, as well as UN Security Council Resolutions.

Additional information might be obtained also from:

- Member States' diplomatic missions and other national governmental institutions;
- The United Nations and other international and regional bodies and agencies, such as the Organization for Security and Co-operation in Europe (OSCE), the Regional Centre on Small Arms in Nairobi, the Organisation of American States and the International Atomic Energy Agency;
- The International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies, and other humanitarian bodies;
- Europol, Interpol and intelligence agencies;
- non-governmental organizations and other reliable sources.

A non-exhaustive list of relevant information sources is contained in Annex I.

3.6.3. **Key concepts.** Criterion Six refers to a broad field of overarching issues which should be taken into account in any assessment, and which are highlighted in its text:

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

Member States shall take into account inter alia the record of the buyer country with regard to:

- (a) its support for or encouragement of terrorism and international organised crime;*
- (b) its compliance with its international commitments, in particular on the non-use of force, and with international humanitarian law;*
- (c) its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament conventions referred to in point (b) of Criterion One."*

Consequently, in assessing whether an export licence should be granted or not, Member States should consider the current and past record of the buyer country with regard to its attitude to terrorism and international organized crime, the nature of its alliances, its respect for international commitments and law, concerning in particular the non-use of force, international humanitarian law and WMD non proliferation, arms control and disarmament.

Criterion Six has to be considered for buyer countries whose Governments exhibit negative behaviour with respect to the above provisions, thus, during the assessment the specific identity and the nature of the end-user or the equipment to be exported are not the main focus. In fact the focus of the analysis is the **behaviour of the buyer country**, more than any consideration of the risk that a particular transfer might have particular negative consequences.

Thus, concerning the key concepts stressed in Criterion Six, Member States could consider the following suggestions.

3.6.4. **Buyer country's support or encouragement of terrorism and international organised crime.** A higher degree of scrutiny is required when evaluating individual export licence applications to buyer countries suspected of supporting terrorism and international organized crime in any way.

In this framework, the term "terrorism" is to be understood to mean "terrorist acts" prohibited under international law, such as deliberate attacks on civilians, indiscriminate attacks, hostage taking, torture or deliberate and arbitrary killings, when the purpose of such an act, by its nature or context, is to intimidate a population or to compel a government or an international organisation to commit or to abstain from committing any act.

Concerning "international organised crime", reference should be made to activities such as drug trafficking, trade in human beings, illegal immigrant smuggling, trafficking in nuclear and radioactive substances, money laundering et *similia*, conducted by a structured group of persons, existing for a period of time and acting

in concert with the aim of committing serious crimes or offences established in accordance with the UN Convention against Trans-national Organised Crime.

A buyer country may encourage or support terrorism and international crime in many ways and before granting a licence, the competent authority might ask, among others, the following questions:

- Does the buyer country have a record of past or present terrorist/criminal activities?
- Are there any known or suspected links between the buyer country and terrorist/criminal organizations (or even individual terrorists/criminals) or any reasons to suspect that entities within, and tolerated by the buyer country have those links?
- Is there any other reason to suspect that the buyer country tolerates re-export or diversion of military technology or equipment to terrorist/criminal organizations, or that it organizes re-export or diversion itself?
- Does the buyer country have internal legislation that tolerates terrorist/criminal activities, or does failure to apply legislation result in tolerance of terrorist/criminal activities?

Many of these questions may also be asked during an assessment under Criterion Seven, but under Criterion Six they involve the buyer country's government rather than the end-user.

More detailed questions should be:

- Does the buyer country criminalize the provision of funds to terrorists, freeze the financial assets of people who commit, or attempt to commit, terrorist acts and prohibit the provision of services to those who participate in the commission of terrorist acts?
- Does the buyer country refrain from providing any form of support, active or passive, to entities or persons involved in the terrorist acts?
- Does the buyer country provide early warnings to other states by exchanging information?
- Does the buyer country deny safe havens to those who finance, plan, support, or commit terrorist acts?
- Does the buyer country prevent those who finance, plan, facilitate or commit terrorist acts from using its territory?
- Does the buyer country prevent the movement of those who carry out acts through effective border controls?

3.6.5. Nature of buyer country's alliances. In a strict interpretation, the term "alliance" might mean an international treaty that links a State to one or more other States and foresees the conditions in which they

should give each other assistance. Considering that few of the many relations between States concerning economic, military or defence cooperation can fit into such a strict interpretation of the term "alliance", in the context of Criterion Six the term "alliance" should be interpreted in a wider sense, and include all those economic, military and defence agreements which, by their nature, are aimed at establishing a significant connection (intended also as common political aims) between two or more States.

Wider interpretation of the term "alliance" will also include any shared vision of international relations (originated, *inter alia*, by a common political view, economic interests or matters of convenience), which will result in a significant action intended to pursue a mutual goal. For instance this can be any type of combined support to a party involved in a situation of crisis, tension or conflict.

Thus, as the nature of alliances is mostly a political assessment, the term "alliance" should be interpreted *cum grano salis*, on the basis of Member States' national interests.

Bearing in mind the above, when considering whether to grant an export licence, Member States may ask, among others, the following questions:

- Does the buyer country belong to an alliance founded or acting against a Member State, or against an allied or friendly country?
- Does the buyer country belong to an alliance that does not respect or promote the respect of the founding principles of the United Nations Organization?
- Does the buyer country belong to an alliance that acts for the destabilization of the international community?

3.6.6. Buyer country's compliance with its international commitments. When considering whether to grant an export licence, Member States may also consider if the buyer country (i.e. government of the buyer country) does or does not respect its international commitments.

Attention should be paid to those commitments that are legally binding for every State as both norms of international law and norms of treaty universally accepted by every State; including in particular commitments which by their nature could be violated (such as non-use of force (Article. 41 of the UN Charter), or respect of international law during a conflict) in most cases by using military technology or equipment.

Members States should also consider:

- Does the buyer country respect its commitments to enforce UN, OSCE, and EU arms embargoes?

- Does the buyer country use, has it used, or is it threatening to use force in violation of Article 41 of the UN Charter, in order to solve an international crisis?
- Does the buyer country normally infringe international common law commitments, or treaties which it has voluntarily signed?
- Does the buyer country behave in a manner so as to exclude itself from the international community of States?

Concerning international humanitarian law, possible indicators to assess the risk are:

- Whether the buyer country has made a formal commitment to apply the rules of international humanitarian law and taken appropriate measures for their implementation;
- Whether the buyer country has in place the legal, judicial and administrative measures necessary for the repression of serious violations of international humanitarian law;
- Whether a buyer country which is, or has been, engaged in an armed conflict, has committed serious violations of international humanitarian law;
- Whether a buyer country, which is or has been engaged in an armed conflict, has failed to take all feasible measures to prevent serious violations of international humanitarian law.

As mentioned above, the type of equipment to be exported does not seem to be in the main focus of the analysis, neither does the final user of this equipment, as Criterion Six is meant to avoid any exports of military equipment or technology to those countries whose governments do not comply with international commitments.

In this framework, Criterion One of the Common Position (the “international commitment” criterion) is of particular relevance. Thus Member States should also refer to it.

A non-exhaustive list of international treaties is included in Annex II to this Section.

3.6.7. **Buyer country’s commitment to non-proliferation and other areas of arms control and disarmament.**

Criterion Six also requires consideration, during the assessment, of the buyer country’s record with regard to its commitments in the area of disarmament and arms control. In particular Member States will examine both the buyer country’s internal legislation and its international commitments. Attention should be paid primarily to those conventions included in Criterion One.

Some questions that might be asked are:

- Has the buyer country signed/ratified/acceded to the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention, and does it adhere to the obligations contained in these treaties? If not, why?
- Does the buyer country respect the commitment not to export any form of anti-personnel landmine, based on the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction?
- Is the buyer country a member/participant in, or does it respect the commitments of international arrangements or regimes, in particular the Nuclear Suppliers Group, the Australia Group, the Missile Technology Control Regime, the Wassenaar Arrangement and the Hague Code of Conduct against Ballistic Missile Proliferation?

Even if Criterion Six reports the above mentioned issues as more relevant during the assessment, Member States might also ask some of the questions that they should ask during assessment under Criterion Seven, and others:

- Does the recipient country report to the UN Register of Conventional Arms; if not, why not?
- Has the recipient country aligned itself with the principles of Common Position 2008/944/CFSP or similar regional arrangements?
- Is the recipient country involved in the Conference on Disarmament?
- Does the recipient country apply effective export and transfer controls encompassing dedicated control legislation and licensing arrangements that conform to international norms?

Once more, Members States should note that when making assessments under Criterion Seven (risk of diversion), it is possible to make a distinction between qualities of military technology or equipment, or between end-users; when the same questions are asked when assessing against criterion Six, Member States will decide whether or not to send any kind of equipment to the country in question, on the basis of their opinion on the recipient country’s government.

A non-exhaustive list of Arms Export Control Regimes and Organizations are included in Annex III

3.6.8. **Arriving at a judgement.** Based on the information and the over-all country examination as suggested in the paragraphs above, Member States will reach a judgement on whether the proposed export should be denied on the basis of Criterion Six.

Member States will not issue a licence where the general evaluation of the buyer country’s record with reference

to Criterion Six is not positive.

In any case, even if such evaluation is positive, it can never be used as a justification for arms transfers that would otherwise be refused under other criteria of the Common Position.

ANNEX I (to Chapter 3 Section 6)

INTERNET WEBSITES OF RELEVANT INFORMATION SOURCES:

United Nations/conventional arms
(<http://disarmament.un.org/cab/register.html>)

Security Council Sanction Committees
(<http://www.un.org/Docs/sc/committees/INTRO.htm>)

Security Council Report
(<http://www.securitycouncilreport.org>)

Security Council Counter Terrorism Committee
(<http://www.un.org/sc/ctc/>)

1540 Committee
(<http://disarmament2.un.org/Committee1540>)

Global Programme against Corruption, UN Office on Drugs and Crime
(<http://www.unodc.org/unodc/corruptio.html>)

United Nations Institute for Disarmament Research/ UNIDIR
(<http://www.unidir.org>)

OSCE/arms control
(<http://www.osce.org/activities/13014.html>)

European Union
(<http://www.consilium.europa.eu>)

CIA World Fact Book
(<https://www.cia.gov/cia/publications/factbook/index.html>)

Jane's foreign report
(<http://www.foreignreport.com>)

Jane's Defence
(<http://jdw.janes.com>)

SIPRI
(<http://www.sipri.org>)

International Action on Small Arms
(<http://www.iansa.org>)

Small Arms Survey
(<http://hei.unige.ch/sas>)

International Committee of the Red Cross
(<http://www.icrc.org>)

ANNEX II (to Chapter 3 Section 6)

RELEVANT INTERNATIONAL TREATIES:

Charter of the United Nations

Biological and Toxin Weapons Convention

Chemical Weapons Conventions

Non-Proliferation Treaty (NPT)

Comprehensive Nuclear Test Ban Treaty (CTBT)

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction

Raratonga Treaty

Treaty of Pelindaba

Treaty of Tlatelolco

Bangkok Treaty

Central Asia nuclear-weapon-free zone treaty

Antarctic Treaty

Sea-bed Treaty

Outer Space Treaty

Strategic Arms Limitation Talks (SALT)

Geneva Conventions

ENMOD Convention

Certain Conventional Weapons Convention (CCWC)

The texts of these and other international treaties could be found at <http://untreaty.un.org/>

ANNEX III (to Chapter 3 Section 6)

RELEVANT INTERNATIONAL ARMS EXPORT CONTROL REGIMES AND ORGANISATIONS:

Wassenaar Arrangement
(<http://www.wassenaar.org>)

Nuclear Suppliers Group
(<http://www.nuclearsuppliersgroup.org>)

The Australia Group
(<http://www.australiagroup.net>)

Zangger Committee
(www.zanggercommittee.org)

MTCR
(<http://www.mtcr.info>)

The Hague Code of Conduct against Ballistic Missile Proliferation

Section 7: Best practices for the interpretation of Criterion Seven

How to apply Criterion Seven

3.7.1 Common Position 2008/944/CFSP applies to all exports of military technology and equipment by Member States, and to dual use items as specified in Article 6 of the Common Position. Thus a priori Criterion Seven applies to exports to all recipient countries without any distinction. However, these practices follow the principle that cases where there is a higher potential risk should be subject to a greater degree of scrutiny than cases with less risk. Evaluation of individual export licence applications should be done on a case-by-case basis and include an over-all risk analysis, based on the potential risk level in the recipient state, the reliability of those involved in the transactions, the nature of the goods to be transferred and the intended end-use. Member States are encouraged to exchange information regarding countries of concern on a case-by-case basis through the co-operation in COARM, or by other channels. In addition, improved documentation in diversion risk-assessment at the licensing stage would make diversion more difficult. Effective systems of end-user control contribute to the prevention of undesirable diversion or re-export of military equipment and technology. End-user certificates and their authentication at the licensing stage should play a central role in counter-diversion policies. (see also Chapter 2 – Licensing Practices). Nevertheless, using end-user certificates cannot substitute for a complete risk assessment of the situation in the particular case.

3.7.2 **Information sources.** Information on diversionary risks should be sought from a wide variety of sources. A common EU base of information sources available to all Member States consists of EU HOMs reports, Open-source defence publications and export control regimes' information exchanges and websites as well as reports from relevant Security Council Committees, in particular the Security Council Committee established pursuant to resolution 1540 (2004); additional information might be obtained as appropriate from Member States' diplomatic missions and other governmental institutions such as customs, police and other law enforcement services as well as those providing Intelligence information or through exchange of views among Member States regarding export to the country in question. A non-exhaustive list of relevant internet websites is contained in Annex I to this section.

Elements to consider when forming a judgement

3.7.3 **Key concepts.** Criterion Seven refers to a broad field of overarching issues which should be taken into account in any assessment. It should be kept in mind that diversion can be initiated at various levels, can take place within a country or can involve detour or retransfer to a third "unauthorised" country. It can be of

possession (end-user) and/or function (end-use).

Criterion Seven states:

In assessing the impact of the military technology or equipment to be exported on the recipient country and the risk that such technology or equipment might be diverted to an undesirable end-user, the following shall be considered:

- (a) *the legitimate defence and domestic security interests of the recipient country, including any participation in UN or other peace-keeping activity;*
- (b) *the technical capability of the recipient country to use the technology or equipment;*
- (c) *the capability of the recipient country to apply effective export controls;*
- (d) *the risk of such technology or equipment being re-exported to undesirable destinations, and the record of the recipient country in respecting any re-export provision or consent prior to re-export which the exporting Member State considers appropriate to impose;*
- (e) *the risk of such technology or equipment being diverted to terrorist organizations or to individual terrorists;*
- (f) *the risk of reverse engineering or unintended technology transfer."*

Ad (a): The legitimate defence and domestic security interests of the recipient country, including any involvement in United Nations or other peace keeping activity.

All nations have the right to defend themselves according to the UN Charter. Nonetheless, an assessment should be made of whether the import is an appropriate and proportionate response to the recipient country's need to defend itself, to ensure internal security, or assist in United Nations or other peace-keeping activity. The following questions might be asked:

- Is there a plausible threat to security that the planned import of military technology or equipment could meet?
- Are the armed forces equipped to meet such a threat?
- What will the destination be of the imported equipment after the participation in UN or other peace-keeping activity has been terminated?

Ad (b): The technical capability of the recipient country to use the military technology or equipment.

The “technical capability of a recipient country to use the equipment” can be a key indicator of the “existence of a risk” of diversion. A proposed export that appears technically beyond what one might normally expect to be deployed by the recipient state may be an indication that a third-country end-user is in fact the intended final destination. This concept applies equally to complete goods and systems, as well as components and spare parts. The export of components and spare parts where there is no evidence that the recipient country operates the completed system in question may be a clear indicator of other intent.

Some questions that might be asked are:

- Is the proposed export high-tech in nature?
- If so, does the recipient have access to, or are they investing in, the appropriate technical backup to support the sale?
- Does the proposed export fit with the defence profile of the recipient state?
- If components or spares are being requested, is the recipient state known to operate the relevant system that incorporates these items?

Ad (c): The capability of the recipient country to apply effective export controls.

Recipient states’ adherence to international export control norms can be a positive indicator against either deliberate or unintentional diversion. Some questions that might be asked are:

- Is the recipient state a signatory or member of key international export control treaties, arrangements or regimes (e.g. Wassenaar)?
- Does the recipient country report to the UN Register of Conventional Arms; if not, why not?
- Has the recipient country aligned itself with the principles of Council Common Position 2008/944/CFSP or similar regional arrangements?
- Does the recipient country apply effective export and transfer controls encompassing dedicated control legislation and licensing arrangements that conform to international norms?
- Is stockpile management and security of sufficient standard?
- Are there effective legal instruments and administrative measures in place to prevent and combat corruption?
- Is the recipient state in the proximity of conflict zones or are there on-going tensions or other factors within the recipient state that might mitigate against the reliable enforcement of their export control provisions?

- Does the country of stated end-use have any history of diversion of arms, including the re-export of surplus equipment to countries of concern?

Ad (d): the risk of such technology or equipment being re-exported to undesirable destinations, and the record of the recipient country in respecting any re-export provision or consent prior to re-export which the exporting Member State considers appropriate to impose.

The competent authority should assess the reliability of the specific consignee:

- Is the equipment intended for the government or an individual company?

If the importer is the government:

- Is the government/the specific government branch reliable in this respect?
- Has the government/the specific government branch honoured previous end-user certificates?
- Is there any reason to suspect that the government/the specific government branch is not reliable?

If the importer is a company:

- Is the company known?
- Is the company authorised by the government in the recipient state?
- Has the company previously been involved in undesirable transactions?
- Does the recipient country have the technical capacity to use the equipment?

Technical capacity refers to the ability of the recipient country to make effective use of the equipment in question, both in material and human terms. It also refers to the technological level of the recipient country and its operational capacity, and generally to the standard of performance of its equipment.

Consequently, examination of the compatibility of an export of military technology or equipment with respect to this technical capacity should include consideration of whether it is opportune to deliver to the recipient equipment which is more sensitive or sophisticated than the technological means and operational needs of the recipient country.

Ad (e): The risk of such technology or equipment being diverted to terrorist organisations or to individual terrorists (anti-terrorist equipment would need particularly careful consideration in this context).

In assessing the potential risk in the recipient state, the competent authority might ask the following questions:

- Does the recipient state have a record of past or present terrorist activities?
- Are there any known or suspected links to terrorist organisations (or even individual terrorists) or any reason to suspect that entities within the recipient state participate in the financing of terrorism?
- Is there any other reason to suspect that the equipment might be re-exported or diverted to terrorist organisations?

If the answer is “yes” to one or more of the questions asked, a higher degree of scrutiny is necessary. The competent authority should consult with open and other sources when continuing that risk assessment.

Ad (f) The risk of reverse engineering or unintended technology transfer.

When the Member States are deciding on an export licence application, account must be taken of the capabilities of the recipient, whether State or private, to analyse and to divert the technology contained in the military equipment being acquired. The Member States will be able to exchange the relevant information with a view to establishing the capabilities of a potential purchaser of European military equipment.

In this context, and particularly for equipment which uses sensitive technology, the following factors must be considered:

- The sensitivity and the level of protection of the technologies contained in the system, as regards the estimated level of expert knowledge of the recipient, and the evident desire of that recipient to acquire some of those technologies;
- The ease with which those technologies could be analysed and diverted, either to develop similar equipment, or to improve other systems using the technology acquired;
- The quantities to be exported: the purchase of a number of sub-systems or items of equipment which appears to be under (or over) estimated is an indicator of a move to acquire technologies;
- The past behaviour of the recipient, when that recipient has previously acquired systems which it has been able to examine to obtain information about the technologies used in those systems. In this context, the Member States may inform one another about the cases of technology theft which they have experienced.

In order to determine this compatibility, Member States could consider the following questions:

- Does the recipient country have the military infrastructure to be able to make effective use of the equipment?
- Is the technological level of the equipment requested proportionate to the needs expressed by the recipient country and to its operational capacity?
- Is similar equipment already in service well maintained?
- Are enough skilled personnel available to be able to use and maintain the equipment? ⁷

3.7.4 **Arriving at a judgement.** Based on information and the over-all risk assessment as suggested in the paragraphs above Member States will reach a judgement on whether the proposed export should be denied on the basis of Criterion Seven.

ANNEX I (to Chapter 3 Section 7)

INTERNET WEBSITES OF RELEVANT INFORMATION SOURCES INCLUDE:

United Nations/conventional arms
(<http://disarmament.un.org/cab/register.html>)

Security Council Sanctions Committees
(<http://www.un.org/Docs/sc/committees/INTRO.htm>)

Security Council Counter Terrorism Committee
(<http://www.un.org/sc/ctc/>)

1540 Committee
(<http://disarmament2.un.org/Committee1540>)

Global Programme against Corruption, UN Office on Drugs and Crime
(<http://www.unodc.org/unodc/corruption.html>)

United Nations Institute for Disarmament Research/
UNIDIR
(www.unidir.org)

OSCE/arms control (<http://www.osce.org/activities/13014.html>)

European Union (www.consilium.europa.eu)

Wassenaar Arrangement (www.wassenaar.org)

Nuclear Suppliers Group (www.nuclearsuppliersgroup.org)

The Australia Group (www.australiagroup.net)

Zangger Committee (www.zanggercommittee.org)

MTCR (<http://www.mtcr.info>)

⁷ For instance, are a high proportion of the country's engineers and technicians already working in the military sector? Is there a shortage of engineers and technicians in the civilian sector that could be aggravated through additional recruitment by the military sector?

Hague Code of Conduct against the Proliferation of
Ballistic Missiles

<http://www.bmeia.gv.at/en/foreign-ministry/foreign-policy/disarmament/weapons-of-mass-destruction/hcoc.html>

Jane's foreign report (www.foreignreport.com)

Jane's Defence (jdw.janes.com)

Small Arms Survey (www.smallarmssurvey.org)

Security Council Report, (www.securitycouncilreport.org)

International Action Network on Small Arms
(<http://www.iansa.org>)

SIPRI (www.sipri.org)

Section 8: Best practices for the interpretation of Criterion Eight

How to apply Criterion Eight

3.8.1 Common Position 2008/944/CFSP applies to **all** exports by Member States of military technology or equipment included in the EU Common Military List, and to dual use items as specified in Article 6 of the Common Position. Thus a priori Criterion Eight applies to exports to all recipient countries without any distinction. However, because Criterion Eight establishes a link with the sustainable development⁸ of the recipient country, special attention should be given to arms exports to developing countries. It would be expected only to apply when the stated end-user is a government or other public sector entity, because it is only in respect of these end-users that the possibility of diverting scarce resources from social and other spending could occur. **Annex A** outlines a two-stage “filter” system to help Member States identify export licence applications which may require assessments against Criterion Eight. Stage 1 identifies country-level development concerns, while Stage 2 focuses on whether the financial value of the licence application is significant to the recipient country.

3.8.2 **Information sources.** If the filter system outlined in paragraph 3.8.1 indicates that further analysis is required, **Annex B** lists a series of social and economic indicators for Member States to take into account. For each indicator it provides an information source. The recipient country’s performance against one or more of these indicators should not in itself determine the outcome of Member States’ licensing decisions. Rather these data should be used to form an evidence base which will contribute to the decision-making process. Paragraphs 3.8.3 – 3.8.10 outline elements of criterion 8 on which further judgement needs to be reached.

Elements to consider when forming a judgement

3.8.3 Criterion Eight refers to a number of broad, overarching issues which should be taken into account in any assessment, and which are highlighted in the following text.

*Compatibility of the exports of the military technology or equipment with the **technical and economic capacity** of the recipient country, taking into account the desirability that states should meet their **legitimate security and defence needs** with the **least diversion of human and economic resources for armaments.***

Member States shall take into account, in the light of information from relevant sources such as United Nations Development Programme, World Bank, International

⁸ The Millennium Development Goals encapsulate sustainable development and include progress on goals related to poverty, education, gender equality, child mortality, maternal health, HIV/AIDS and other diseases, the environment and a global development partnership.

*Monetary Fund and Organisation for Economic Cooperation and Development reports, whether the proposed export would seriously hamper the sustainable development of the recipient country. They shall consider in this context the recipient country’s relative levels of **military and social expenditure**, taking into account also any **EU or bilateral aid.***

Technical and Economic Capacity

3.8.4a **Economic capacity** refers to the impact of the import of military technology or equipment on the availability of the financial and economic resources of the recipient country for other purposes, in the immediate, medium and long term. In this regard, Member States might consider taking into account:

- Both the capital cost of the purchase of military technology or equipment and the likely follow-on ‘life-cycle’ costs of related operation (e.g. ancillary systems and equipment), training and maintenance;
- Whether the arms in question are additional to existing capabilities or are replacing them, and – where appropriate – the likely savings in operating costs of older systems;
- How the import will be financed by the recipient country⁹ and how this might impact on its external debt and balance of payments situation.

3.8.4b **Technical capacity** refers to the ability of the recipient country to make effective use of the equipment in question, both in material and human terms. In this regard, Member States should consider the following questions:

- Does the recipient country have the military infrastructure to be able to make effective use of the equipment?
- Is similar equipment already in service well maintained?
- Are enough skilled personnel available to be able to use and maintain the equipment?¹⁰

Legitimate Needs of Security and Defence

3.8.5 All nations have the right to defend themselves according to the UN Charter. Nonetheless, an assessment should be made of whether the import is an appropriate and proportionate response to the recipient country’s need to defend itself, to ensure internal security, and assist in international peace-keeping and humanitarian operations. The following questions should be considered:

⁹ This needs to be considered because the payment methods could have detrimental macro-economic and sustainable development effects. For example if the purchase is by cash payment then it could seriously deplete a country’s foreign exchange reserves, impeding any exchange rate management safety net, and also have short term negative effects on the balance of payments. If provided on credit (of any form) it will add to the recipient country’s total debt burden – and this may already be at unsustainable levels.

¹⁰ For instance, are a high proportion of the country’s engineers and technicians already working in the military sector? Is there a shortage of engineers and technicians in the civilian sector that could be aggravated through additional recruitment by the military sector?

- Is there a plausible threat to security that the planned import of military technology or equipment could meet?
- Are the armed forces equipped to meet such a threat?
- Is the planned import a plausible priority considering the overall threat?

Least diversion for armaments of human and economic resources

3.8.6 What constitutes “least diversion” is a matter of judgement, taking all relevant factors into consideration. Member States should consider *inter alia* the following questions:

- Is the expenditure in line with the recipient country’s Poverty Reduction Strategy or programmes supported by the International Financial Institutions (IFIs)?
- What are the levels of military expenditure in the recipient country? Has it been increasing in the last five years?
- How transparent are state military expenditures and procurement? What are the possibilities for democratic or public involvement in the state budget process?
- Is there a clear and consistent approach to military budgeting? Is there a well-defined defence policy and a clear articulation of a country’s legitimate security needs?
- Are more cost-effective military systems available?

Relative levels of military and social expenditure

3.8.7 Member States should consider the following questions in assessing whether the purchase would significantly distort the level of military expenditure relative to social expenditure:

- What is the recipient country’s level of military expenditure relative to its expenditure on health and education?
- What is the recipient country’s military expenditure as a percentage of Gross Domestic Product (GDP)?
- Is there an upward trend in the ratio of military expenditure to health and education and to GDP over the last five years?
- If the country has high levels of military expenditure, does some of this “hide” social expenditure? (e.g. in highly militarised societies, the military may provide hospitals, welfare etc)
- Does the country have significant levels of “off-budget” military expenditure (i.e. is there significant military expenditure outside the normal processes of budgetary accountability and control)?

Aid Flows

3.8.8 Member States should take into account the level of aid flows to the importing country and their potential fungibility¹¹.

- Is the country highly dependent on multilateral as well as EU and bilateral aid?
- What is the country’s aid dependency as a proportion of Gross National Income?

Cumulative Impact

3.8.9 An assessment of the cumulative impact of arms imports on a recipient country’s economy can only be made with reference to exports from all sources, but accurate figures are not usually available. Each Member State may wish to consider the cumulative impact of its own arms exports to a recipient country, including recent and projected licence requests. It may also wish to take into account available information on current and planned exports from other EU Member States, as well as from other supplier states. Potential sources of information are, *inter alia*, the EU Annual Report, Member States’ annual national reports, the Wassenaar Arrangement, the UN Arms Register and the annual reports of the Stockholm International Peace Research Institute.

3.8.10 Data on cumulative arms exports may be used to inform a more accurate assessment of:

- historical, current and projected trends in a recipient country’s military expenditure, and how this would be affected by the proposed export.
- Trends in military spending as a percentage of the recipient country’s income, and as a percentage of its social expenditure.

3.8.11 **Arriving at a judgement:** Based on data and assessment of critical elements suggested under paragraphs 3.8.3 to 3.8.10 above, Member States will reach a judgement as to whether the proposed export would seriously hamper the sustainable development in the recipient country.

¹¹ Fungibility refers to the potential diversion of aid flows into inappropriate military expenditure.

Annex B (to Chapter 3 Section 8)

Member States may wish to consider a number of social and economic indicators relating to recipient countries, and their trend in recent years which are listed below, along with data sources.

| Indicator | Data source |
|--|--|
| Level of military expenditure relative to public expenditure on health and education | IISS Military Balance; SIPRI; WB/IMF Country Reports; WDI |
| Military expenditure as a percentage of Gross Domestic Product (GDP) | IISS Military Balance; SIPRI; WB/IMF Country Reports; WDI. |
| Aid dependency as a proportion of GNI | WDI |
| Fiscal sustainability | WDI, WDR, IFI Country Reports |
| Debt sustainability | WB/IMF, including Country Reports |
| Performance against Millennium Development Goals (post-2005) | UNDP, Human Development Report |

List of abbreviations

- IFI : International Financial Institutions watchnet
IISS : International Institute For Strategic Studies
IMF : International Monetary Fund
SIPRI : Stockholm International Peace Research Institute
UNDP : United Nations Development Programme
WB : World Bank
WDI : World Development Indicators
WDR : World Development Reports

List of sources (websites)

- IFI : <http://www.if-watchnet.org>
IISS : <http://www.iiss.org>
IMF : <http://www.imf.org>
SIPRI : <http://www.sipri.org>
UNDP : <http://www.undp.org.in>
WB : <http://www.worldbank.org>
WDI : <http://www.publications.worldbank.org/WDI>
WDR : <http://econ.worldbank.org/wdr>

Annex C

List of Direct Internet Addresses of EU Member States' National Reports on Arms Exports

- Austria: (Gouvernement <http://www.austria.gv.at> Foreign Ministry <http://www.bmaa.gv.at>)
- Belgium: « Rapport du Gouvernement au Parlement sur la loi relative à l'importation, l'exportation et le transit d'armes
<http://www.diplomatie.be/fr/press/homedetails.asp?TEXTID=8481>
(diplobel.fgov.be)
<http://docs.vlaanderen.be/buitenland/deelsites/wapenhandel.htm>
http://gov.wallonie.be/code/fr/rap_2005.pdf
- Bulgaria: <http://www.mee.government.bg/ind/lic/arms.html>
- Czech Republic: « Yearly National Reports : 2001, 2002, 2003, 2004 »
<http://www.mzv.cz/wwwo/mzv/default.asp?ido=15135&idj=2&amb=1&ikony=True&trid=1&prsl=True&pocc1=8>
(www.mzv.cz/kontrolaexportu)
- Denmark: « Udforsel af vaben og produkter med dobbelt anvendelse fra Danmark 2004 »
<http://www.um.dk/NR/rdonlyres/5D6C5BD3-E876-484B-B974-AA62D12D949B/0/2004Udfoerselafvaab-enogdualuseprodukterev2.pdf>
- Estonia: http://www.vm.ee/eng/kat_153
- Finland: « Annual report according to the eu code of conduct on arms exports 2003 »
http://www.defmin.fi/index.phtml/page_id/334/topmenu_id/75/menu_id/334/this_topmenu/75/lang/3/fs/12
- France: « Rapport au Parlement sur les exportations d'armement de la France en 2002 et 2003 »
http://www.defense.gouv.fr/sites/defense/actualites_et_dossiers/rapport_sur_les_exportations_darmement_en_2002_et_2003
- Germany: « 2004 Military Equipment Export Report »
<http://www.bmwi.bund.de/Navigation/Service/bestellservice,did=72610.html>
- Hungary: <http://www.mkeh.hu>
- Ireland: <http://www.entemp.ie/trade/export/military.htm>
- Italy: <http://www.senato.it/leg/15/BGT/Schede/docnonleg/12689.htm>

Latvia: www.mfa.gov.lv

Lithuania: <http://www.urm.lt/index.php?1703452064>

Luxembourg: www.mae.lu

Malta: http://mcmp.gov.mt/commerce_trade04.asp

Netherlands: « Bijlage: Jaarrapport Wapenexportbeleid 2004 »
<http://www.exportcontrole.ez.nl>

Poland: <http://dke.mg.gov.pl>

Portugal: http://www.mdn.gov.pt/Defesa/Estrutura/Organigrama/DGAED/relatorios_anuarios.htm

Romania: www.ancex.ro, www.export-control.ro

Slovakia: www.economy.gov.sk

Slovenia: www.mors.si

Spain: <http://www.revistasice.com/Estudios/Documen/bice/2827/BICE28270101.PDF>
(www.mcx.es/sgcomex/mddu)

Sweden: <http://www.sweden.gov.se>

United Kingdom: <http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029390554>

Annex D

Table of Export Control Regimes in 2008 by Country

| | 1.Non-Proliferation Treaty: Established 1970 | The Zangger Committee: Established 1971 | Nuclear Suppliers Group: Established 1975 | The Chemical Weapons Convention: Established 1997 | Biological and Toxin Weapons Convention: Establish 1975 | The Australia Group: Established 1985 | The Missile Technology Control Regime: Established 1987 | The Wassenaar Arrangement: Established 1996 |
|-------------------|---|--|--|--|--|--|--|--|
| Afghanistan | • | | | • | • | | | |
| Albania | • | | | • | • | | | |
| Algeria | • | | | • | • | | | |
| Andorra | • | | | • | • | | | |
| Angola | • | | | | • | | | |
| Antigua & Barbuda | • | | | • | • | | | |
| Argentina | • | • | • | • | • | • | • | • |
| Armenia | • | | | • | • | | | |
| Australia | • | • | • | • | • | • | • | • |
| Austria | • | • | • | • | • | • | • | • |
| Azerbaijan | • | | | • | • | | | |
| The Bahamas | • | | | | • | | | |
| Bahrain | • | | | • | • | | | |
| Bangladesh | • | | | • | • | | | |
| Barbados | • | | | • | • | | | |
| Belarus | • | | • | • | • | | | |
| Belgium | • | • | • | • | • | • | • | • |

| | 1. Non-Proliferation Treaty: Established 1970 | The Zanger Committee: Established 1971 | Nuclear Suppliers Group: Established 1975 | The Chemical Weapons Convention: Established 1997 | Biological and Toxin Weapons Convention: Establish 1975 | The Australia Group: Established 1985 | The Missile Technology Control Regime: Established 1987 | The Wassenaar Arrangement: Established 1996 |
|--------------------------|--|---|--|--|--|--|--|--|
| Belize | • | | | • | • | | | |
| Benin | • | | | • | • | | | |
| Bhutan | • | | | • | • | | | |
| Bolivia | • | | | • | • | | | |
| Bosnia & Herzogovina | • | | | • | • | | | |
| Botswana | • | | | • | • | | | |
| Brazil | • | | • | • | • | | • | |
| Brunei | • | | | • | • | | | |
| Bulgaria | • | • | • | • | • | • | • | • |
| Burkina Faso | • | | | • | • | | | |
| Burundi | • | | | • | • | | | |
| Cambodia | • | | | • | • | | | |
| Cameroon | • | | | • | • | | | |
| Canada | • | • | • | • | • | • | • | • |
| Cape Verde | • | | | • | • | | | |
| Central African Republic | • | | | • | • | | | |
| Chad | • | | | • | • | | | |
| Chile | • | | | • | • | | | |
| China | • | • | • | • | • | | | |
| Colombia | • | | | • | • | | | |
| Comoros | • | | | • | • | | | |
| Congo | • | | | • | • | | | |
| Cook Islands | | | | • | • | | | |
| Costa Rica | • | | | • | • | | | |
| Cote d'Ivoire | • | | | • | • | | | |
| Croatia | • | • | • | • | • | • | | • |
| Cuba | | | • | • | • | | | |
| Cyprus | • | | • | • | • | • | | |
| Czech Republic | • | • | • | • | • | • | • | • |

| | 1.Non-Proliferation Treaty: Established 1970 | The Zangger Committee: Established 1971 | Nuclear Suppliers Group: Established 1975 | The Chemical Weapons Convention: Established 1997 | Biological and Toxin Weapons Convention: Establish 1975 | The Australia Group: Established 1985 | The Missile Technology Control Regime: Established 1987 | The Wassenaar Arrangement: Established 1996 |
|--------------------------------------|---|--|--|--|--|--|--|--|
| Democratic Republic of Congo (Zaire) | • | | | • | • | | | |
| Denmark | • | • | • | • | • | • | • | • |
| Djibouti | • | | | • | • | | | |
| Dominica | • | | | • | • | | | |
| Dominican Republic | • | | | | • | | | |
| Ecuador | • | | | • | • | | | |
| Egypt | • | | | | • | | | |
| El Salvador | • | | | • | • | | | |
| Equatorial Guinea | • | | | • | • | | | |
| Eritrea | • | | | • | • | | | |
| Estonia | • | | • | • | • | • | | • |
| Ethiopia | • | | | • | • | | | |
| Fiji | • | | | • | • | | | |
| Finland | • | • | • | • | • | • | • | • |
| France | • | • | • | • | • | • | • | • |
| Gabon | • | | | • | • | | | |
| The Gambia | • | | | • | • | | | |
| Georgia | • | | | • | • | | | |
| Germany | • | • | • | • | • | • | • | • |
| Ghana | • | | • | • | • | | | |
| Greece | • | • | • | • | • | • | • | • |
| Grenada | • | | | • | • | | | |
| Guatemala | • | | | • | • | | | |
| Guinea | • | | | • | • | | | |
| Guinea-Bissau | • | | | | • | | | |
| Guyana | • | | | • | • | | | |
| Haiti | • | | | • | • | | | |
| Holy See | • | | | • | • | | | |
| Honduras | • | | | • | • | | | |

| | 1.Non-Proliferation Treaty: Established 1970 | The Zanger Committee: Established 1971 | Nuclear Suppliers Group: Established 1975 | The Chemical Weapons Convention: Established 1997 | Biological and Toxin Weapons Convention: Establish 1975 | The Australia Group: Established 1985 | The Missile Technology Control Regime: Established 1987 | The Wassenaar Arrangement: Established 1996 |
|---------------|---|---|--|--|--|--|--|--|
| Hungary | • | • | • | • | • | • | • | • |
| Iceland | • | | | • | • | • | • | |
| India | | | | • | • | | | |
| Indonesia | • | | | • | • | | | |
| Iran | • | | | • | • | | | |
| Iraq | • | | | | • | | | |
| Ireland | • | • | • | • | • | • | • | • |
| Israel | | | | | • | | | |
| Italy | • | • | • | • | • | • | • | • |
| Jamaica | • | | | • | • | | | |
| Japan | • | • | • | • | • | • | • | • |
| Jordan | • | | | • | • | | | |
| Kazakhstan | • | | • | • | • | | | |
| Kenya | • | | | • | • | | | |
| Kiribati | • | | | • | • | | | |
| Kuwait | | | | • | • | | | |
| Kyrgyzstan | • | | | • | • | | | |
| North Korea | • | | | | | | | |
| South Korea | • | • | • | • | • | • | • | • |
| Laos | • | | | • | • | | | |
| Latvia | • | | • | • | • | • | | • |
| Lebanon | • | | | | • | | | |
| Lesotho | • | | | • | • | | | |
| Liberia | • | | | • | • | | | |
| Libya | • | | | • | • | | | |
| Liechtenstein | • | | | • | • | | | |
| Lithuania | • | | • | | • | • | | • |
| Luxembourg | • | • | • | • | • | • | • | • |
| FYR Macedonia | • | | | • | • | | | |
| Madagascar | • | | | • | • | | | |

| | 1.Non-Proliferation Treaty: Established 1970 | The Zangger Committee: Established 1971 | Nuclear Suppliers Group: Established 1975 | The Chemical Weapons Convention: Established 1997 | Biological and Toxin Weapons Convention: Establish 1975 | The Australia Group: Established 1985 | The Missile Technology Control Regime: Established 1987 | The Wassenaar Arrangement: Established 1996 |
|------------------|---|--|--|--|--|--|--|--|
| Malawi | • | | | • | • | | | |
| Malaysia | • | | | • | • | | | |
| Maldives Islands | • | | | • | • | | | |
| Mali | • | | | • | • | | | |
| Malta | • | | • | • | • | • | | • |
| Marshall Islands | • | | | • | • | | | |
| Mauritania | • | | | • | • | | | |
| Mauritius | • | | | • | • | | | |
| Mexico | • | | | • | • | | | |
| Micronesia | • | | | • | • | | | |
| Moldova | • | | | • | • | | | |
| Monaco | • | | | • | • | | | |
| Mongolia | • | | | • | • | | | |
| Montenegro | | | | • | | | | |
| Morocco | • | | | • | • | | | |
| Mozambique | • | | | • | • | | | |
| Myanmar | • | | | | • | | | |
| Namibia | • | | | • | • | | | |
| Nauru | • | | | • | • | | | |
| Nepal | • | | | • | • | | | |
| Netherlands | • | • | • | • | • | • | • | • |
| New Zealand | • | | • | • | • | • | • | • |
| Nicaragua | • | | | • | • | | | |
| Niger | • | | | • | • | | | |
| Nigeria | • | | | • | • | | | |
| Niue | | | | • | • | | | |
| Norway | • | • | • | • | • | • | • | • |
| Oman | • | | | • | • | | | |
| Palau | • | | | • | • | | | |
| Pakistan | | | | • | • | | | |

| | 1.Non-Proliferation Treaty: Established 1970 | The Zanger Committee: Established 1971 | Nuclear Suppliers Group: Established 1975 | The Chemical Weapons Convention: Established 1997 | Biological and Toxin Weapons Convention: Establish 1975 | The Australia Group: Established 1985 | The Missile Technology Control Regime: Established 1987 | The Wasseaar Arrangement: Established 1996 |
|---------------------------------|---|---|--|--|--|--|--|---|
| Panama | • | | | • | • | | | |
| Papua New Guinea | • | | | • | • | | | |
| Paraguay | • | | | • | • | | | |
| Peru | • | | | • | • | | | |
| Philippines | • | | | • | • | | | |
| Poland | • | • | • | • | • | • | • | • |
| Portugal | • | • | • | • | • | • | • | • |
| Qatar | • | | | • | • | | | |
| Romania | • | • | • | • | • | • | | • |
| Russia | • | • | • | • | • | | • | • |
| Rwanda | • | | | • | • | | | |
| St. Kitts and Nevis | • | | | • | • | | | |
| St. Lucia | • | | | • | • | | | |
| St. Vincent & the Grenadines | • | | | • | • | | | |
| Samoa | | | | • | • | | | |
| San Marino | • | | | • | • | | | |
| SaoTome & Principe | • | | | • | • | | | |
| Saudi Arabia | • | | | • | • | | | |
| Senegal | • | | | • | • | | | |
| Serbia | | | | • | • | | | |
| Seychelles | • | | | • | • | | | |
| Sierra Leone | • | | | • | • | | | |
| Singapore | • | | | • | • | | | |
| Slovakia | • | • | • | • | • | • | | • |
| Slovenia | • | • | • | • | • | • | | • |
| Solomon Islands | • | | | • | • | | | |
| Somalia | • | | | | • | | | |
| South Africa | • | • | • | • | • | | • | • |
| Spain | • | • | • | • | • | • | • | • |

| | 1.Non-Proliferation Treaty: Established 1970 | The Zangger Committee: Established 1971 | Nuclear Suppliers Group: Established 1975 | The Chemical Weapons Convention: Established 1997 | Biological and Toxin Weapons Convention: Establish 1975 | The Australia Group: Established 1985 | The Missile Technology Control Regime: Established 1987 | The Wassenaar Arrangement: Established 1996 |
|----------------------|---|--|--|--|--|--|--|--|
| Sri Lanka | • | | | • | • | | | |
| Sudan | • | | | • | • | | | |
| Suriname | • | | | • | • | | | |
| Swaziland | • | | | • | • | | | |
| Sweden | • | • | • | • | • | • | • | • |
| Switzerland | • | • | • | • | • | • | • | • |
| Syria | • | | | | • | | | |
| Tajikistan | • | | | • | • | | | |
| Tanzania | • | | | • | • | | | |
| Thailand | • | | | • | • | | | |
| Timor-Leste | | | | • | • | | | |
| Togo | • | | | • | • | | | |
| Tonga | • | | | • | • | | | |
| Trinidad & Tobago | • | | | • | • | | | |
| Tunisia | • | | | • | • | | | |
| Turkey | • | • | • | • | • | • | • | • |
| Turkmenistan | • | | | • | • | | | |
| Tuvalu | • | | | • | • | | | |
| Uganda | • | | | • | • | | | |
| Ukraine | • | • | • | • | • | • | • | • |
| United Arab Emirates | • | | | • | • | | | |
| United Kingdom | • | • | • | • | • | • | • | • |
| United States | • | • | • | • | • | • | • | • |
| Uruguay | • | | | • | • | | | |
| Uzbekistan | • | | | • | • | | | |
| Vanuatu | • | | | • | • | | | |
| Venezuela | • | | | • | • | | | |
| Vietnam | • | | | • | • | | | |
| Western Samoa | • | | | | | | | |
| Yemen | • | | | • | • | | | |

| | 1.Non-Proliferation Treaty: Established 1970 | The Zanger Committee: Established 1971 | Nuclear Suppliers Group: Established 1975 | The Chemical Weapons Convention: Established 1997 | Biological and Toxin Weapons Convention: Establish 1975 | The Australia Group: Established 1985 | The Missile Technology Control Regime: Established 1987 | The Wassenaar Arrangement: Established 1996 |
|------------|---|---|--|--|--|--|--|--|
| Yugoslavia | • | | | | | | | |
| Zambia | • | | | • | • | | | |
| Zimbabwe | • | | | • | • | | | |

Annex E

International Development Assistance Association Borrowers

Africa

Angola
Benin
Burkina Faso
Cape Verde
Cameroon
Central African Republic
Chad
Comoros
Congo, Democratic Republic of
Congo, Republic of
Cote D'Ivoire
Ethiopia
Eritrea
Gambia
Ghana
Guinea
Guinea-Bissau
Kenya
Lesotho
Liberia
Madagascar
Malawi
Mali
Mauritania
Mozambique
Niger
Nigeria
Rwanda
Sao Tome and Principe
Senegal
Sierra Leone
Somalia
Sudan
Tanzania
Togo
Uganda
Zambia
Zimbabwe

East Asia

Cambodia
Kiribati
Laos, PDR
Mongolia
Myanmar
Papua New Guinea
Samoa
Solomon Islands
Timor-Leste
Tonga
Vanuatu
Vietnam

Europe and Central Asia

Armenia
Azerbaijan
Bosnia-Herzegovina
Georgia
Kyrgyz Republic
Moldova
Tajikistan
Uzbekistan

Latin America and Caribbean

Bolivia
Guyana
Haiti
Honduras
Nicaragua
Dominica
Grenada
St Lucia
St Vincent

Middle East and North Africa

Djibouti
Yemen, Republic of

South Asia

Afghanistan
Bangladesh
Bhutan
India
Maldives
Nepal
Pakistan
Sri Lanka

Annex F

Information required for the UN Conventional Arms Register

Standardized form for reporting international transfers of conventional arms (exports)^a



EXPORTS

Report of international conventional arms transfers

(according to United Nations General Assembly resolutions 46/36 L and 58/54)

Reporting country: United Kingdom

National point of contact: Foreign and Commonwealth Office, Counter Proliferation Department,
Tel: +44 (0) 20 7008 1793 email; Eric.Spicer@fco.gov.uk
(Organization, Division/Section, telephone, fax, e-mail) (FOR GOVERNMENTAL USE ONLY)

Calendar year: _____2008_____

| A | | B | C | D ^b | E ^b | REMARKS ^c | |
|------------------|---------------------------------|-------------------------|-----------------|-----------------------------------|--------------------------------|----------------------|--------------------------|
| Category (I-VII) | | Final importer State(s) | Number of items | State of origin (if not exporter) | Intermediate location (if any) | Description of item | Comments on the transfer |
| I. | Battle tanks | | | | | | |
| II. | Armoured combat vehicles | Saudi Arabia | 162 | | | Tactical Vehicles | Includes 14 x Ambulances |
| III. | Large-calibre artillery systems | Spain | 2 | | | 105mm Gun | |
| IV. | Combat aircraft | USA | 16 | | | Shorts Tucano | For static display |
| | | Netherlands | 2 | | | C-130 | |
| | | Greece | 1 | | | Jaguar GR3 | |

| A | | B | C | D ^b | E ^b | REMARKS ^c | |
|------------------|---|-------------------------|-----------------|-----------------------------------|--------------------------------|---|---------------------------------------|
| Category (I-VII) | | Final importer State(s) | Number of items | State of origin (if not exporter) | Intermediate location (if any) | Description of item | Comments on the transfer |
| V. | Attack helicopters | USA | 1 | | | Mi-24 Hind 4 x Bell UH1H 3 x Bell 212 | All weapons systems deactivated |
| | | Zambia | 7 | | | | |
| VI. | Warships | | | | | | |
| VII. | Missiles and missile launchers ^d | Norway | 600 | | | Swingfire | For disposal Govt to Govt Transfer |
| | | Singapore | 15 | | | SHORAD | |
| | | France | 3 | | | Seawolf | |
| | | Australia | 21 | | | | |

National criteria on transfers: _____

^{a b c d} See explanatory notes.

The nature of information provided should be indicated in accordance with explanatory notes e and f.

Standardized form for reporting international transfers of conventional arms (imports)^a



IMPORTS

Report of international conventional arms transfers

(according to United Nations General Assembly resolutions 46/36 L and 58/54)

Reporting country: United Kingdom

National point of contact: Foreign and Commonwealth Office, Counter Proliferation Department,
Tel: +44 (0) 20 7008 1793 email; Eric.Spicer@fco.gov.uk
(Organization, Division/Section, telephone, fax, e-mail) (FOR GOVERNMENTAL USE ONLY)

Calendar year: _____ 2008 _____

| A | | B | C | D ^b | E ^b | REMARKS ^c | |
|------------------|---|-------------------|-----------------|-----------------------------------|--------------------------------|----------------------------|--------------------------|
| Category (I-VII) | | Exporter State(s) | Number of items | State of origin (if not exporter) | Intermediate location (if any) | Description of item | Comments on the transfer |
| I. | Battle tanks | | | | | | |
| II. | Armoured combat vehicles | Sweden Italy | 41 220 | | | Viking Vehicles Panther | |
| III. | Large-calibre artillery systems | | | | | | |
| IV. | Combat aircraft | | | | | | |
| V. | Attack helicopters | | | | | | |
| VI. | Warships | | | | | | |
| VII. | Missiles and missile launchers ^d | a) a) USA b) | 240 | | | Hellfire | |

National criteria on transfers: _____

^{a b c d} See explanatory notes.

The nature of information provided should be indicated in accordance with explanatory notes e and f.

THE UN REGISTER OF CONVENTIONAL ARMS

MILITARY HOLDINGS

Reporting Country: United Kingdom

For reporting period: 2008

| Category | Definition | Number |
|---|---------------------|--------|
| Category I Battle Tanks | Challenger 2 | 383 |
| Category II Armoured Combat Vehicles | Viking TCV variant | 69 |
| | Viking AMBV variant | 12 |
| | Viking RRV variant | 10 |
| | Viking CV variant | 29 |
| | AFV 432 | 1487 |
| | Stormer APC | 147 |
| | CVR(T) Scimitar | 322 |
| | CVR(T) Spartan | 494 |
| | CVR(T) Sturgeon | 35 |
| | CVR(T) Salamander | 32 |
| | Saxon | 147 |
| | Warrior | 793 |
| | Mastiff | 143 |
| | Jackal | 202 |
| | Panther | 350 |
| Category III Large Calibre Artillery Systems | 105mm Lt Gun | 159 |
| | AS90 SP Howitzer | 142 |
| | MLRS | 59 |
| | 81mm (all types) | 363 |
| Category IV Military Aircrafts | Hawk | 128 |
| | Islander | 9 |
| | Defender | 6 |
| | Harrier | 79 |
| | Tornado | 206 |
| | Nimrod | 17 |
| | Sentry | 7 |
| | Typhoon | 55 |
| | Reaper | 2 |
| | VC10 | 15 |
| | C17 | 6 |
| | Hercules | 40 |
| | Tristar | 6 |
| Category V Attack Helicopters | Gazelle | 32 |
| | Lynx AH7 | 84 |
| | Lynx AH9 | 24 |
| | Apache AH1 | 67 |
| | Sea King HC4 | 37 |
| | Sea King HAS 6 (CR) | 5 |
| | Puma HC1 | 43 |
| | Merlin HC3/3A | 28 |
| | Chinook HC2/2a | 40 |
| | Bell 212 | 7 |
| | Augusta A109 | 4 |
| | Chinook HC3 | 8 |
| | Eurocopter AS365 N3 | 3 |

| Category | Definition | Number |
|--|-----------------------------|--------|
| Category VI Warships | Submarines | 12 |
| | Aircraft Carriers | 2 |
| | Frigates/Destroyers | 25 |
| | Amphibious Ships | 3 |
| | Survey Vessels | 5 |
| | Offshore Patrol Vessels | 5 |
| | Aviation Training Ship | 1 |
| | Repair and Maintenance ship | 1 |
| | Tanker/Replenishment Ship | 14 |
| MCMV | 8 | |
| Category VII Missiles and Missile Launchers | TOTAL | 9967 |

Military Holdings defined as equipment in-service with UK-Armed Forces.

THE UN REGISTER OF CONVENTIONAL ARMS

PROCUREMENT FROM NATIONAL PRODUCTION

Reporting Country: **United Kingdom**

For reporting period: **2008**

| Category (I-VII) | Number of Items | Details of model, type, variant |
|--------------------------------------|-----------------|---------------------------------|
| I. Battle Tanks | | |
| II. Armoured Combat Vehicles | 41 | Viking All Terrain Vehicle |
| III. Large Calibre Artillery Systems | | |
| IV. Combat Aircraft | 4 | Typhoon |
| V. Attack Helicopters | | |
| VI. Warships | | |
| VII. Missiles & Missile Launchers | | |

Procurement from national production is defined as complete weapon systems purchased by the Government from suppliers within the United Kingdom or from programmes in which the UK is a collaborative partner.

Government to Government transfers of equipment between 1 January and 31 December 2008

| Country | Type of Equipment | Quantity* |
|-----------|------------------------------|-----------|
| Singapore | Missiles & Missile Launchers | 15 |

Small Arms destroyed by the Ministry of Defence between 1 January and 31 December 2008

| Gun Type | Number |
|---------------------|-------------|
| Grenade Launcher | 46 |
| Light A/Tank Weapon | 63 |
| Machine Gun | 265 |
| Riot Gun | 38 |
| Sub Machine Gun | NIL |
| Shotgun | 13 |
| Rifle | 473 |
| Carbine | 6 |
| Pistol | 54 |
| Injector | 30 |
| Bolt Gun | NIL |
| RPG | 13 |
| Grenade Discharger | NIL |
| Total | 1001 |

Statistics on exports of weapons and small arms in 2008.

Information on international transfers of small arms and light weapons^{a,b} (exports)



EXPORTS

Reporting country: United Kingdom

National point of contact: Foreign and Commonwealth Office, Counter Proliferation Department,
Tel: +44 (0) 20 7008 1793 email: Eric.Spicer@fco.gov.uk
(Organization, Division/Section, telephone, fax, e-mail) (FOR GOVERNMENTAL USE ONLY)

Calendar year: _____ 2008 _____

| A | | B | C | D | E | REMARKS | |
|-------------------|------------------------------------|---|--|-----------------------------------|--------------------------------|-----------------------|--------------------------|
| | | Exporter State(s) | Number of items | State of origin (if not exporter) | Intermediate location (if any) | Description of item | Comments on the transfer |
| SMALL ARMS | | | | | | | |
| 1. | Revolvers and self-loading pistols | New Zealand USA | 2 1 | | | Pistol | |
| | | Afghanistan Austria Bahrain Belgium Canada France Germany Hong Kong India Iraq Ireland Italy Japan Jordan Korea, South Kuwait Lesotho Malta Morocco Netherlands New Zealand Oman Serbia | 97 12 2 4 899 1 4 2 1 692 14 18 4 402 3 398 100 5 28 2 13 69 5 | | | Semi-Automatic Pistol | |

| A | | B | C | D | E | REMARKS | |
|----|------------------------------------|----------------------|-----------------|-----------------------------------|--------------------------------|---------------------|--------------------------|
| | | Exporter State(s) | Number of items | State of origin (if not exporter) | Intermediate location (if any) | Description of item | Comments on the transfer |
| 2. | Rifles and carbines (continued) | Argentina | 84 | | | Shotguns | |
| | | Australia | 25 | | | | |
| | | Austria | 1 | | | | |
| | | Bahrain | 2 | | | | |
| | | Belgium | 4 | | | | |
| | | Canada | 36 | | | | |
| | | Cyprus | 65 | | | | |
| | | Denmark | 9 | | | | |
| | | Dominican Republic | 17 | | | | |
| | | Finland | 11 | | | | |
| | | France | 6 | | | | |
| | | Gambia | 3 | | | | |
| | | Germany | 6 | | | | |
| | | Greece | 5 | | | | |
| | | Hong Kong | 1 | | | | |
| | | Iceland | 5 | | | | |
| | | India | 2 | | | | |
| | | Ireland | 11 | | | | |
| | | Italy | 33 | | | | |
| | | Jordan | 3 | | | | |
| | | Kazakhstan | 1 | | | | |
| | | Korea South | 3 | | | | |
| | | Kuwait | 1 | | | | |
| | | Libya | 2 | | | | |
| | | Malaysia | 1 | | | | |
| | | Morocco | 6 | | | | |
| | | Namibia | 2 | | | | |
| | | Netherlands | 3 | | | | |
| | | New Zealand | 28 | | | | |
| | | Norway | 8 | | | | |
| | | Oman | 2 | | | | |
| | | Pakistan | 49 | | | | |
| | | Poland | 1 | | | | |
| | | Portugal | 12 | | | | |
| | | Qatar | 3 | | | | |
| | | Russia | 34 | | | | |
| | | San Marino | 1 | | | | |
| | | Slovakia | 4 | | | | |
| | | South Africa | 43 | | | | |
| | | Spain | 4 | | | | |
| | | Sweden | 12 | | | | |
| | | Switzerland | 9 | | | | |
| | | Taiwan | 1 | | | | |
| | | Trinidad & Tobago | 1 | | | | |
| | | Turkey | 14 | | | | |
| | | Ukraine | 4 | | | | |
| | | USA | 1526 | | | | |
| | | Zambia | 10 | | | | |
| | | United Arab Emirates | 5 | | | | |

| A | | B | C | D | E | REMARKS | |
|----|------------------------------------|----------------------|-----------------|-----------------------------------|--------------------------------|---------------------|--------------------------|
| | | Exporter State(s) | Number of items | State of origin (if not exporter) | Intermediate location (if any) | Description of item | Comments on the transfer |
| 2. | Rifles and carbines (continued) | Australia | 9 | | | Sporting Rifle | |
| | | Austria | 1 | | | | |
| | | Belgium | 14 | | | | |
| | | Canada | 12 | | | | |
| | | Denmark | 7 | | | | |
| | | Estonia | 1 | | | | |
| | | Finland | 2 | | | | |
| | | France | 4 | | | | |
| | | Germany | 2 | | | | |
| | | Iceland | 2 | | | | |
| | | Ireland | 16 | | | | |
| | | Italy | 94 | | | | |
| | | Japan | 1 | | | | |
| | | Jordan | 1 | | | | |
| | | Kenya | 11 | | | | |
| | | Kuwait | 2 | | | | |
| | | Malaysia | 21 | | | | |
| | | Mongolia | 1 | | | | |
| | | Namibia | 3 | | | | |
| | | Netherlands | 3 | | | | |
| | | New Zealand | 12 | | | | |
| | | Norway | 3 | | | | |
| | | Oman | 1 | | | | |
| | | Pakistan | 7 | | | | |
| | | Poland | 2 | | | | |
| | | Portugal | 1 | | | | |
| | | Russia | 12 | | | | |
| | | South Africa | 9 | | | | |
| | | Spain | 6 | | | | |
| | | Sweden | 3 | | | | |
| | | Switzerland | 1 | | | | |
| | | Tanzania | 1 | | | | |
| | | Ukraine | 136 | | | | |
| | | USA | 22536 | | | | |
| | | Zambia | 42 | | | | |
| | | United Arab Emirates | 13 | | | | |

| A | | B | C | D | E | REMARKS | |
|----|------------------------------------|----------------------|-----------------|-----------------------------------|--------------------------------|---------------------|--------------------------|
| | | Exporter State(s) | Number of items | State of origin (if not exporter) | Intermediate location (if any) | Description of item | Comments on the transfer |
| 2. | Rifles and carbines (continued) | Australia | 25 | | | Sniper Rifle | |
| | | Bahrain | 1 | | | | |
| | | Belgium | 5 | | | | |
| | | Bulgaria | 1 | | | | |
| | | Canada | 20 | | | | |
| | | Chile | 2 | | | | |
| | | Czech Republic | 9 | | | | |
| | | Denmark | 3 | | | | |
| | | Finland | 1 | | | | |
| | | France | 1 | | | | |
| | | Georgia | 5 | | | | |
| | | India | 2 | | | | |
| | | Indonesia | 64 | | | | |
| | | Ireland | 2 | | | | |
| | | Italy | 92 | | | | |
| | | Jordan | 2 | | | | |
| | | Korea, South | 7 | | | | |
| | | Kuwait | 1 | | | | |
| | | Latvia | 5 | | | | |
| | | Netherlands | 2 | | | | |
| | | New Zealand | 12 | | | | |
| | | Norway | 3 | | | | |
| | | Oman | 11 | | | | |
| | | Pakistan | 266 | | | | |
| | | Peru | 12 | | | | |
| | | Poland | 12 | | | | |
| | | Qatar | 2 | | | | |
| | | Romania | 1 | | | | |
| | | Russia | 28 | | | | |
| | | Slovakia | 5 | | | | |
| | | South Africa | 2 | | | | |
| | | Spain | 47 | | | | |
| | | Switzerland | 3 | | | | |
| | | Taiwan | 2 | | | | |
| | | Tunisia | 4 | | | | |
| | | Turkmenistan | 9 | | | | |
| | | Ukraine | 115 | | | | |
| | | USA | 5614 | | | | |
| | | United Arab Emirates | 3 | | | | |

| A | | B | C | D | E | REMARKS | |
|----|------------------|----------------------|-----------------|-----------------------------------|--------------------------------|---------------------|--------------------------|
| | | Exporter State(s) | Number of items | State of origin (if not exporter) | Intermediate location (if any) | Description of item | Comments on the transfer |
| 3. | Sub-machine guns | Afghanistan | 8 | | | sub machine gun | |
| | | Bahrain | 1 | | | | |
| | | Belgium | 2 | | | | |
| | | Chile | 426 | | | | |
| | | Czech Republic | 5 | | | | |
| | | Germany | 1 | | | | |
| | | Gibraltar | 3 | | | | |
| | | Hong Kong | 4 | | | | |
| | | Italy | 5 | | | | |
| | | Jordan | 5 | | | | |
| | | Kuwait | 315 | | | | |
| | | Malta | 10 | | | | |
| | | Morocco | 8 | | | | |
| | | Netherlands | 4 | | | | |
| | | New Zealand | 130 | | | | |
| | | Qatar | 100 | | | | |
| | | Serbia | 20 | | | | |
| | | South Africa | 209 | | | | |
| | | Spain | 29 | | | | |
| | | USA | 20000 | | | | |
| | | Uruguay | 2 | | | | |
| | | United Arab Emirates | 35 | | | | |

| A | | B | C | D | E | REMARKS | |
|----|--------------------|--|--|-----------------------------------|--------------------------------|---------------------|--------------------------|
| | | Exporter State(s) | Number of items | State of origin (if not exporter) | Intermediate location (if any) | Description of item | Comments on the transfer |
| 4. | Assault rifles | Afghanistan Austria Bahrain Belgium Bermuda Brazil Canada Chile Czech Republic Finland France Germany Hong Kong Iraq Italy Jordan Latvia Lesotho Malta Morocco Netherlands New Zealand Oman Poland Qatar Saudi Arabia Slovakia South Africa Spain Switzerland USA Uruguay United Arab Emirates | 163 6 2 20 4 37 604 6 33 2 125 5 4 700 5 61 5 100 73 123 56 186 3 3000 2 120 54 2 10 300 159507 609 16 | | | Assault Rifles | |
| 5. | Light machine guns | | | | | Light Machine Gun | |

| A | B | C | D | E | REMARKS | |
|----------------------|--------------------|---|--|--------------------------------|---------------------|------------------------------|
| | Exporter State(s) | Number of items | State of origin (if not exporter) | Intermediate location (if any) | Description of item | Comments on the transfer |
| LIGHT WEAPONS | | | | | | |
| 1. | Heavy machine guns | Afghanistan Belgium Brazil Czech Republic France Hong Kong Iraq Italy Lesotho Malta Morocco New Zealand Oman Romania Saudi Arabia Serbia Spain Trinidad & Tobago USA Uruguay United Arab Emirates | 32 10 3 20 125 8 214 2 2 6 20 81 81 1 2 3 11 200 5000 18 1 | | | General Purpose Machine Guns |
| | | Ireland Malta Morocco New Zealand | 28 7 2 14 | | | Heavy Machine Guns |

National criteria on transfers:

^a The standardized forms provide options for reporting only aggregate quantities under the generic categories of “Small arms” and “Light weapons” and/or under their respective subcategories. See the United Nations Information Booklet 2007 (<http://disarmament.un.org/cab/register.html>) for questions and answers regarding the reporting of small arms and light weapons.

^b The categories provided in the reporting form do not constitute a definition of “Small arms” and “Light weapons”.



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