

LESSONS FROM MENA

APPRAISING EU TRANSFERS
OF MILITARY AND SECURITY EQUIPMENT
TO THE MIDDLE EAST AND NORTH AFRICA



A CONTRIBUTION TO THE REVIEW
OF THE EU COMMON POSITION

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Executive Summary

The arsenals that several regimes in the Middle East and North Africa (MENA) deployed to repress democracy movements in 2011 were seen to contain European-supplied arms. This observation challenges the arms exports control system that EU Member States have developed to ensure their decision-making on military exports takes into account political and moral concerns that are being raised in their constituencies. The current events in the Arab world provide grounds to evaluate and possibly rethink the EU arms export control system.

While the system is a distinct improvement on what went before, and the level of control exercised in the EU is in many ways setting the global lead, the deployment of European arms to repress the demands for democracy in several countries in MENA, and more broadly the willingness to transfer arms where the risk of such behaviour was very real, suggest that the EU system is still far from perfect.

This report analyses EU arms exports to MENA, in recent years both from an overarching perspective as well as detailing specific transfers. While the particular timing and nature of the Arab Spring itself could not be predicted, the potential for trouble at some point and the responding State repression could hardly be a surprise given the nature of these authoritarian regimes. While NGOs over the years have questioned a number of arms sales to undemocratic regimes with a history of violating human rights, the Arab Spring appeared to be a necessary condition for EU governments to recognise that the implementation of their export control policies had failed on numerous occasions. This analysis probes the level of caution EU exporting authorities demonstrated. The aim is to identify patterns of poor decision-making on arms exports where they exist, to consider why such patterns exist and to suggest remedies. Demands for socio-economic improvements as well as civil liberties, as they emerged in numerous Arab countries over the past year, are not likely to die soon, nor are these demands constrained to the Arab world.

Standing slightly apart from some of the other issues raised herein, the report also considers what appears to be a longstanding loophole of the EU system, whereby non-military equipment is exported with the intention of being converted to military specifications and for military or security use in the destination state, without the need for authorisation.

This report urges EU Member States to take advantage of the opportunity provided by the forthcoming review of the Common Position to improve the existing system and adapt their current export policies, implementing more comprehensive measures to prevent military goods from being used to oppress legitimate demands for democratic reform.

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Recommendations

The following is a list of recommendations that flow from the events and repercussions of the Arab Spring, and that we would hope can be considered in the context of the forthcoming review of the Common Position. In some cases they merely point to a potentially productive line of enquiry for the review to pursue. In other instances they are more concrete.

The recommendations also address both the future substance of the EU arms transfer control regime, and the process of the review itself.

1. The review of the Common Position should be thorough and comprehensive, with a view to producing substantive recommendations for change. It should follow a lessons-learned approach, with some concentration on events in MENA (including generating an historical perspective) but with a view to applying those lessons more widely. The review should be transparent, and seek the views of external actors by inter alia interactive means, such as workshops and the taking and interrogation of evidence. The review should have an interim stage, at which preliminary findings can be shared with external stakeholders and responses requested and considered.

2. Member States should examine how to manage what is at its core a permissive licensing process when considering licence applications for transfers to states where there are particular 'reasons to be concerned'. A useful way forward could be to establish a list of 'countries of concern', updated regularly, drawing on work done on related issues such as conflict prevention, early warning, conflict-affected and fragile states, security sector reform, good governance etc., but also drawing upon the specific experience and understanding of licensing authorities (note that this would be in addition to countries under embargo, not instead of or as a means for extending the application of embargoes).

For transfers to these states, Member States would then operate a policy of 'presumption of denial'. This would still involve a case-by-case approach, but instead of the current practice of approving a licence application unless there is a specific reason for refusing it, licences would be refused unless a legitimate defence need can be demonstrated, and the applicant can satisfy the licensing authority that the equipment will be used only in support of that need.

Information currently circulated among Member States regarding licence denials would be circulated for licences granted to countries on the list of concern. As well, information would be shared about the legitimate defence relevant to the transfer.

3. Consideration should be given to establishing a new criterion, or elaborating on existing criteria to explicitly consider governance as a risk factor. Much work has been done on this since the eight existing criteria were agreed, and it is incumbent on Member States to ensure that the transfer control system keeps pace with relevant developments.

The Worldwide Governance Indicators (WGI), which consider six dimensions of governance (voice and accountability; political stability and absence of violence; government effectiveness; regulatory quality; rule of law; and control of corruption) may be of interest here. Looking at the indicators for Libya, for example, would have given great cause for concern well ahead of the Arab Spring.

A governance criterion might also be of assistance in the context of the message that arms sales deliver about the way the transferring state views the importing regime. Supplying arms can be seen as conferring legitimacy on or at least acknowledging the legitimacy of a regime that may be completely unrepresentative and potentially predatory. Linking this together with the above mentioned list of countries of concern and the application of a presumption of denial for those countries would help give some direction to the circumstances where this is likely to be relevant.

4. States need to look at how to ensure that assessment processes take account of longer-term or over-the-horizon risks. This is likely to require greater external input into the provision of relevant information. Meaningful longer-term analysis will almost certainly require more detailed knowledge and contextual understanding than a licensing official could be expected to have. Consulting with geographical desks within government would be a start, but involving external, independent experts will be critical to the quality of the analysis. Member States should consider how to co-operate to generate this analysis in the most efficient way possible without compromising quality.

5. Member States need to be much clearer regarding the way the relationship between the restrictive criteria and economic, foreign policy and strategic interests works in practice. When questioned about individual authorisations, EU Member State governments will typically insist that they are always assessed with equal rigour against the Common Position criteria, but as is demonstrated by cases described in this report, refusing to admit that sometimes other issues take precedence strains credibility. As part of the review, Member States should have a frank discussion regarding the way they manage the competing interests relevant to licensing decisions, and how this needs to change to minimise the risk that any arms transfers will have negative consequences.

6. As hinted at by several of the previous recommendations, EU Member States should be using a joined-up government approach to arms transfer controls, linking policy and decision-making in this area with new thinking on issues around development and security, governance, peace-building, conflict prevention, conflict-affected and fragile states, security sector reform, etc.

7. Current information-sharing and -exchange procedures among COARM need to be improved. With the stakes involved, once again as demonstrated by events in MENA, it is not acceptable that EU Member States are limiting themselves to the periodic circulation of a CD containing licence denial information and to information-sharing through personal contacts. While these contacts are irreplaceable in terms of level of detail and nuance in specific cases, they are also arbitrary and subject to frequent disruption due to staff turnover. Consistency of information shared is not feasible, nor can longer-term institutional memories be developed. Systematic information sharing must be developed for, for example, assessments of risks to certain end-users, countries or regions; problematic trade routes, brokers or transporters; on situation of unauthorised end-use, end-users, or problematic re-export. Better information-sharing could be used to identify spikes or unusual patterns in a purchaser's or end-user's efforts to procure controlled items from different states. Modern digital data-management systems need to be developed so that this information can be uploaded and circulated in real time.

All this information could be of critical importance with regard to certain licence applications, and is being held within national structures, but advantage is not being taken of it. Better information-sharing would not only improve decision-making, but could, if well-managed, reduce the workload of licensing officials. It may also help to develop the aforementioned personal contacts, in that officials would be given more reason to contact COARM colleagues to find out more about why certain export licensing decisions were taken, or what they mean. As mentioned above, we would also recommend

¹ 'Governance indicators on 1996–2011' are available from the Worldwide Governance Indicators Project that is managed by Daniel Kaufman (Brookings Institution), Aart Kraaij (World Bank Development Research Group) and Massimo Mastruzzi (World Bank Institute).

developing a greater level of information-sharing regarding licences issued to those on the list of countries of concern.

8. A further improvement in transparency is necessary, not least so that regional experts could have better information on which to base any approach to governments regarding the wisdom and risks of actual or proposed transfers. EU Member States should be giving greater detail on the proposed end-users of the items being licenced, the quantities of equipment being delivered and on transfer policies and their implementation to specific states.

9. The Dual-use Regulation should be updated to make it completely clear that goods which would normally not be subject to controls but which were to be adapted for a military or security end-use would become subject to transfer controls, regardless of the final destination. If the company concerned knew or should have reasonably been expected to have known that this was going to happen, then it would be the responsibility of the company to advise the licensing authority accordingly. And of course if the authorities knew about the revised end-use, they would be required to alert the company that licences would have to be applied for.

No doubt the course of the review will throw up other ideas and opportunities to improve the existing system. Civil society looks forward to participating in a constructive process that delivers those improvements in a way that helps protect the rights and freedoms of people from all around the world.

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Glossary

Arab Spring

The Arab Spring is a revolutionary wave of demonstrations and protests occurring in the Arab world. Since 18 December 2010 there have been revolutions in Tunisia and Egypt; a civil war in Libya resulting in the fall of its regime; civil uprisings in Bahrain, Syria, and Yemen; major protests in Algeria, Iraq, Jordan, Morocco, and Oman, and minor protests in Kuwait, Lebanon, Mauritania, Saudi Arabia, Sudan, and Western Sahara. The protests have shared techniques of civil resistance in sustained campaigns involving strikes, demonstrations, marches and rallies, as well as the use of social media to organise, communicate, and raise awareness in the face of state attempts at repression and internet censorship. Many demonstrations have also met violent responses from authorities.

COARM

Working Party on Conventional Arms Exports, where the 27 EU Member States' representatives convene at level of the EU Council.

EU Code of Conduct

European Union, the Council, Code of Conduct on arms exports, as adopted on 5 June 1998. 8675/2/98, REV 2, DG E - PESC IV. This instrument outlined eight minimum criteria against which arms transfers should be checked. In 2008, this EU Code was superseded by the Common Position.

Common Position

European Union, the Council, Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, as published in *Official Journal of the European Union* on 13 December 2008 as L 335/99. The Common Position criteria are copied in the annex with this report.

Consolidated Report or Annual Report

From 1999 onwards, the EU Council publishes annual reports on Member States' compliance with its arms export control regime. The latest issues report on compliance with the Common Position. These reports are compilations of trade figures from the

EU Member States' national reports sorted into EU Common Military List categories, and can include information on the number of export licences that the Member States have issued in a specific year, value of these export licences and value of actual exports, although not all states provide all the information. The report also includes the licence applications the Member States formally denied and the grounds for these denials. The most recent, 12th Annual Report, that covers trade year 2009, was published in the *Official Journal of the European Union* on 13 January 2011 as 2011/C 9.

Dual-use Regulation

EU Council Regulation (EC) No 428/2009 of 5 May setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. The instrument is the latest recast of the Regulation that set up the Community regime for that control in 2000. As a Regulation rather than a Directive, a Common Position, or Code of Conduct, this regime is automatically incorporated in all EU Member States national systems of control.

GCC

Gulf Cooperation Council, or Cooperation Council for the Arab States of the Gulf. Member States are the Kingdom of Bahrain, the Kingdom of Saudi Arabia, Kuwait, Qatar, the Sultanate of Oman and the United Arab Emirates (UAE).

Licence Denial

In the specific context of reporting on arms exports, 'denial' refers to the non-approval of an export licence application by an EU Member State and the sending of notification to COARM for inclusion in a confidential 'denials database'. However the reservoir of denial notifications does not cover all exports of military products and technologies that EU Member States refuse to authorise, as applicants may receive a 'preliminary notification' or 'informal denial' that causes further steps in the licence process to be aborted. In that case, the EU Member State will not issue a 'formal denial' subject to notification to COARM.

Major Conventional Weapons

As used here the term covers a wide range of military goods, including military aircraft and helicopters;

armoured vehicles; surveillance systems; fire-control radars, anti-submarine warfare and anti-ship sonar systems for ships and helicopters; air defence systems; powered, guided missiles and torpedoes with conventional warheads, ships with a standard tonnage of at least 100 tonnes and/or armed with artillery of 100mm calibre or more, torpedoes or guided missiles; engines for military aircraft, for combat vehicles and for most armoured vehicles; turrets for armoured vehicles and for ships; and artillery (naval, fixed, self-propelled and towed guns, howitzers, multiple rocket launchers and mortars, with a calibre of at least 100mm).

MENA

Acronym commonly used to refer to the countries that constitute the Middle East and North Africa, that is Algeria, Bahrain, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, the Palestinian controlled territories, Qatar, Saudi Arabia, Syria, Tunisia, the United Arab Emirates (UAE), the Western Sahara and Yemen. Some institutions additionally categorise Sudan and/or Mauritania in North Africa, and hence in MENA.

Common Military List

The most recent version of the Common Military List (ML) of the European Union was adopted by the Council on 15 February 2010 and published in the *Official Journal of the European Union* on 18 March 2010, C69/19-51. The List describes 22 categories of equipment covered by the Council Common Position. These categories are referred to as ML1, ML2, and so on.

SALW

The acronym SALW, for small arms and light weapons, refers to any man-portable lethal weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive.

Small arms are weapons designed for individual use. They include small calibre firearms, such as revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and man-portable machine guns. The EU Common Position and Military List system categorises these small arms as ML1: Smooth-bore weapons with a calibre of less than

20 mm, other arms and automatic weapons with a calibre of 12.7 mm (calibre 0.50 inches) or less and accessories, and specially designed components therefore.

Light weapons are weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. These are described under ML2: Smooth-bore weapons with a calibre of 20 mm or more, other weapons or armament with a calibre greater than 12.7 mm (calibre 0.50 inches), projectors and accessories, and specially designed components thereof. They include medium machine guns, heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a calibre of less than 100 millimetres.

Transfer system

The term is used in this report in a broader sense than 'arms export control system', as it also incorporates brokering licences and transits.

UAV

Unmanned Aerial Vehicle.

UN Register of Conventional Arms (UNROCA)

The Register was established by UN Resolution 46/361 on Transparency in Armaments and adopted on 9 October 1991. It calls on all UN Member States to report the number of arms in seven categories (battle tanks, attack helicopters, armoured combat vehicles, large calibre artillery systems, combat aircraft, warships) exported or imported from their territory during the calendar year. There is also optional reporting on SALW imports and exports. Information contributed by country to UNROCA is available to all countries and is compiled by the Secretary General in a report to the UN General Assembly. Unfortunately, not all States report.

User's Guide

The User's Guide to Council Common Position 2008/944/CFSP defines common rules governing the control of exports of military technology and equipment.

Introduction

The system of arms transfer controls agreed by EU Member States is widely regarded as among the most elaborate and sophisticated in the world. The centrepiece of the control system is the 2008 legally-binding *Common Position defining common rules governing control of exports of military technology and equipment* (Common Position), which replaced the politically-binding 1998 EU Code of Conduct on Arms Exports. It is supported and elaborated through a number of other instruments and documents such as the 2003 *Common Position on the control of arms brokering* and the periodically-updated *User's Guide to the Common Position*.

The key purpose of the Common Position is to ensure that EU Member States do not transfer strategic goods and technology that will then be used in breach of various criteria. These criteria address issues such as human rights and international humanitarian law, regional peace, security and stability, and sustainable development.

However recent revelations about arms transfers authorised by EU Member States to the Middle East and North Africa (MENA) suggest that no matter how sophisticated the EU system may be, there are flaws in its implementation and possibly in terms of the language and content of its underlying documents. In light of these apparent problems, it is perhaps fortuitous timing that Member States are obliged, by Article 15 of the Common Position, to review its implementation starting no later than December 2011. This report is intended to be a constructive contribution to the review; the civil society community from which it springs looks forward to an ongoing engagement on this issue with EU Member States and the review process as it moves forward.

The conflicted Common Position

The Common Position is an imperfect instrument. This is probably inevitable, as it is a negotiated attempt to capture in one place a set of complicated and sometimes competing objectives by states with different perspectives and interests.

Included among the goals and objectives of the Common Position are to:

- develop high common standards of arms transfer control and strengthen EU export control policy;
- prevent the export of arms which might be used for internal repression or international aggression or contribute to regional instability;
- improve information-sharing;
- reinforce cooperation and promote convergence in the field of arms exports;
- maintain and strengthen a European defence and industrial base and a defence capability.²

The two clearly contrasting drivers of the Common Position are immediately apparent, i.e. to place limits on trade where it would have a negative outcome and to promote trade so as to strengthen economic and strategic capacity in MENA Member States.

Attempts are made within the Common Position to prioritise among these competing objectives. Two references stand out:

Article 2.5 (a) requires states to consider: 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.

Article 10 allows that Member States may "take into account the effect of proposed exports on their economic, social, commercial and industrial interests"; however it directs that "these factors shall not affect the application of the [Common Position] criteria".

² See the preamble to the Common Position.

Less immediately obvious is another tension. The notion of convergence, co-operation and harmonisation is promoted but decision-making is taken at the national level. When these different tensions are considered in combination with the fact that the wording of the Common Position has been purposefully crafted so as to allow room for judgement and interpretation, it should come as no surprise that consistent and rigorous application of the Common Position will mean different things to different authorities at different times. Different actors operating in good faith may therefore arrive at different decisions in the same circumstances. However this also gives an excuse for poor decision-making, and it is not at all clear how the articles 2.5, (a) and 10 referred to above are managed in practice.

NGOs have long argued that EU Member States have not got the balance right, and the revelations that have attended the Arab Spring support this assertion. Moreover, the events of the Arab Spring are a reminder of the consequences of getting this wrong: people's and whole societies' lives, livelihoods and futures are at stake. The conclusions are obvious: Member States need to improve implementation, or the Common Position and accompanying documents are in need of amendment. Or both.

Lessons from the Arab Spring

As mentioned above, and discussed in more detail in the sections that follow, the current EU regime does not appear to have generated the necessary restraint among Member States in terms of arms supplies to MENA. The case-by-case approach to licensing which is set out in the Common Position allows authorities to ignore the broader picture with regard to, for example authoritarian rule and a poor general human rights record, on the grounds that the risk of misuse of the particular equipment proposed for transfer is not high enough to merit refusal. When coupled with the approach widely-used in EU Member States, whereby the default position is that licences are granted unless there is a compelling reason to deny, it is easy to see how a culture of approving marginal cases could develop. This raises the prospect of considering an alternative approach

where the nature of the recipient state is such that it might be regarded as higher risk in general.

As will be set out in more detail below, other issues that the Arab Spring has thrown up include the related question of how to develop a licensing policy appropriate to a state that is apparently stable, or at least in the sense that for an extended period there has been no large-scale political violence, when that stability has been created by an oppressive regime. In this context it might be useful for licensing authorities to reimagine the concept of 'stability' along the lines as set out in the July 2011 UK Building Stability Overseas Strategy (BSOS), which characterises stability in terms of:

political systems which are representative and legitimate, capable of managing conflict and change peacefully, and societies in which human rights and rule of law are respected, basic needs are met, security established and opportunities for social and economic development open to all. This type of 'structural stability', which is built on the consent of the population, is resilient and flexible in the face of shocks, and can evolve over time as the context changes.³

Another pattern that seems to be emerging out of the response to the Arab Spring relates to the issue of the tension between applying the restrictive criteria and promoting economic and strategic interests. Most obvious is the way in which business with the largest customer in MENA, Saudi Arabia, seems to be business-as-usual, despite, for example, their willingness to crack down hard upon internal dissent, their dispatch of armoured vehicles to Bahrain and their earlier use of aircraft in Yemen. This is examined in more detail below.

It may also be the case that Member States need to reconsider how to assess the risk of use of certain types of equipment against domestic populations in protest situations. The use by Libyan troops of all kinds of military equipment to quell protests, the use

³ Department for International Development, Foreign and Commonwealth Office and Ministry of Defence, 'Building Stability Overseas Strategy' (BSOS), July 2011, p. 5.

of tanks and heavy weaponry to do the same in Syria, suggest the traditional understanding of the risks that are associated with this more major equipment may need to be rethought.

Hopefully the Arab spring will turn out to be a wake-up call for European governments that more needs to be done to avoid the risk of weapons supplied with their consent being used against peaceful protesters, as happened on the streets of numerous towns in MENA this year.

Critically, there is a need to assess whether the EU-supplied arms that were deployed against civilians on the streets in MENA were the fruits of the accidental few stray deals, or a tip of an iceberg, or the logical outcome of trade in military goods with recipient states to which we 'could have attributed' a profile likely to turn violent towards their own civilian populations either sooner or later. Is it fair to conclude the EU regulatory system 'failed' to prevent such deals? Did it fail because not all EU States followed the agreed rules with enough rigour or because the corpus of agreed rules themselves is inadequate, incomplete and in need of improvement or tightening? What lessons can these apparent failures inspire to avoid similarly problematic arms trade deals to these same recipients and/or to end users in other regions that stand a risk to develop a similar security problem?

In order to address these and similar questions, the first chapter profiles EU trade in military goods and technology with MENA, comparing it with EU trade in these goods with other regions, calculating its financial value and assessing the level of restraint that EU authorities were seen to exert in assessing export licence requests for that region. The report then moves on to discuss a number of deals that went through in recent years that proved controversial. For this section, we have revisited several reports that NGOs from several EU Member States published in the recent past.

The mechanics that ensured these deals took place are examined in some detail, with an aim to identify the more fundamental problems EU Member States may be having in applying their agreed rules. In addition the report identifies problematic cases

even where arms transfer licensing rules have been followed, which suggests that the rules themselves are not always good enough. The report then seeks to identify the main problem areas in existing EU arms transfer control policy and practice, to help improve compliance with the relevant instruments, and to suggest possible remedies where the system is not achieving its designated goals.

Possibilities for improvement

With a review of the implementation of the Common Position scheduled to start before the end of 2011, this report hopes to contribute to that review process, presenting critical evidence-based analysis by a number of arms transfer control researchers.

For a robust arms trade policy, EU Member States should realise that national self-interest should not overrule the ethical guidelines of the criteria of the Common Position. If they are serious with their expressed determination to "prevent the export of military technology and equipment which might be used for internal repression or international aggression or contribute to regional instability" they should make sure their human rights, development and conflict prevention policies include a strong position on arms trade. The Arab Spring has shown that if arms exporting states fail to do so, the consequences can be severe.

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Profiling EU transfers of military and security equipment to MENA

The acronym MENA is used here for the countries that constitute the Middle East and North Africa, that is Algeria, Bahrain, Egypt, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, the Palestinian controlled territories, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, the United Arab Emirates (UAE), the Western Sahara and Yemen.⁴

These countries are presented here in their capacity as clients for supplies of military and security equipment. Heavyweight MENA weapons buyers are identified, as are their main suppliers among EU Member States. In describing how that trade evolved over the past decade, an assessment is made of the restraint that export authorities in EU Member States have exerted when trade opportunities with MENA

expanded, and which Common Position criteria they have typically stated among the grounds for refusing export licences. Some of the more intriguing trade relations with a few specific countries in the region are then explored in greater detail and with reference to case studies in the next sections.

Oversized business

With less than half a billion inhabitants, the MENA is not a very populous region. However, most MENA countries' armed forces are relatively large in relation to their population size, and defence – including the purchase of military hardware – is given considerable priority in government spending, well above the global average of 2.6% of GDP. As shown in Table 1, MENA countries' defence expenditures range from almost 11% of GDP in Saudi Arabia to 1.2% in Tunisia. Defence spending in Mauritania and Yemen – countries the UNDP classifies in the low-income category – stands at 3.8 per cent and 3.6 per cent of GDP respectively. In 2009, this resulted in defence budgets as large as almost €30 billion in the case of Saudi Arabia, and less than €100 million in Mauritania. Obviously, these budgets are not spent solely on arms purchases, as these must also cover structural expenses such as soldiers' salaries.

Israeli production supplies most of its own military hardware to its armed forces, and some MENA countries rely mainly on US and/or Russian suppliers. The US is by far the largest supplier of arms to the MENA, and has delivered more than 50% of the major conventional arms supplied to the Middle East in recent years.⁵ But suppliers from EU countries are by no means insignificant to the MENA market.

When the matter is looked at from the perspective of EU exporting countries, the MENA market for arms represents a considerable share of their arms exports worldwide. In 2009, the combined value of individual export licences authorised for trade with MENA took

up almost two thirds of all such licences UK arms export authorities issued that year.⁶ Table 1 shows the UAE, Oman, Morocco, Kuwait, Syria and Jordan represented significant markets, but with over €5 billion in military exports authorised to Saudi Arabia, that destination country was by far the EU defence industries' largest single market in 2009 – a year when EU export authorities issued licences for a total value of slightly over €4 billion to their second most important customer, the US market.

Saudi Arabia was the destination of around 19% of British major conventional arms deliveries in the period from 2005 to 2009.⁷ This made up 42% of the major conventional weapons Saudi Arabia imported in that period.⁸

The Middle Eastern market represented over 25% of French military exports in 2005–2009.⁹ The UAE accounted for 16% of all French exports in those years,¹⁰ when it bought an estimated 62 Mirage-2000-5 MK2 combat aircraft and associated systems along with 390 Leclerc main battle tanks.¹¹

Data on licences and their respective values indicate French and British military exports to MENA dwarf all other such exports from other EU countries. However these figures do not give an accurate picture of how the European military industry supplies MENA with arms or the economic benefits it derives from those commercial activities. In today's globalised society major conventional arms are not necessarily entirely manufactured in the country listed as the exporter. The tanks that France sold to the UAE, for instance, contain engines and transmissions made in Germany, and defence companies from Germany, Italy and Spain participate in the production of the Eurofighter aircraft that the UK exports to Saudi Arabia. The sales values of these components to MENA countries

Table 1: Population and expenditure on defence and arms of selected MENA countries, in 2009.¹²

Country	Population (thousands)	Armed forces (# actives)	Defence budget as % of GDP	Defence budget, in € million	Value of export licences from EU, in € million
Algeria	35,468	147,000	3.8	3,786	275
Bahrain	1,262	8,200	3.6	532	40
Egypt	81,121	468,500	2.2	2,952	294
Iraq	31,672	578,269	6.3	2,952	100
Israel	7,418	176,500	6.9	9,690	114
Jordan	6,187	100,500	5.5	999	77
Kuwait	2,737	15,500	4.3	3,000	667
Lebanon	4,228	59,100	4.1	1,022	6
Libya	6,355	76,000	2.8	1,225	272
Mauritania	3,460	15,870	3.8	82	0.4
Morocco	34,603	195,800	3.3	2,195	1,361
Oman	2,82	42,600	8.7	2,881	976
Qatar	1,759	11,800	2.5	1,792	108
Saudi Arabia	27,448	233,500	10.9	29,593	5,042
Syria	20,411	325,000	4.1	1,598	643
Tunisia	10,481	35,800	1.2	381	53
UAE	7,512	51,000	3.6	5,705	2,140
Yemen	24,053	66,700	3.5	633	101

⁴ This delineation is more inclusive than in EU Council reporting on arms trade, where Sudan and Mauritania are listed under Sub Saharan Africa. This 'expansion' of the term MENA is informed by UN affairs, where Sudan tends to be designated as a North African country. The International Institute for Strategic Studies, in its publications, categorizes Mauritania (but not Sudan) in the MENA region.

⁵ Data on armed forces and defence budgets are sourced by *The Military Balance 2011*, London: International Institute for Strategic Studies, 2011, with budget figures converted from US Dollar to average 2009 Euro value according to Eurostat data (€1 = US\$ 1.3948). Population counts are taken from the Department of Economic and Social Affairs of the United Nations Secretariat, *World Population Prospects: The 2010 Revision*. Value of export licences authorised to these countries as reported in the EU Council's 12th Annual Report (reported overvaluation of MLI exports to Libya is corrected in this table).

⁶ 'Military expenditure data 2001-10', SIPRI Yearbook 2011 – Armaments, Disarmament and International Security, Stockholm: SIPRI, 2011. On regional trends, see Carina Solmirano and Pieter Wezeman, 'Military spending and arms procurement in the Gulf States', SIPRI Fact Sheet, October 2010.

⁷ Op. cit., SIPRI, 2011.

⁸ Calculations based on trade data reported to COARM, compiled in the 12th Annual Report.

⁹ Op. cit., SIPRI, 2011.

¹⁰ Op. cit., Carina Solmirano and Pieter Wezeman, October 2010.

¹¹ Op. cit., SIPRI, 2011.

¹² Sam Perlo-Freyman, 'Arms transfers to the Middle East', SIPRI Background Paper, July 2009.

Table 2: Arms transfers from EU Member States by destination region, in 2009.¹

Destination region	€ value of EU-export licences ² (in € million)	Value share in EU-licences (worldwide = 100%)	Number of licences authorised
Americas ³	6,980	19.2	10,372
Asia ⁴	4,986	13.7	11,156
Europe ⁵	11,270	30.9	27,364
MENA	11,751	32.0	7,210
Oceania	1,034	2.8	3,322
Sub-Saharan Africa ⁶	568	1.4	1,921

*1 Data in this table are sourced by the EU Council's 12th Annual Report, either directly or as basis for calculating. The originally reported overvaluation of exports to Libya is corrected.

*2 The reported value of the export licences does not guarantee the entire value of each of those export licences was actually traded in 2009, or after.

*3 This row summarises data the Annual Report specifies for 3 subregions: Central America and the Caribbean, North America and South America.

*4 This row summarises data the Annual Report specifies 4 subregions: Central Asia, North Asia, South Asia and South East Asia.

*5 This row summarises data the Annual Report specifies 2 subregions: The European Union, and 'Other European Countries' (such as the Russian Federation and Turkey).

*6 Excluding Mauritania and Sudan, as these countries are counted with MENA in this table.

are hard to identify in the national reports of the countries where the components are produced, for example in the case of Germany.⁷

German national reports contain a lump sum for *Sammelaufsernehmungen* (similar to General Project Licences, or GPL) that sometimes is higher than all other licences reported and sometimes is much lower, but each year runs into billions.

The value of proper German arms exports to MENA countries has also been on the increase, after the German Federal Security Council decided Leopard tanks could be exported to that region. As is documented in this report, the first such tank contract was concluded in 2008 with Qatar and served as a door-opener for a larger deal with Saudi Arabia, that is potentially worth several billion. German manufacturers have also been given a green light to make another €10 billion on armoured vehicles, frigates and border control technology for Algeria.⁸

¹³ Otfried Nassauer and Christopher Steinmetz, 'Made in Germany inside – Komponenten, die vergessenen Rüstungsexporte', BfTS-Oxfam Research Report, Berlin, March 2005, accessible at <http://www.bfts.de>.

¹⁴ 'Deutschland gibt Rüstung für Algerien frei', Handelsblatt, 3 July 2011.

Table 2 compares recent exports of EU military equipment and technologies to MENA with those to other regions. Although fewer export licences were issued to MENA countries than to European countries, the combined value of these exports is higher than the combined value of exports to Europe (i.e. EU plus other European destination countries, such as Russia). The higher average value of EU-MENA arms exports would be explained in that these concern major weapons systems, rather than components and SALW.

MENA's share in the value of that EU trade worldwide was larger than any other region's share in 2009, the most recent documented year. In Table 3 data over the past decade is examined.

Apart from relatively modest trade in 2001, 2006 and 2007, the value of EU-MENA arms exports has tended to be high in the past decade, with an increase in the scale of exports towards the end of the decade. That increase can be partially accounted for by the EU enlargement that caused more export licences to be administrated under the EU banner. Licences that Romanian authorities issued for exports to Israel in 2007 and 2008 may have represented a quarter of the additional licences to the region as compared to 2006, but the remainder of the increase is accounted

Table 3: MENA market share and value of arms transfers from EU Member States, 2001 – 2009.⁹

Year	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total	Average/ year
Licences # to MENA	2,847	3,802	3,351	3,002	3,628	3,539	5,747	4,784	6,824	37,521	4,169
Value in € million	1,228	7,496	8,518	5,674	5,086	1,756	2,731	5,954	11,673	50,112	5,568
Share in licences worldwide	12.2	36.6	30.1	22.3	19.3	11.8	10.8	19.8	31.9	—	21.7

*1 Sourced from the EU Council's 4th - 12th Annual Report. Data on 2001 and 2006 do not cover all – then – EU Member States, as only the value of actual French deliveries were reported in those years, not licences value or the number of licences issued.

for a general expansion of export opportunities to MENA, which 'old' EU Member States exploited more than the newer EU Member States.

EU transfers of major weapon systems to MENA

Behind the data on export values are of course real transfers of military equipment delivered with permits from European governments. According to the database on international arms transfers of major weapons that is managed by the Stockholm International Peace Research Institute (SIPRI) and generally acknowledged to be the most comprehensive, open-source database available, the most significant arms transfers from the EU to MENA over the past decade are those referred to in Table 4.

Table 4: Selected EU transfers of major conventional weapons to MENA (2001 – 2010).¹⁰

Recipient	Supplier	Description of order and indication of its value, when available	Year of order / licence
Algeria	France	21 FPB-98 patrol craft	2007
Spain	UK	6 C-295 transport aircraft	2004
	UK	6 EH-101-400 helicopters; 4 Super Lynx-300 helicopters, part of €402 million deal	2007
Bahrain	Belgium	50 armoured infantry fighting vehicles	2007
	UK	3 T-67 Firefly trainer aircraft; 6 Hawk trainer/combat aircraft	2002-3
Egypt	Austria	108 M-60A1 Patton-2 Tanks	2001
	Netherlands	431 VPR armoured infantry fighting vehicles	2004
		555 BGM-71 TOW anti-tank missiles	(2006)
Iraq	Germany	24 EC-135/EC-655 armed light helicopters, €360 million	2009
	Italy	4 Diciotti patrol craft, €80 million	2006
	Poland	600 Dzik armoured personnel carriers, \$80 or \$180 million	2005

Israel	Germany	2 Dolphin submarines, option for 1 more	2006
Jordan	Belgium	(142-214) armoured infantry fighting vehicles / armoured personnel carriers	2005
		16 + 9 F-16 fighter aircraft	2006-10
Netherlands	6 F-16 fighter aircraft		2007
		441 armoured infantry fighting vehicles ; 121 M-109A1 155mm self-propelled guns; 69 M-113 armoured personnel carriers	2010
Spain	2 C-295 transport aircraft, \$45 million		2003
Kuwait	Italy	Upgrade (175) Aspide surface-to-air missiles, part of \$65 million deal	2007
Libya	France	(200) MILAN-3 anti-tank missiles; possibly €168 million	(2007)
	Italy	10 A-109K light helicopters, €80 million	(2005)
Morocco	Belgium	43 M-109A1 155mm self-propelled guns	2006
		110 armoured infantry fighting vehicles / armoured personnel carriers	2008
		13 M-113 armoured personnel carriers	2009
France	27 Mirage F-1 – 2000+ missiles and EO systems, €350 mln		2005-6
		1 FREMM frigate, €470 million	2008
Italy	4 C-27J Spartan transport aircraft, €130 million		2008
Netherlands	3 SIGMA-90 frigates, €510 million		2008
Oman	F/NL	20 NH-90 tactical transport helicopters, €600-800 million	2004
UK	16 Super Lynx helicopters		
		3 Khareef frigates, \$700 million	2007
Qatar	Italy	16 AW-139 helicopters, €260 million	2008
S-Arabia	Finland	36 NEMO 120mm mortar turrets	(2011)
	France	(80) CAESAR 155mm self-propelled guns	2006
		(100) Mistral portable Surface-to-air missiles, €500 million	2006
	Sweden	(1) Saab-2000 airborne early warning aircraft, \$670 million	2010
	UK	(261) Tactica armoured infantry fighting vehicles	(2006)
		72 Eurofighter Typhoon fighter aircraft, €4 billion	2007
Sudan	Slovakia	(10) Cobra 30mm turrets for Belarus supplied armoured personnel carriers	(2007)
Tunisia	Germany	6 Albatros/Type-143 fast attack craft, €34 million	2004
UAE	France	6 Baynunah corvettes, \$727-817 million	2003-5
	Germany	32 Fuchs armoured personnel carriers, €60 million	2005

^{1*} Note the SIPRI database that sources this Table does not cover small arms and ammunition, which is recognised to be a limitation, as these categories of military goods are the subject of deals explored in some of the next sections of this report. Numbers between () indicate a SIPRI estimate.

were not ascribed major economic nor political significance and were considered in line with official German guidelines.¹¹ Official German reasoning to legitimate the exports was that warships cannot easily be used for violating human rights and internal repression even if the importing country is under authoritarian rule. The fast patrol boats that Germany transferred to Egypt and Tunisia support

these countries' capabilities to stop refugees from Africa reaching EU soil. It is not improbable that goal makes EU authorities impervious to the possibility the materiel facilitates violation of refugees' rights.

No restraint?

The existence of an extensive and profitable MENA market does not necessarily mean that the licensing authorities in EU Member States have not exerted any restraint in authorising exports to the region. One indicator of restraint is shown in the ratio of

Table 5: Export licences EU Member States issued and denied, by destination region, in 2009.¹²

Destination region	Number of licences granted	Number of licences denied	Ratio denied / granted (%)	Criteria for denial (# that criterion is among grounds to deny licence) ¹³
Americas	Caribbean + Central & South America	1 986	37	1,86 1(1), 2(6), 4(9) 7(11)
	North America	8 386	1	0,01 1
Asia		11 156	185	1,66 1(43), 2(67), 3(57), 4(23), 5(13), 6(1), 7(74)
Europe	European Union	19 080	0	0,00 --
	Other European countries	8 284	105	1,27 1(19), 2(14), 3(27), 4(27), 5(2), 7(65)
MENA	Middle East	6 002	80	1,33 1(10), 2(21), 3(22), 4(20), 5(3), 6(1), 7(42)
	North Africa	822	16	1,95 1(1), 2(8) , 3(1), 4(3), 5(2), 7(5)
Oceania		2 390	0	0,00 --
Sub-Saharan Africa ¹⁴		1 921	54	2,81 1(9), 2(20), 3(14), 4(5), 5(2), 7(21) , 8(1)

^{1*} Table sourced from the EU Council's 12th Annual Report.

¹² An export licence can be denied on the grounds of more than one criterion. The list of criteria from the Common Position is reproduced in the Annex.

¹³ Excluding Mauritania and Sudan, which are counted within MENA in this table.

export licence applications that were formally denied to a particular destination compared to the number of export licences that were issued to that same destination. That denial/approval ratio is calculated from the EU Council's Annual Reports, but its value as an indicator of restraint is rather limited, since these reports do not identify the type of military goods nor the type of clients for which authorities in the different EU Member States decided to deny an export licence, nor the financial implication of these decisions.

Moreover, a higher proportion of denials may merely indicate that industry is struggling to identify where governments are setting the limits of what is acceptable. For this reason, licence denials seem to spike upwards at times of changing policy. For example, and as is examined in greater detail later on in this report, denials to Libya spiked from a total of four for the period 2003-2005 to 15 in 2006, before stabilising at around seven per year in 2008 and 2009. In 2004 an arms embargo on Libya was lifted, which means that virtually by definition licensing policy for transfers to Libya went through a process of liberalisation, yet refusals shot up. The reason for the increase is that with the lifting of the embargo, industry was relatively uncertain of the type of equipment that might be approved or refused a licence. As time passed, and industry became more familiar with, though not entirely certain of, the rules for transfers to Libya, the number of refusals fell.

¹⁵ Politische Grundsätze der Bundesregierung für den Export von Kriegswaffen und sonstigen Rüstungsgütern, Berlin, last modified 19 January 2000.

Middle East. The Middle East resembles other (sub) regions in terms of the stated criteria for denying licences – primarily an ‘unacceptably high risk’ the exported goods be diverted’ to other users than the stated end-user(s), that is criterion 7. Exports requests to North Africa are more frequently refused because of violations of human rights and international humanitarian law (criterion 2).

In order to determine whether such decision-making on licence applications was specific for 2009—the year covered in the most recent Annual Report—or conforms to a pattern that has been in place for a while, Tables 6 and 7 differentiate export data on each year of the past decade and categorise the Middle East and North Africa separately.

Table 6 shows the North African market expanded significantly after 2006, while the ratio of denials per approved export licences fell steeply. In 2001, 8 per cent of licence applications for transfers to North African countries were refused. By 2009, that figure was down to just under 2 per cent, a historic low. The table is also clear in that violations of human

rights and international humanitarian law have been the most often stated grounds for denying export licences to North African destination countries from 2006 onwards. Until then, the prime reason for these denials related to embargoes, such as on Libya and Sudan.

Table 7 considers transfers that EU Member States authorised to the Middle East, and specifies the proportion of these transfers that concerned Member States of the Gulf Cooperation Council (GCC), that is the United Arab Emirates (UAE), Bahrain, Saudi Arabia, Oman, Qatar and Kuwait. This group of six Arab states represents a modest population size (Table 1 holds it at less than 50 million) but these substantially prioritise defence spending on their public budgets. As some GCC states were identified in Table 1 as prominent clients of European military defence industries, trade data on Gulf States are specified.

Table 7 indicates a steep increase in the exports to the Middle East, especially from 2007 onwards, while the denial/approval rate for these licences fell over the

Table 6: Export licences EU Member States issued and denied for North Africa, 2001–2009.¹⁹

Year	2001	2002	2003	2004	2005	2006	2007	2008	2009
# issued licences	198	284	276	301	305	309	564	595	822
Value issued licences (in € million)	59	1070	102	128	394	91	584	992	2034
# denied licences	16	21	9	8	11	23	20	18	16
Ratio denial / approvals (%)	8.08	7.39	3.26	2.66	3.61	7.44	3.55	2.86	1.95
Criteria stated among the grounds for these denials ²⁰	2(7) 3(4) 4(4)	1(6) 2(4)	1(4) 3(2)	4(3)	1, 2, 3, 4 & 8	2(20) 4(7)	1(2) 2(8) 5(8) 8(5)	1(1) 2(13) 3(5) 6(7) 7(5)	2(8) 4(3)

¹⁹ Sourced from the EU Council's 4th - 12th Annual Report. To summarise data on 'North Africa' as defined in these reports have been added data on EU trade with destination countries Mauritania and Sudan. Data reported on 2001 are incomplete, as the 4th Annual Report does not include the number and value of the licences approved by France.

²⁰ The total number of denials does not always correspond with the sum of the denials by criterion. This is explained by incomplete reporting, especially in the first COARM reports, and/or denials on the ground of more than one criterion.

Table 7: Export licences EU Member States issued and denied for the Middle East, 2001–2009.²¹

# licences issued	Total	2001	2002	2003	2004	2005	2006	2007	2008	2009
		GCC	2,145	2,104	1,917	1,662	1,198	2,795	2,774	2,406
Value, in € million	Total	1,169	6,425	8,416	5,546	4,702	1,666 ²²	2,147 ²³	4,963	9,638
	GCC	871	5,930	7,032	4,993	4,002	4,618	3,278	4,411	8,434
# licences denied	Total	97	95	52	57	52	55	84	50	80
	GCC	0	1	2	2	3	3	2	0	16
Criteria commonly stated among grounds to refuse licences	Total	1(20)	2(44)	1(5)	1(10)	2(11)	1(4)	1(27)	1(3)	1(10)
	GCC	2(35)	3(55)	2(19)	2(19)	3(30)	2(23)	2(17)	2(4)	2(21)
	3(12)	4(25)	3(24)	3(25)	4(19)	3(30)	3(25)	3(24)	3(22)	
	4(9)	6(14)	7(15)	4(15)	5(10)	4(26)	4(30)	4(10)	4(20)	
	7(12)	7(6)	8(4)	7(17)	7(28)	7(17)	7(42)	7(35)	7(42)	
denial / approval	GCC									
	Total ratio (%)	3.66	2.70	1.70	2.11	1.78	1.69	1.62	1.19	1.33

²¹ Sourced from the EU Council's 4th - 12th Annual Report. To summarise data on 'North Africa' as defined in these reports have been added data on EU trade with destination countries Mauritania and Sudan. Data reported on 2001 are incomplete, as the 4th Annual Report does not include the number and value of the licences approved by France.

²² An error seems to have crept into the COARM's reporting on the value of licences issued for the Middle East. That value is held to be less than €1.7 billion, whereas country specific tables already report almost €2.5 billion in export licences issued for the UAE.

²³ An error seems to have occurred in the COARM's reporting on the value of licences issued for the Middle East in 2007, held to be €2.1 billion, whereas the sum of the export licences for Saudi Arabia and the UAE reported for that year in the country-specific tables already amounts to over €2.7 billion.

entire period under review and the major grounds for the denial notifications shifted. Whereas in the first half of the decade (internal) armed conflict (criterion 3) was the most commonly stated reason, the risk of diversion (criterion 7) became the main obstacle to authorising arms transfers from the second half of the decade onwards.

The GCC sub-region is seen to account for the lion's share of authorised export licences to the Middle East, and for very few of the denied licences. Neither Bahrain nor Qatar were denied one single export licence throughout the past decade, and only one licence application for a transfer to Saudi Arabia

was denied.²⁴ The few licences denied to other GCC member states were taken to imply an unacceptable high risk that the transferred equipment would be diverted (criterion 7). Typically, these denied licences concern ML1 to ML4 exports—SALW and explosives—rather than expensive major conventional weapons.

Israel stands out as the destination country in the Middle East that has repeatedly been subject to most export licences denied to the region, with a peak in 2002, when Israel was the proposed destination for

²⁴ EU Council's 4th - 12th Annual Report.

66 out of a total of 95 denials for the Middle East in that year. The main stated concerns that motivated such decisions were violations of human rights and of international humanitarian law, and the internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts' (criterion 3). At the same time, Israel is still a significant recipient of controlled items from the EU, but the denial/approval ratio for export licences to Israel is still above the average rate for the region throughout the past decade.

In 2008 the Italian Government granted licences to Galileo Avionica, a subsidiary of Finmeccanica, for exporting spare parts of TURMS fire-control systems worth €2.8 million intended for T-72 main battle tanks (MBT).²⁵ Actual delivery took place in 2009. This deal appears a follow-up of previous exports destined to upgrade Syrian T-72 tanks, and would account for the €18 million in export licences that Italian authorities reported to have approved in 2002, according to the EU Council's Annual Report on that year. Such deliveries followed from a major contract signed in 1998 to upgrade 122 of these tanks, worth 515 million Italian Lira,²⁶ which would roughly correspond to current €266 million - other sources calculate the contract's value at €200 million.²⁷

EU arms transfer policy to Syria demonstrates similar restraint. This is even before the May 2011 embargo on ‘arms and related material of all types (...) as well as equipment which might be used for internal repression’, which was agreed by the EU Council in response to the Syrian Government’s

bloody crackdown on civilian protesters.²⁸ From 2005 to 2009, only 22 export licences were issued for transfers to Syria with a total value of slightly over €7 million. In that same period, 20 export licences were denied; criteria 3 and 4 were invoked as grounds for 10 and 13 denials respectively. In 2009, only two licence applications were approved for exports to Syria, while four were denied, all under criterion 4. It would seem that most, but not all, EU Member States already understood a ‘virtual embargo’ to be in place.

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Marginalised by Western countries, Syria traditionally had tended to rely on ex-Soviet and Russian defence materials.²⁹ Most of Damascus' battle tanks fleet is obsolete or requires upgrades. Therefore, maintenance and spare parts contracts, such as with Galileo Avionica, are of utmost importance for Syria who, for economic reasons, cannot afford the acquisition of new major conventional materials. Observers point out that military purchases by Damascus are mainly driven by the ongoing tensions with Israel regarding the Golan Heights. It now appears that the Syrian regime found other uses for their battle tanks as ‘most of the deployed vehicles [during the 2011 violent repression of civilian protests in Syria] have been T-72’.³⁰

Iraq and Lebanon are other MENA countries against which an embargo has been in place during most years under discussion here, though these embargoes do contain certain exceptions. Transfers of military equipment are permitted and were authorised for equipment destined for international peacekeepers, such as UNIFIL in the case of Lebanon. In the case of Iraq, an exemption on the embargo has been in place for arms and related material required by the multinational force established under UNSCR 1511 (2003) to serve the purposes of UNSCR 1546 (2004) and the Government of Iraq. In fact, since 2004, trade in military equipment with embargoed Iraq is far more significant—both in value and number of licences—that it had been before that country was placed under an embargo.

Over the last decade the value of licences granted for transfer to MENA states by EU countries has risen at the same time as the proportion of licences refused has fallen. These trends have been particularly marked for North Africa, with the value of licences rising from €59 million in 2001 to almost €1 billion on 2008 and over €2 billion in 2009, while the proportion of licences denied fell from 8.1 per cent to 2 per cent over the same period.

This increase in the value of licences granted together with the fall in the number of licences refused do not necessarily mean that Member States have

¹⁹ Pamela Baarman & Jarmo Pykälä (eds.), *Finnish Arms Exports 2009*, SaferGlobe Finland, 2011.

²⁰ Nils Duquet, *Flemish foreign trade in dual-use items 2010*. Brussels: Flemish Peace Institute, May 2011.

²¹ Council Decision 2011/273/CFSP of 9 May 2011 concerning restrictive measures against Syria, Official Journal of the European Union, L121/11.

²² In the Italian national report on 2008, published in 2009, refers to the authorisation as MAE 17271, categorised mainly as ‘armaments and related material of all types (including fire-guided systems)’. The Italian national report on 2009, published in 2010, describes the delivered equipment as 286 spare parts for the TURMS, and adds 15,000 hours maintenance, and another 600 hours of technical assistance.

²³ Giorgio Beretta, *Armi italiane: nuovi affari in Medio Oriente*, Unimondo, 13 August 2005.

²⁴ Alon Ben-David, *Syria upgrades T-72 tanks*, Jane's Defence Weekly, 31 July 2003.

Conclusion

MENA stands out as one of EU Member States' most important arms export destinations. With relatively high military expenditure rates in the region and parallel major procurement programmes this hardly comes as surprise. Demand is high in part because of the oil-wealth available to a significant proportion of MENA states. But it is also high because the security situation is complex and fraught.

MENA has long suffered from various intra- and inter-state tensions that have on occasion erupted into violent conflict. It is also a region where many governments exercise heavily authoritarian control over their populations. While the situation in specific countries may ebb or flow, for the region as a whole these factors have been relatively constant for a considerable period. This is the context within which arms transfers to the region must be considered.

In considering general licensing trends to MENA over the last decade, it is clear that EU Member States do exercise restraint, as is demonstrated by policies toward Iran and Syria, and indeed by every arms transfer licence refused (96 to MENA in 2009). However, until a potential recipient reaches the point of being regarded as fundamentally unacceptable, it would seem that the potential for financial profit and political influence that arms sales provide may sometimes prove difficult for EU Member States to resist, especially where there is reason to think that trouble is not imminent. An analysis of licensing patterns suggests that in terms of transfers to MENA this may have become more of an issue over time.

Over the last decade the value of licences granted for transfer to MENA states by EU countries has risen at the same time as the proportion of licences refused has fallen. These trends have been particularly marked for North Africa, with the value of licences rising from €59 million in 2001 to almost €1 billion on 2008 and over €2 billion in 2009, while the proportion of licences denied fell from 8.1 per cent to 2 per cent over the same period.

This increase in the value of licences granted together with the fall in the number of licences refused do not necessarily mean that Member States have

liberalised transfer policy to MENA, but they at least raise a warning flag. And there are other factors that support such a hypothesis.

The huge demand in MENA over the last decade and the perceived contribution this can make to national economies creates a business pressure to liberalise export policy, a pressure absent from smaller markets, e.g. in sub-Saharan Africa. The long-term success that many MENA governments had in using harsh authoritarian rule and internal repression to keep populations in line could have encouraged authorities in the EU to equate this effective suppression of dissent over time with 'stability', and thus to approve transfers on the basis that the situation in the recipient state was stable. Once a pattern of approving licences is established, it is the nature of bureaucratic systems to approve further similar licence applications, rather than to continually challenge them, especially given the default position of most EU Member States to award licences unless there is a compelling reason for refusal. It is easy to see how licensing policy to the region could have become more permissive than would be recommended by rigorous application of the Common Position.

EU arms transfer control since the Arab Spring

A revolutionary wave of demonstrations and protests occurring in the Arab world is referred to today as the Arab Spring, even though it began on 18 December 2010, with the Jasmine Revolution in Tunisia, followed shortly after by a revolution in Egypt; a civil war in Libya resulting in the fall of its regime; civil uprisings in Bahrain, Syria, and Yemen; major protests in Algeria, Iraq, Jordan, Morocco, and Oman, and minor protests in Kuwait, Lebanon, Mauritania, Saudi Arabia, Sudan, and Western Sahara. The protests have shared techniques of civil resistance in sustained campaigns involving strikes, demonstrations, marches and rallies, as well as the use of social media to organise, communicate, and raise awareness in the face of state attempts at repression. Many demonstrations have also met violent responses from authorities, as well as from pro-government militias and counter-demonstrators.

The EU Council responded with arms embargoes on Libya in March 2011 and on Syria two months later. Apart from complying with these measures, individual EU Member States had to consider if and how to change their arms transfer policies to other MENA countries.

Members of the French Government maintained support for the Ben Ali regime throughout the first weeks of Tunisia's Jasmine Revolution. That support was questioned in the French Parliament,²⁵ and gave rise to public outcry in mid-January 2011, when a cargo plane with seven tonnes of law enforcement equipment, including gallons of teargas, was found Roissy airport bound for Tunisia. The cargo was halted by a routine customs check rather than government instruction. Yet the French Prime Minister tried to present this action as a demonstration of concern about repression in Tunisia, and denied the Government had known of authorisations for these deliveries.²⁶ His manoeuvres were easily proven ('Elysian fables'): Debate zoomed in on Foreign Minister Michèle Alliot-Marie, who had first claimed French police cooperation with Tunisia amounted to nothing more than an Interpol link, before she was reminded that she suggested French security experts share their 'savoir-faire' with the Tunisian riot police to help them control the popular uprising.²⁷ The Minister resigned when it also became known she had actually been on holidays in Tunisia

at the time of the uprising, and had used the private jet of a businessman linked to the Ben Ali regime.²⁸

The political fall-out of the Tunisia debacle is thought to have motivated the French Government to swiftly suspend deliveries of similar law enforcement equipment to Egypt from 27 January 2011.²⁹ The German Ministry of Economic Affairs reported similar action a few days later, adding that defence manufacturers stood to lose up to €40 million in contracts for which the licences were now suspended.³⁰ In early March, Swedish authorities reported they had halted weapons deliveries to two unnamed MENA countries, presumed to be Tunisia and Egypt.³¹

The British Government refused to say whether it would follow the example of other EU Member States and suspend exports of arms and riot control equipment to Egypt. Instead, UK officials said decisions would be taken on a "case by case" basis

28 'French foreign minister quits after Tunisia gaffes', *Deutsche Welle*, 27 February 2011.

29 Alexandre Piquard, 'Les ventes d'armes françaises à l'Egypte sont suspendues depuis le 27 janvier, selon Matignon', *Le Monde*, 7 March 2011.

30 'Deutschland setzt Rüstungsexporte nach Ägypten aus', *Deutsche Welle*, 4 February 2011.

31 'Sweden halts arms deliveries to two Mideast states: Official', AFP, 9 March 2011.

in line with its own and EU guidelines.³² By the time the cross-departmental Parliamentary Committees on Arms Export Control (CAEC)³³ produced a report on the matter on 5 April 2011,³⁴ the UK had revoked more than 150 licences for arms transfers to Bahrain, Egypt, Libya and Tunisia (though it was not clear how much equipment had already been delivered).

In their April 2011 report, the CAEC assessed that the previous and current UK Governments had misjudged the risk that arms approved for export to certain authoritarian countries in MENA might be used for internal repression.³⁵ In a House of Commons debate on 16 May 2011, the CAEC Chair and former Conservative Defence Minister, Sir John Stanley MP, said ministers had been "vigorously back-peddaling on arms exports that had previously been approved". He questioned why those revocations should be limited to just four countries (Tunisia, Egypt, Libya and Bahrain), and not to countries such as Saudi Arabia and called for the Government to extend a review of arms licences granted for exports to include exports to other authoritarian regimes around the world.

"Why have there been no revocations (...) of arms exports to Saudi Arabia, whose British-made armoured personnel carriers have rolled into Bahrain and are therefore complicit, as it were, in the appalling abuses of human rights there? Of course, I understand that Saudi Arabia is big money, is big oil, and is useful intelligence, but can the Government really justify such a blatant degree of inconsistency in their revocation policy?"³⁶

This inconsistency is repeated in terms of licences granted over the last year. In the second half of 2010 the UK granted 21 Standard Individual Export

Licences (SIELs) for military equipment worth €2.3 million (£2 million) to Bahrain and 28 SIELs for military equipment worth €6 million (£5.2 million) to Libya. In the first half of 2011 the UK granted 12 SIELs worth €280,000 (£246,000) to Bahrain and only 2 SIELs worth just over €15,000 (£12,000) to Libya.³⁷ But there has been no comparable decrease in the value of export licences granted to Saudi Arabia during 2011. In the second half of 2010 the UK granted 21 licences for military equipment worth almost €2.3 million (£2 million) to Bahrain and 28 licences for military equipment worth almost €6 million (£5.3) to Libya. In the first half of 2011 the UK granted 12 export licences worth €280,000 (£246,500) to Bahrain and only 2 licences worth just over €16,000 (£14,343) to Libya.³⁸

In Spain, parliamentary questions relating to the potential use of Spanish supplied vehicles in the Western Sahara, did not lead the Government any further than declare its willingness to suspend or revoke defence vehicle export licences to Morocco if that country were found to have made "improper use" of the materiel.³⁹

In Finland, the arms export licensing department within the Ministry of Defence responded to events in MENA by advising Finnish defence companies to cease seeking export licences for these countries. However, no extant licences were cancelled, and by the end of May 2011 normal practice had resumed,

except for countries under embargo.⁴⁰ In October, Finnish Minister of Development Heidi Hautala issued a statement in favour of aligning the limits and targets for arms exports, foreign policy and development cooperation, and of bringing arms exports licensing within the competence of the Ministry of Foreign Affairs, rather than the Defence Ministry that currently decides on Finnish arms exports.⁴¹

Swedish discontent over arms exports to the Gulf reached a critical point in the spring of 2011. Anders Weiryd, Archbishop of the Swedish Church and president of the Christian Council of Sweden, called it "simply unacceptable to continue Swedish arms export to dictatorships and countries that violate the human rights on such a large scale. Obviously, the rules are not strong enough and will have to be improved through clearer legislation".⁴² At a Liberal Party convention on 19 March, vice Prime Minister Jan Björklund said "we must be more specific about whom we sell military equipment to. It is an embarrassment that Sweden, the 21st century has been selling arms to both Bahrain and Saudi Arabia". On 12 May 2011, the Swedish parliamentary foreign policy committee decided "the Government shall return to Parliament with proposals for new legislation concerning arms exports in order to strengthen the control of exports aimed at non-democratic states," as was accepted after a three-hour debate in Parliament on 19 May.⁴³ A few days earlier, several political parties and NGOs had already published an op-ed in Sweden's leading daily paper, in which they declared their ambition to push for "legislation that does not permit export of military equipment to dictatorships to occur in practice".⁴⁴ On 21 September 2011, the Government was handed a petition with over 14,000 signatures, advocating

the inclusion of a 'democracy criterion' in the revised arms export regulation. The latter is no new idea to Swedish politics. Since 1996, MPs from both sides of the Swedish political divide have submitted at least 37 motions to introduce a democracy criterion for arms export decisions.⁴⁵

In March 2011 the Dutch Government declared that it had decided to hold - but not process - military exports to Bahrain, Egypt, Tunisia and Yemen, "until there is reason for reconsideration". Licences that had already been issued in the past and were up for renewal, however, would not fall under that rule, but would receive "critical" screening, and no export licences whatsoever would be granted for Iran, Syria and Libya.⁴⁶ Video footage from the streets of Manama, the capital of Bahrain, showed security forces deployed armoured vehicles of the type that had been transferred to that Gulf state from Dutch army surplus, as part of the €30 million deals that the Netherlands and Bahrain had conducted in the past 20 years.⁴⁷ The Belgian armed forces had transferred similar surplus armoured vehicles to Bahrain in 2008.⁴⁸

The upheaval and deployment in Bahrain served as a reminder of risks involved in the transfer of surplus military equipment to other countries. The Dutch and the Belgian armed forces also sold off hundreds of surplus military vehicles to Jordan, as recently as 2010. The Dutch Government admitted it might have miscalculated the risk involved in such transfers, and during a parliamentary debate on arms exports on 24 March 2011 was forced onto the defensive. With several parliamentary motions for stricter export control measures proposed receiving majority support, the Government attempted to defuse the opposition. It admitted that past implementation of the Dutch arms export policy had failed and promised

32 Richard Norton-Taylor, 'UK refuses to suspend Egypt arms sales', *The Guardian*, 8 February 2011.

33 The Committees are made up of representatives from four Commons Committees - Business, Innovation and Skills, Defence, Foreign Affairs and International Development.

34 Report of the CAEC, 5 April 2011.

35 Ibid.

36 John Stanley quoted in 'Export policy questioned', *CAAT News* 221, July-September 2011.

37 Department for Business, Innovation and Skills – Export Control Organisation Strategic Export Controls Country Review Reports 1st July-30th-31st December 2010 and Strategic Export Controls Country Pivot Reports 1st January 2011-30 June 2011 (both reports generated 18 October 2011). This only covers Standard Individual Export Licences (SIELs) of military equipment. The UK Government also reports the number and value of export licences of dual use goods.

38 Ibid. Note that the total value of the UK's arms sales to Saudi Arabia may be significantly higher, as this figure does not include categories of licences for which no values are recorded, nor does it take account of the fact some arms sales to Saudi Arabia are carried out on a government-to-government basis, which provides scope for transfers that take place outside the licensing system.

39 David Ing, 'Spain could revoke Morocco export licences', *Jane's Defence Weekly*, 11 May 2011.

40 Email 11 July 2011 from Sanna Poutila, special counselor Finnish Ministry of Defence.

41 Topi Kanninen, 'Hautala: Suomen aselehti tarkkaa luu', *Taukissaanomät*, 11 October 2011.

42 Author's translation from Op-ed in *Dagens Nyheter*, 5 February 2011.

43 Riksdagens protokoll, 2010/11:05, 19 May 2011.

44 Author's translation from Op-ed in *Dagens Nyheter*, 17 May 2011.

45 Swedish Peace and Arbitration Society, *Factsheet*, April 2011.

46 The Minister of Foreign Affairs' replies to parliamentary questions from MPs Van Bommel and Van Dijk, 24 March 2011; quotes are the author's translation.

47 Campagne tegen Wapenhandel, *Press release*, 18 February 2011.

48 See Belgian entries for 2008 to the UN Register on Conventional Arms.

to revise that policy.⁴⁹ In June the Government published a letter laying out new policy measures.⁵⁰ It stated that in future assessments of export licence applications, "more than already is the case, an element of risk-analysis will play a role. Obviously, the reach of such an analysis will be limited. However, when there are perceptible risks which in due time can lead to violent developments and where the goods to be exported could be deployed, then the Government will be reluctant to grant a licence".⁵¹

Judging that the letter failed to properly address the human rights issues it had been expected to address, Dutch MPs from different parties responded by filing a series of motions, several of which were adopted by a majority of votes on 30 June 2011. One of the motions adopted referred to the deployment of European weapons against civilians in MENA, and called on the Government not to grant any more export licences to "countries where human rights violations take place and where no free elections are held".⁵² Another adopted motion was presented by GreenLeft MP Arjan el Fassed, who called on Dutch authorities not to grant any more export or transit licences for Saudi Arabia "as long as this country does not implement meaningful structural reforms".⁵³ The motion related directly to Foreign Affairs Minister Uri Rosenthal, who in the parliamentary debate of March 2011 had refused to treat Saudi Arabia along the same lines as Tunisia, Bahrain, Yemen and Egypt, for which all pending licence requests had been held.

In September 2011, a potential deal for Dutch shipyard Damen Naval Shipbuilding to build four corvettes for Oman was reportedly stalled, though the reason for this is unclear.⁵⁴ This is

particularly note-worthy as a pre-licensing request for the contract had received a positive decision from the Dutch Government in 2010,⁵⁵ and the deal may have been discussed in Oman during the Dutch Queen's visit in March 2011,⁵⁶ by which time the Sultanate had already been touched by the unrest.

Conclusion

There have been some signs of EU Member States responding to unfolding events in the Arab world with stricter controls, and some have put on hold or revoked export licences to a handful of MENA countries. There are few signs, however, of a broader coherent 'EU-response'. Even less evidence was found of proactive, deeper policy changes towards the MENA at large, despite demands for such by MPs and their constituencies in various countries. Governments' responses to these requests do not provide a basis to anticipate how long the reluctance in allowing major arms deals to MENA will last, and how soon it might be business-as-usual again.

Business around the Gulf

Previous sections of this report showed that countries situated around the Gulf of Aden have large defence budgets and have sourced some of their military and security equipment from Europe. EU Member States respect a strict embargo on Iran and Iraqi defence needs appear to be taken care of by US contractors - although Iraq is a significant client for European businesses as well. But it is the members of the Gulf Cooperation Council (GCC), on the west side of the Gulf, that have been the most valuable customers in the region for EU defence producers.

As demonstrated in Table 7, exports to Bahrain, Kuwait, Qatar, Oman, Saudi Arabia, and the UAE account for the majority of the arms European countries have transferred to the Middle East and MENA more broadly in the past decade. In addition, licence denials to these states tend to be very low; not even a handful of licence applications were denied during the nine years to the end of 2008. In 2009 a number of exports to the UAE were held to pose a high risk of diversion, as seen from the number of times criterion 7 was stated as ground for these denials.

As discussed above, this may demonstrate only that industry was well aware of the type of transfers that would or would not be likely to receive a licence, and companies have little interest in wasting time and money on deals they think will not be allowed. However, and especially in light of subsequent events, an alternative explanation is that it may be that the boundary between acceptable and unacceptable was drawn in the wrong place for arms transfers to too many of the states in the Gulf.

In this context it worth examining EU arms transfers to Bahrain, which did not suffer a single licence denial in the past ten years.⁵⁷ In the first nine months of 2010, British authorities approved almost €6 million worth of military and dual-use equipment for export to Bahrain, including tear gas and crowd-

control ammunition, equipment for the use of aircraft cannons, assault rifles, shotguns, sniper rifles and sub-machine guns. However a turning point of sorts seems to have been reached on 21 February 2011, when the UK Government revoked 24 individual licences and removed Bahrain as a permitted destination for 20 open licences after Bahraini security forces attacked demonstrators. Dutch authorities as well sustained new licences requests for Bahrain.

The complicity of Saudi Arabia in the crackdown in Bahrain has been demonstrated, and was presented in Europe as one among many other grounds to tighten controls, revoke or suspend existing licences and stop issuing new ones for military and security equipment exports to Saudi Arabia. The country has long been seen as problematic in terms of arms transfers on various grounds, not least human rights, yet despite the fact that year-on-year it is one of the largest markets for EU-produced controlled items, during the ten years to the end of 2009 only one licence denial for Saudi Arabia was reported by EU Member States.⁵⁸ In 2005-2009, export licences have been granted by EU Member States to Saudi Arabia for more than €10,250 billion (7.2% of EU arms exports worldwide).

Just saying "no" to the Saudis?

Saudi Arabia is known for its extremely conservative-religious government that exerts power with strict repression of many basic human rights including freedom of religion, freedom of speech and rights to a fair trial. Saudi Arabia engages in capital punishment, by beheading, executing at least 26 people in 2010. Also, Saudi Arabia allows for judicial corporal punishment, including flogging and amputations, although no sanctioned amputations were reported in 2010.⁵⁹

58 Ibid.

59 US Department of State, 2010 Human Rights Report: Saudi Arabia, 8 April 2011. Also see Amnesty International's Annual Report 2011 and Human Rights Watch World Report 2011.

49 Report of a parliamentary debate, Tweede Kamer, vergaderjaar 2010-2011, 22054 nr. 164.

50 Tweede Kamer, 'Aanpassingen in het wapenexportbeleid', 10 June 2011.

51 Ibid., author's translation.

52 Tweede Kamer der Staten-Generaal, Vergaderjaar 2010-2011, 22054, nr. 173, Motie Jasper van Dijk, 30 June 2011.

53 Tweede Kamer der Staten-Generaal, Vergaderjaar 2010-2011, 22054, nr. 172, Motie El Fassed, 30 June 2011.

54 Tjabel Daling, 'Bonden bezorgd over orders marinewerf', Financieel Dagblad, 13 September 2011.

55 Answers by the Dutch Minister of Foreign Affairs to parliamentary questions of GreenLeft MP El Fassed, 19 April 2011.

56 Arjen van der Ziel, 'Order freighten achter bezoek Beatrix aan Oman', De Volkskrant, 7 March 2011.

57 EU Council's 4th – 12th Annual Report. These Reports did not detail denials by country of destination pre 2001.

With the Arab Spring spreading to a number of MENA countries, in February 2011 the Saudi Government made public protests illegal. The Saudi Interior Ministry in March 2011 dispatched some 10,000 troops to the east of the country, where grievances against the Government ran highest.⁶⁰ Saudi Arabia has blamed Shi'a-majority Iran for supporting the Shi'a in Bahrain, Yemen and Saudi Arabia. In November 2009, Saudi Arabia bombed Yemen's Shi'a rebels in its country's northern parts with fighter-plane and artillery attacks. In spring 2011, the Saudi armed forces supported the suppression of the demonstrations of the Shi'a in Bahrain, who were demanding democracy and reforms. The Saudi armed forces entered Bahrain at the invitation of Bahrain's ruling al-Khalifa family. Although they did not participate in the actual repression they were seen entering the country at the time of the demonstrations in a convoy of Tactica armoured vehicles manufactured by BAE Systems in Newcastle-Upon-Tyne with final assembly in Belgium.⁶¹

The deployment of European-made equipment by Saudi authorities should not come as a surprise. Over the past few decades, Saudi Arabia has spent a considerable proportion of its oil income on weapons systems, which some Western governments have been eager to sell. Probably still best-known is the Al-Yamamah deal for warplanes that former British prime minister Margaret Thatcher clinched with Saudi Prince Bandar in 1985, which made Saudi Arabia the largest buyer of UK military equipment. The programme generated at least €50 billion in revenue for BAE Systems.⁶² Police later indicated that more than 15 per cent of that amount was distributed in corrupt commissions,⁶³ but such findings seemed

to have no impact on the British supply relationship with Saudi Arabia. At the height of the unfolding corruption drama, a new deal for Eurofighter aircraft was concluded, also known as the Salam Project.

As it transpired, the Saudi attacks on Yemen referred to above were carried out using UK-supplied aircraft. Following evidence from Amnesty International,⁶⁴ and when questioned by the CAEC, the UK Government confirmed in a letter to CAEC that UK-supplied aircraft were used in attacks in Yemen, but stated that Saudi Arabia "had a legitimate right to respond proportionately to incursions into its territory resulting from the conflict between the Houthi rebels and the Government of Yemen", and as such, this was not "inconsistent with the export licensing criteria".⁶⁵ Despite substantial evidence collected by Amnesty International that the attacks damaged homes and infrastructure and displaced up to 280,000 people,⁶⁶ the UK Government appears to have accepted the Saudi version of events at face value. Just as there are no signs yet that UK export policy to Saudi was modified by the events of the Arab Spring. In the second quarter of 2011, the latest period for which figures are available, the UK awarded 46 SIELs for military and dual use goods to the value of nearly €2 billion (£1.707 billion), as well as 5 Open Individual Export Licences (OIELs). Only two licences were denied – these were OIELs, one for various types of body armour and the other for small arms ammunition and associated components. Included among the equipment licenced for transfer were components for water cannons, hand grenades and small arms ammunition.⁶⁷

Is the UK the exception here, or have other EU Member States' arms trade relations with Saudi Arabia represented as significant a proportion of their military exports? Have authorities in some EU countries been more reluctant to deliver weapons to Saudi Arabia? How have these attitudes evolved in the

run-up to and since the Arab Spring? These questions are examined with the case descriptions below, which are illustrative, rather than a comprehensive account of the arms trade relations that EU Member States have engaged in with Saudi Arabia.

Major conventional weapons

Dutch export policy towards the Saudis has been rather ambiguous. While admitting that it was a destination under strong restrictions,⁶⁸ lucrative deals such as for a €21 million patrol vessel sale were allowed to take place in 2002. Export licences worth another €15 million were granted in the years 2007-2009. These included a €10 million deal for SOTAS communication equipment for US supplied Abrams main battle tanks, which the then Dutch Foreign Minister had described as a type of military material that is "not linked with specific concerns about the human rights situation in Saudi Arabia".⁶⁹ In a 2009 evaluation of Dutch arms export policies the Ministry of Foreign Affairs Policy and Operations Evaluation Department had expressed some surprise that licence applications for Saudi Arabia consistently received a positive score on the human rights criterion.⁷⁰ That evaluation did not make a dent in exports to the Saudi Kingdom. In June 2010, The Hague allowed for the export of another €2.2 million worth of parts for armoured vehicles.

With sales totalling €9.4 million, mainly in gasmasks, the Saudi market for military equipment represented but a few percentages of Finnish defence exports in the years 2001 to 2009.⁷¹ That share in Finnish

exports and Finnish exports as such could increase significantly as a consequence of a contract for 36 Patria NEMO 120 mm remote controlled mortar turrets systems, a deal estimated to be worth €150 million.⁷² That sale is incorporated in a US\$2.2 billion tender for the US Government's Foreign Military Sales programme that was won by General Dynamics Land Systems - Canada for light armoured vehicles. Mecar S.A. from Belgium is in the deal as well.⁷³

The Finnish company Patria is still to apply for the relevant export licence that allows it to honour the subcontract arrangement, in which it is assumed to have engaged on a positive pre-licensing notice – a document which is classified in Finland. The assumption that Saudi Arabia is the destination country for the order was brought out in public,⁷⁴ and has not been denied nor confirmed by the Finnish Ministries of Defence and Foreign Affairs. In a joint statement these ministers did announce a comprehensive assessment of Patria's export licence application in line with the Government Programme,⁷⁵ which refers to the Common Position as well as official Finnish foreign policy that advocates women's rights, democracy and human rights, and peace-building. It is hard to see how an assessment along these policy lines could allow for the sale of the NEMO mortar system for armoured vehicles in Saudi Arabia, but it is equally difficult to imagine the licence being denied. The Finnish State owns almost three quarters of the Patria company, the rest

is owned by the pan-European Aeronautic Defence and Space conglomerate EADS. If the Finnish government were to consider certain destinations too sensitive for NEMO mortar turrets, Patria may lose more than the €150 million contract for Saudi Arabia. Such a decision is also likely to exclude the company

68 Report of a debate in Parliament on 20 November 2003, 22054 nr. 79.

69 Answers of Minister for Foreign Affairs Verhagen, to parliamentary questions about the 2007 Dutch annual report on arms exports, 1 December 2008. In February 2011, in the midst of the turmoil, the Dutch supplier issued a press release commenting on the 'successful implementation of the SOTAS system.'

70 'Beleidsdoorlichting van het Nederlandse exportcontrole-en wapenexportbeleid', InspectieOntwikkelingsmaatschappijen en Beleidsevaluatie, IOB Evaluaties nr. 325, October 2009, p.107.

71 'Finnish Arms Exports 2009 Report', SaferGlobe Finland, October 2011.

72 'Euroopan asevoimat vastatuoleissa', Press release, SaferGlobe Finland, 8 August 2011; Jouko Huru, 'Patria valmistilee isoa asekauppa Saudi-Arabiaan', Kansan Uutiset, 13 May 2011.

73 'Patria signed the final subcontract for the supply of its Nemo Mortar System', Press release, 26 November 2010.

74 Jarmo Pylä and Timmi Trumper, 'Finnish Arms Company Sell Mortar System to Saudi Arabia', Investigative Story, SaferGlobe Finland, 13 May 2011.

75 Prime Minister's Office, 'Programme of the Finnish Government', 22 June 2011.

60 Charles Recknagel, 'Saudi Arabia Braces For Friday Protests, Particularly in Shire East', Radio Free Europe/Radio Liberty, 10 March 2011.

61 Jane's Armour and Artillery 2009-10 p. 664, as cited in 'Saudi Arabia uses UK-made armoured vehicles in Bahrain crackdown on democracy protesters', CAAT Press Release, 16 March 2011.

62 BAE Systems is one of the world's largest arms producers. It makes fighter aircraft, warships, tanks, armoured vehicles, artillery systems, missiles and munitions. Its foremost foreign markets are Saudi Arabia and the United States.

63 David Leigh and Rob Evans, 'Secrets of Al-Yamamah', The Guardian, s.d.

64 Amnesty International evidence to the CAEC, paras 50-54.

65 Report of the CAEC's April 2011, paras 126-130.

66 Amnesty International evidence to CAEC, paras 50-54.

67 Strategic Export Controls, Country Pivot Report 1 April 2011-30 June 2011, Department of Business, Innovation and Skills: Export Control Organisation

from further cooperation with North American partners that brought Patria in on a far larger US Government programme. As relations with the US are important for Finland, the country's commitment to democracy and human rights is likely at risk to be sacrificed.

Another Scandinavian country that once prided itself on policies excluding arms transfers to clients under authoritarian rule has already changed its position. The Swedish Government created a first opening in the early 1990s, when it allowed for exports of so-called 'other military equipment' (OME) to the Middle East. Still this was considered very controversial, and Social-Democrat Trade Minister Mats Hellström stopped OME trade with the Gulf again in 1995. Nine months later, Hellström's decision was revised, and industry began lobbying to also be allowed exports of combat purposes (MEC) to Gulf states, arguing Swedish companies should be allowed to export military equipment, just like other western countries could. That goal came within reach in January 2001, when a Swedish ban on selling arms to all countries from 'Morocco to Pakistan' was reversed, and export licensing decisions began to be made on a case-by-case basis.

Prior to 2005, Saudi Arabia had been allowed to purchase small amounts of OME from Sweden. That situation changed when Sweden and Saudi Arabia signed a Memorandum of Understanding (MoU) on military cooperation, the purpose of which was "to identify and extend the major areas of military co-operation between the two parties with regard to military systems & products, logistic, training, technology transfer, research and development in addition to exchange of expertise in equipment maintenance and military medical services".⁷⁸ Swedish authorities licensed the transfer to Saudi Arabia in December 2005,⁷⁹ of a CV90 tracked armoured vehicle from BAE Systems Hägglunds fitted with Advanced Mortar Systems (AMOS) produced with the Finnish Patria

company.⁸⁰ The transfer was for a demonstration and does not appear to have brought in orders for this particular armoured vehicle. Still, the value of Swedish exports to Saudi Arabia increased, reaching €5 million in 2009 and €27 million in 2010.⁸¹ The latter export value was largely ascribed to the delivery of a BILL 2 anti-tank missile system for which the Swedish Saab company had reported having received orders in 2007,⁸² the client, only identified as Saudi Arabia after delivery, when ISP published the annual report on 2010. In 2007, Saab was also issued a licence to export Eneye airborne early warning aircraft.⁸³ In October 2010 Jane's Defence Weekly reported that Saudi Arabia was the recipient nation of that deal, worth almost €490 million (SEK4.5 billion).⁸⁴ Not entirely surprisingly, the Swedish Government announced its intention to extend the cooperation contract with the Saudis for another five years. 'A termination of the contract would be a directly unfriendly action', said Swedish Minister of Defence Sten Tolgfors.⁸⁵ Several political parties contested the renewal nevertheless.⁸⁶ Such opposition further gained momentum in the Arab Spring a year later.

As a matter of principle that had held for decades, no German tanks, large calibre artillery, fighter aircraft or helicopter gunships were delivered to the Arab Peninsula. That principle began to be abandoned in 2008, when the Bundesicherheitsrat, the security committee of the German Government, decided that applications for exports of major conventional arms to the Gulf could be considered on a case-by-case basis.

76 'Samarbetsavtal med Saudiarabien om militärt samarbete' – SO 2005:59, Swedish Government Publications, 15 November 2005.

77 Olle Lönnåus and Niklas Orrenius, 'Näste kund: Saudiarabien', Sydsvenskan, 7 October 2007.

78 'Advanced Armoured System', Defense Update, s.d.

79 Regeringens skrivelse 2010/1114, Strategisk exportkontroll 2010 – krigsmateriel och produkter med dubbla användningsområden. Stockholm, 10 March 2011.

80 'Saab receives billion order', Saab Newsroom, 11 December 2007.

81 'Saab receives billion order for an airborne surveillance system', Saab Newsroom, 4 October 2010.

82 Jane's Defence Weekly, 8 October 2010.

83 'Övnings handeling att såga upp avtalet', Sveriges Radio, 15 May 2010.

84 'Militäravtal med diktator splitter regeringen', Svenska Dagbladet SvD Nyheter, 15 May 2010.

The radical change of German arms exports was seen to be consolidated with the go ahead given to Krauss Maffei Wegman (KMW) and Rheinmetall Defence for the sale of 36 Leopard 2 tanks to Qatar,⁸⁷ under the condition that Israel would not oppose that transfer. Tel Aviv did not and negotiations continued. In early 2011 the tanks underwent trials in Qatar, and a version of the tank with a large modular upgrade kit, called 'MBT Revolution',⁸⁸ was shown for the first time in the Middle East at IDEX 2011, where its manufacturers were careful to underline commercialisation was subject to approval by the German Government on a case-by-case basis.⁸⁹ Nevertheless, the presence of the Leopard 2 at IDEX 2011 was understood to indicate that such tanks were available to potential buyers in the region.⁹⁰

Saudi defence procurement officials had not even waited that long to approach KMW and Rheinmetall Defence in Germany, as well as General Dynamics - Santa Barbara Sistemas from Sevilla in Spain, that produces an older version of the tank under German licence.⁹¹ In Spain, a potential order for 200 up to 270 of these tanks was reported to be worth over €3 billion and a decade of guaranteed employment at the local General Dynamics factory, and to entail an arrangement to train Saudi maintenance personnel for the tanks.⁹² The Spanish manufacturer of the tanks, as well as its German manufacturers, obviously needed authorisation from the German Government to export the Leopard 2 to Saudi Arabia. The German manufacturers received authorisation in the summer of 2011, after Saudi armoured vehicles had already been seen to enter Bahrain in support of a major crackdown on demonstrations. KMW received the go ahead to negotiate a deal with the Saudis to supply

the most modern urban operations version of the Leopard 2 A7+ designed for traditional tank battles and internal defence or peace operations.⁹³ The decision sparked major criticism,⁹⁴ including from the German Justice Minister, who publicly vented her unease that the deal would end the German 'tradition not to transfer major conventional arms to crisis regions', and led the Bundesicherheitsrat to announce a second debate on the matter before the end of the year.⁹⁵

Yet another type of major conventional weapons transferred from the EU to Saudi Arabia relate to border surveillance, which multinational European companies identified to offer a major market in the region. While deliveries of individual systems and technologies, such as infrared and ground surveillance radars dominated the orders initially, companies like EADS now offer sophisticated integrated systems. EADS won the initial contracts for building modern integrated control systems for Saudi Arabia's 9,000 kilometres of borders. The German Federal Police supported the bid by agreeing to conduct the training for Saudi policemen in using the new technology.⁹⁶

The sale of border control technologies offers a number of advantages in comparison to weapons deals, only part of the technology requires an export licence. Licences for an additional part are more likely

91 'Deutschland will Saudi-Arabien Kampfpanzer liefern', Der Spiegel, 2 July 2011. Linked in this article is a film about a demonstration of the Leopard 2A7plus 'Peace Operations' model. An English version of the article is 'Germany Wants to Supply Battle Tanks to Saudi Arabia', Der Spiegel, 4 July 2011.

92 Nicolas Delaunay, 'German opposition parties up in arms over Saudi tank sale', AFP, 5 July 2011; Germany's controversial Saudi tank deal, UPI, 11 July 2011; Hans Kundnani, 'Germany's contribution to the Arab Spring: arms sales', Comment is free, The Guardian, 9 July 2011; William Boston, 'Should Germany Sell Tanks to Saudi Arabia?' TIME, 7 July 2011.

93 'Sicherheitsrat berät erneut über Panzer-Export', Der Spiegel, 9 October 2011.

94 'Was treibt die Bundespolizei in Saudi-Arabien?' MDR-Fakt, 4 April 2011. The deal is estimated to represent a German subsidy for EADS to cover the basic salary of the policemen involved in aid from the federal budget while EADS only has to cover additional costs. In a separate broadcast, MDR-Fakt reported on 18 July 2011, that the training included personnel from the Saudi intelligence services.

to be issued, since the goods included are dual-use and only a relatively small part are military goods. In addition, border control technology is perceived in many of the licensing countries as supportive to their attempts to control migration and influxes of refugees. Issuing an export licence thereby becomes indirect support to the effectiveness of EU-initiatives such as Frontex.⁹⁷

Country of 'five-armed soldiers'

The Saudi appetite for weapons "made in the EU" does not stop at tanks, planes and warships. Small arms and light weapons (SALW) are also on the top of their wish list: export licences for ML1 and ML2 have been granted to Saudi Arabia for almost €1 billion in 2005–2009 (9.4 per cent of export to Saudi Arabia). Being the destination of almost 15 per cent of all SALW export licences granted during this period, Saudi Arabia is a lucrative market for European SALW producing companies.

A good example of this trend is Belgium, one of the world largest exporters of military SALW.⁹⁸ Belgian SALW manufacturers have traditionally relied on sales to Saudi Arabia, to the extent that led a keen observer to assume 'Saudi soldiers should be five-armed to bear all the Belgian weapons they bought'. In 1996–2002, Saudi Arabia accounted for 36.3 % of Belgian arms exports,⁹⁹ a customer prominent enough to make the seller dependent on the buyer rather than the other way around. As a side effect of the 2003 regionalisation of export control competencies, periodical export reports of Belgian entities revealed that the vast majority of Belgian exports to Saudi Arabia come from the Walloon Region. Since then,

export licences to Riyadh have been granted for over €1.1 billion, more than €150 million each year and around 20 per cent the value of Belgian export licences. These supplied the Saudi forces with the different generations of military SALW that FN Herstal has been producing over the years.

To the remarkable exception of a €217,100,091 transit licence for ML2, ML3 and ML5 items from Switzerland granted by the Flemish Region and wrongfully accounted as an export licence for ML2 items, all Belgian export licences for Saudi Arabia that have ever been reported in the EU Council's Annual Reports were granted by the Walloon Region.

Saudi armed forces' SALW are by no means limited to those imported from Belgium. Since 2008, the renowned German SALW manufacturer Heckler & Koch started transferring technology to Saudi Arabia, and built a factory in King Khalid Town for licence production of the G36 assault rifles at a plant of Military Industrial Corporation (MIC) that opened in the summer of 2009.¹⁰⁰ As reported in the German Parliament, the licence-production was to be dependent on key components supplied by Heckler & Koch.¹⁰¹

Conclusions

The cases recorded in the above section refute the assumption that all EU Member States have at all times exported arms to authoritarian regimes that tolerate human rights violations, or that such exports consistently represented as significant a proportion of their exports as UK exports to Saudi Arabia. Historically, Member States appear to have followed widely varying approaches to exporting arms to Saudi Arabia and other states in the Gulf. However, the last few years before the Arab Spring witnessed a perceptible shift in attitude in several states that had traditionally followed a more restrictive line.

German contractors found that they were more able to compete for a piece of the Saudi market. The increase in Swedish arms exports at the end of last decade was in part attributable to large arms deals with the Saudis. A contract signed in 2010 for Saudi Arabia may triple the average annual value of Finnish military exports. A striking similarity in these arrangements is the non-disclosure of the destination country, a practice that does not sit well with Swedish, Finnish and German democracies and transparency standards.

If licensing officials and governments in EU Member States are becoming more reluctant to refuse licences for transfers to Saudi Arabia, this suggests that in licensing decisions the weight given to human rights violations in-country may be declining relative to the weight given to economic and strategic interests that such deals are held to serve.

95 As explained at www.frontex.europa.eu FRONTEX is an EU-agency based in Warsaw. It is a specialised and independent body tasked to coordinate the operational cooperation between EU Member States in the field of border security.

96 'Sifting the sources: Authorized small arms transfers', in *Small Arms Survey Yearbook 2009 – Shadows of war*, Cambridge University Press, 2009, p.23.

97 1996–2002 is the last documented period of Belgian arms export prior to regionalisation of competence over arms export control. Belgian and Belgian entities publish periodical arms exports reports available through GHIP.

98 'His Royal Highness Crown Prince receives a G36 rifle produced at MIC', Waffenexporte, June 2011.

99 Deutscher Bundestag, Drucksache 17/6858, p. 16.

Supplying the Libyan stockpile

Libyan combat scenes covered by the international media from the spring of 2011 onwards put a wide variety of arms on display that the Gaddafi regime stockpiled prior to the uprising. Troops that remained loyal to that regime deployed the arms against civilians and were in turn attacked by the arms the opposition forces managed to obtain from abroad or pilfer from the Libyan armed forces' arsenals.¹⁰¹ Among these arms are standard G36 assault rifles as well as G36 KV with a shorter barrel,¹⁰² a model the German Heckler & Koch (HK) company manufactures for special forces and has exported to numerous Western countries and their allies, but never to Libya.¹⁰³ The G36 versions discovered in Libya may have been diverted from Egypt, to which HK exported 608 such assault rifles in 2003 and 2004.¹⁰⁴

These and similar findings appear fortunate by-products of the Libyan Uprising, as they may allow for follow-up research to identify stockpile sources. These efforts can point at patterns of diversion and transfers that passed below the radar, but quite a substantial proportion of the stocks found in Libya were sourced by fully authorised exports from EU and other countries that irresponsibly transferred arms to a country that systematically failed to respect human rights.

¹⁰¹ Alan Taylor, 'DIY Weapons of the Libyan Rebels', *The Atlantic* (online), 29 June 2011. Weapons from Gaddafi's forces have been acquired by Al Qaeda cells, according to EU counter-terrorism co-ordinator Gilles de Kerckhove on quote in Valerie J. Papp, 'U.S. Arms Control Agency raises questions about Gaddafi's arms', *EU Observer*, 7 September 2011.

¹⁰² Deutsche Waffen in Libyen – Rebellen nutzen G36-Gewehre', *Arteinfo*, 31 August 2011 and picture gallery at 'Rebellen stürmen eine leere Residenz - Wo steht Muammar al-Gaddafi?' and 'Spectakuläre Entdeckung in Tripolis – Rebellen erkunden Gaddafis Bunker'.

¹⁰³ 'Statement regarding speculations on arms deliveries to Libya', HK, 30 August 2011.

¹⁰⁴ Letter by HK to Bundestag committees. The export licences for Egypt appear in the German national report on 2003. Egyptian authorities were asked to clarify what appears diversion of these arms in breach of the end-user certificate Egypt issued.

A brief non-embargoed interval

From 1985 until 2003, Libya was an embargoed destination country for all military equipment and technology. Even if that embargo did not close the door entirely on exports of items such as armoured vehicles from Germany and (through) Malta, the licences EU authorities issued for Libya were few and as many licence applications were being denied, mostly on the ground of criterion 1 that refers to international obligations, such as respect for embargoes set by the UN.

That ground began to shift after 2003, when Libya announced the end of its nuclear programme, and that it was to discontinue its support to terrorist groups and to henceforth collaborate in the War on Terror. Shortly thereafter, the UN embargo on Libya was lifted, but it took until October 2004 before the EU lifted its own embargo on the transfer of arms to that country.¹⁰⁵ That did not make Libya an unproblematic destination for controlled goods. After 2004, the most serious human rights violations continued to be reported from Libya, as they had been reported before.¹⁰⁶ Libyan indicators for voice and accountability remained among the weakest in the world.¹⁰⁷

The USA restored diplomatic ties with Libya in 2006, but did not give military export clearance. By contrast, some in the EU saw a window of opportunity had opened for exporting military and security equipment to Libya, as is shown in Table 8. Data on trade year 2005 indicate licensing officials from EU Member States had approved all of the 18 export licence

¹⁰⁵ 'EU lifts weapons embargo on Libya', *BBC News*, 11 October 2004.

¹⁰⁶ E.g. Human Rights Watch, *Truth and Justice Can't Wait: Human Rights Developments in Libya Amid Institutional Obstacles*, New York: HRW, 2009.

¹⁰⁷ Cf. database 'Governance and Anti-Corruption WGI 1996 – 2011'. On the link between governance and arms issues, see Owen Green and Nicolas Marsh (eds.), *Small Arms, Crime and Conflict – Global governance and the threat of armed violence*. London: Routledge, 2011.

Table 8: Export licences EU Member States approved and denied to Libya, 2001–2009.¹⁰⁸

Year	2001	2002	2003	2004	2005	2006	2007	2008	2009
# licences denied ¹⁰⁹	2	5	1	1	0	15	6	7	7
Criteria as ground for denial	1 4	1 4	1 4	4	--	2(13) 5(8)	4(4) 8(4)	2(2) 5(1) 8(1)	2(7) 7(3) 2(2)
# licences issued	9	5	10	1	18	47	56	181	283
Value of licences (€ million)	3.1	0.3	6.4	1.08	72.1	59	108.8	250.7	343.7 ¹¹⁰
Main exporter (in # licences and/or value)	UK	UK	Malta	Malta	UK Austria France Belgium Malta	France Italy UK	Italy UK France	UK France Portugal Austria Italy Slovakia	UK France Portugal Italy Belgium Malta

¹⁰⁸ Sourced by the EU Council's 4th Annual Report through its 12th Annual Report.

¹⁰⁹ An export licence can be denied on the grounds of more than one criterion. The list of criteria that the Common Position provides is reproduced in the Annex.

¹¹⁰ 343.7 is licence value as initially recorded in the 12th Annual Report, (272) is estimate of actual value.

applications for exports to Libya. In the ensuing years, export authorities registered substantially more licence applications for that destination most, but not all, were approved. The 15 refusals in 2006 indicate industry was relatively uncertain of the type of equipment that might be approved or refused a licence after the embargo was lifted and criterion 1 was no longer invoked. Almost all other criteria of the Common Position were stated among the grounds for denying export authorisations, before industry became more familiar with, though not entirely certain of, the rules of the game for transfers to Libya, and the number of refusals fell.

The ratio of denials for approved licences to Libya stood at almost 1/3 in 2006. By 2009 that rate had dropped to less than 3 per cent and the number of licences that were issued shot up from 47 to 283 per year. French export authorities issued 58 of these licences

in 2009, as well as 75 preliminary notifications.¹¹¹ Some of these transactions relate to Colonel Gaddafi's visit to Paris in December 2007, that gave rise to a MoU to modernise some of Libya's Mirage F-1C fighters, and to a Libyan purchase 14 Dassault Aviation Rafale combat aircraft and associated weapons, as well as a mix of Eurocopter Tiger, EC725 and AS550 Fennec helicopters, Caesar truck-mounted 155mm howitzers, a mix of VAB, Sagittarius and VBL wheeled armoured vehicles, fast patrol boats, and air defence radars.¹¹² Even if that deal did not entirely come through, the Memorandum marks a significant step in Libya's rise in respectability.

Austria exported Schiebel Camcopter S-100 light rotor-driven unmanned aerial vehicles (UAV) to Libya, on the understanding these were to be used for surveying migrants on Libyan territory and

¹¹¹ (French) Ministère de la Défense, 11^e Rapport au Parlement sur les exportations d'armement de la France en 2009, August 2010.

¹¹² 'Libya seeking arms deals', *Defense Industry Daily*, 8 August 2011.

strengthening border control.¹¹³ In 2008, Austrian export authorities issued licences for the sale of four of these Camcopters. An email from the inventor of the Camcopter to a Libyan intermediary, which was later leaked by an Austrian MP, revealed the deliveries had been part of an order for twelve UAVs, and that another eight vehicles were scheduled for delivery to the Libyan Ministry of the Interior at a later date.¹¹⁴ Statistik Austria questioned the reported numbers of the UAVs licenced for export by saying the export relates to six vehicles at a total value of €3,364 million. The Austrian MP also reported evidence that the UAV were in use by the Libyan army rather than by authorities in charge of migration control.¹¹⁵

"Border control to prevent illegal immigration from Africa to Europe" also figured as the officially stated end-use for a potential €1 million Libyan order of third generation thermal cameras of the types Albatross or Claire, for which the Dutch branch of the Thales conglomerate submitted a pre-licence application in March 2009.¹¹⁶ The Dutch Ministry of Economic Affairs had no problems with the deal, as this was far from the first deal with North African states justified in terms of cooperation in curbing "illegal migration". In April 2008 and June 2009 The Hague had already authorised for export to Libya Thales Squire portable radars,¹¹⁷ for "surveillance and security aims"; further specified with the terms "military" and "drugs prevention". The Dutch ministry of Foreign Affairs, for its part, assessed the political implications of the night vision licence request and in June advised positively on all eight EU arms export criteria, including human rights, as seen on the chart reproduced in illustration 1.

This advice was overruled by then Minister of Foreign Affairs Maxime Verhagen, who was alarmed by reports from Human Rights Watch on abuses of migrants by the Libyan authorities. The Dutch Ministry of Economic Affairs insisted on a new assessment, which resulted in a new decision in March 2010, authorising the Libyan deal, under the peculiar condition that Dutch diplomats in Tripoli monitor human rights violations against migrants. The transfer never materialised, but the preparations for the deal illustrate the grand manoeuvres authorities in EU Member States were willing to make to justify arms exports in a situation where human rights were clearly at risk.

British authorities issued numerous temporary licences for exports to Libya,¹¹⁸ which companies required to exhibit their wares at arms fairs in Libya.¹¹⁹ British government services, such as the Trade and Industry Defence and Security Organisation (DSO) and the UK embassy in Tripoli, were reported to have made considerable efforts in promoting sales of military and security equipment to clients in Libya. As late as June 2010, they made direct approaches to Khamis Gaddafi, the youngest son of the leader and soon to be feared military commander of the 32nd Brigade.¹²⁰

The UK licenced the export of armoured all-wheel vehicles to Libya in 2007,¹²¹ and of armoured personnel carriers in 2008.¹²² Armoured vehicles, built by a UK-based firm and sold to the Libyan

¹¹³ Department for Business Innovation and Skills – Export Control Organisation, 'Strategic Export Controls Country Pivot Report 1st January 2008 – 31st December 2008' (generated 12 August 2011).

¹¹⁴ British companies participated in the Libyan Aviation Conference and Exhibition (LADEX) in 2008, 2009, 2010 and 2011, over 20 British companies – including an armoured vehicle manufacturer – participated in Libdex, according to websites of these fairs.

¹¹⁵ Colin Freeman, 'How Britain courted, armed and trained a Libyan monster', *The Sunday Telegraph*, 26 September 2011.

¹¹⁶ Department for Business Innovation and Skills – Export Control Organisation, 'Annex of Data: Annual Report on Strategic Export Controls 2007'.

¹¹⁷ Department for Business Innovation and Skills – Export Control Organisation, 'Strategic Export Controls Country Pivot Report 1st January 2008 – 31st December 2008'.

¹¹⁸ Licences granted on 15 April 2008 and 8 June 2009.

Wapenexportcriteria gerelateerd aan de aard van het goed	Pos	Neg	Net
1. naleving internationale verplichtingen van Nederland	X		
2. rechten van de mens in het land van eindbestemming	X		
3. interne spanningen / gewapende conflicten in het land van eindbestemming	X		
4. handhaving van vrede, veiligheid en stabiliteit in regio	X		
5. nationale veiligheid Nederland, bevrilende landen of bondgenoten	X		
6. nadruk van het land van eindbestemming t.o.v. de internationale gemeenschap?	X		
7. gevraag voor wijziging van de eindbestemming	X		
8. vereenigbaarheid van de voorgenomen export met het technische en economische vermogen van het ontvangende land ¹²³	X		

Illustration 1: Criteria assessment sheet, filled out by Dutch authorities in their assessment of a licence for export of night vision equipment to Libya.

regime, were spotted on the streets of Libya during the uprising. This company also stated they trained Libyan police officers in riot control.¹²⁴ In 2007, a contract worth almost €100 million was signed with the Prime Minister, Tony Blair's personal backing, for a state-of-the-art command and control system to be supplied by General Dynamics UK, which had already installed a similar one for the British Army.¹²⁵ This was incorporated into a communications and data-systems deal to upgrade Libya's T-72 tanks and other armoured vehicles; a 12-man team was posted in Libya for that purpose until its evacuation on 19 February 2011, the export licence was withdrawn two days later.¹²⁶

Yet another deal in the making with Libya that was aborted with the turmoil in 2011 concerned the Italian defence company Finmeccanica, that had

been hoping to win orders for €3.5 billion, up from €700 million worth of existing contracts in its order book. Finmeccanica had previously announced a deal for maritime surveillance aircraft, trainer aircraft and AgustaWestland helicopters.¹²⁷ In 2010, Libya had also ordered new cannons from Finmeccanica for its 155mm Palmaria self-propelled howitzers.¹²⁸

Small arms and light weapons (SALW)

According to the 12th Annual Report presented by the EU Council in January 2011, EU Member States had issued export licences for small arms (MLI) to Libya in 2009 at a total value of almost €100 million. The figure was not only high, it was remarkable, as all sales to Libya in this ML category authorities from EU Member States previously reported amounted to less than €10,000.

¹¹⁹ 'Finmeccanica Plays Down Libyan Impact', *Aviation Week & Space Technology*, 7/14 March 2011.

¹²⁰ Tom Kington, 'French, UK Firms Seek Sales in Libya', *Defense News*, 29 August 2011.

¹²¹ The email is reproduced in a March 2011 entry to MP Peter Pilz' online Tagebuch.

¹²² Peter Pilz, Tagebuch, March 2011.

¹²³ Document obtained under Freedom of Information Act request by the Slipper on 13 December 2010; decision by Dutch Ministry of Foreign Affairs on 7 February 2011. The documents obtained source this entire paragraph and the form reproduced in the illustration.

¹²⁴ Licences granted on 15 April 2008 and 8 June 2009.

The modesty of European SALW sales prior to 2009 does not correspond to a lack of interest from the Libyan Government to buy small arms. In fact, Tripoli attempted to import quantities of SALW far beyond the legitimate needs of its armed forces that are calculated to consist of 76,000 active troops and 40,000 reserves ('People's Militia').¹²⁵ In March 2006, the prosecutor of Perugia opened an investigation into some Italian businessmen who were found to be working as intermediaries in a vast arms deal through which high-ranking Libyan Government officials sought to procure 1 million Russian arms and another 500,000 Norinco Type 56 assault rifles from China, as well as 10 million rounds of ammunition.¹²⁶ That Italian investigation, which became known as 'Operation Parabellum', reportedly broke the deal.

In 2006-2007, the Libyan government successfully imported 100,000 automatic rifles from the Ukraine.¹²⁷ In 2008, procurement officials at Libya's Defence Ministry sought to import another 130,000 Kalashnikov automatic rifles from an unidentified Ukrainian party via a UK-based intermediary. However, the UK refused to issue the relevant brokering licence.¹²⁸ The UK embassy in Tripoli reportedly expressed concern that the Government of Libya might have intended to re-export the weapons to either the Governments of, or armed rebel factions in, Chad and Sudan.¹²⁹

Again in 2008, a Libyan businessman whose intermediary services had been sought to facilitate a 'procurement programme' on behalf of the 32nd Brigade signed a contract with a Romanian company

¹²⁵ International Institute for Strategic Studies, *The Military Balance* 2011, p. 320.

¹²⁶ Luc Mampaey & Federico Santopinto, 'Opération Parabellum: Enquête sur un trafic d'armes aux sommets de l'Etat libyen', Note d'analyse, Brussels: GRIP, November 2009.

¹²⁷ Paul Holtom, 'Ukrainian exports of small arms and light weapons, 2004-2007', SIPRI Background Paper, Stockholm: SIPRI, 2008, in reference to reports published in Ukrainian on the Export Control Service website at www.dsecu.gov.ua/control/ukr/index.

¹²⁸ 'UK denies licence for export of Kalashnikovs to Libya; GOL potentially seeking alternative sellers', cable 08TRIPOLO968 from the US embassy in Tripoli of 6 November 2008, revealed by WikiLeaks on 30 August 2011.

¹²⁹ Ibid.

for the export from Romania to Libya of 100,000 Kalashnikov automatic rifles.¹³⁰ In March 2009, the Serbian Government refused to authorise a local firm, Zastava Arms of Kragujevac, to export more than €30 million worth of small arms to Libya, on the ground that one of the brokers who acted on behalf of the Libyan government was blacklisted by the UN for having violated the embargo on arms exports to Liberia.¹³¹ Just prior to the uprising, Tripoli reportedly had also concluded a deal with Russia to build an AK103 machine guns factory in Libya.¹³²

These efforts to accumulate large quantities of small arms reminded the international community of the support that Colonel Gaddafi was reputed to have offered rebels throughout Africa, in some places in Latin America and in the Philippines. Libyan authorities had repeatedly been caught violating international embargoes, such as by supplying arms to parties in the armed conflicts in Liberia and Sierra Leone.¹³³ Also in Sudan, Somalia and Chad arms had already been encountered that appeared to have been supplied by Libya.¹³⁴ Evidence of continuing Libyan efforts to acquire quantities of SALW beyond the legitimate needs of own troops thus refuted the belief that the Gaddafi regime had really broken with its old habit of buying influence among those not easily supplied through the legal arms market. That conclusion led some authorities in Europe to exert restraint when they could. However, the case studies recorded below suggest that restraint was lacking in some cases.

¹³⁰ Ibid. The cable added that the businessman 'avoided the question as to whether these arms were intended to be used in Libya or re-exported to another destination'.

¹³¹ Luc Mampaey & Federico Santopinto, 'Opération Parabellum: Enquête sur un trafic d'armes aux sommets de l'Etat libyen', Note d'analyse, Brussels: GRIP, November 2009.

¹³² Dmitry Gorobezko, 'Russian arms sales to the Middle East and North Africa', Russian Military Reform, 7 March 2011, quoting from the Russian CAST Export Vooruzheniya Journal of November 2010.

¹³³ Violations were reported by the UN panel of experts tasked with monitoring those embargoes according to Paul Holtom, *United Nations arms embargoes: their impact on arms flows and target behaviour – Case study: Liberia 1992-2006*, Stockholm: SIPRI, 2007.

¹³⁴ Report S/2008/649 by the group of experts tasked to monitor UNSC Resolution 1591 on Sudan.

Economic and humanitarian crises legitimate SALW sales

By comparison with the acquisitions mentioned before, the Libyan government sought to buy relatively modest quantities of SALW when it started negotiating a deal with the Belgian Fabrique Nationale (FN Herstal). The company is known for state of the art small arms that do not come cheaply and some of which requires specialty ammunition that is hard to come by on the black market. The client wanted pistols and semi-automatic rifles to replace arms FN Herstal had supplied to the Libyan police before 1985. The client also wanted to procure riot control equipment, particularly FN303 Less Lethal Weapons.¹³⁵ By October 2008, the selling order was drawn up for 2000 FN303 semi-automatic less-lethal riot guns – at the time the largest deal for such arms FN Herstal had received, as well as for 367 FN 5-7 pistols, 50 FN HP Renaissance pistols, 367 FN P-90 submachine guns, 367 FN F2000 assault rifles, and 30 FN Minimi light machine guns, all with spare parts, accessories and munitions, at a total value of over €11.5 million.¹³⁶

The company applied for the five relevant export licences for Libya with the regional Walloon Government. The deliberation on the licences was not dealt with lightly. The matter was passed on to the expert advisory commission that monitors Walloon compliance with the provisions in the Belgian arms exports law, which was amended in 2003 so as to incorporate the EU system of transfer control. In February 2009, the advisory commission concluded that with the exception of the FN303, the arms Libya sought to procure presented too high a risk for proliferation beyond the Libyan borders, and thus issued a negative advice on four of the five licences.

¹³⁵ The company's website describes FN303 riot control devices as 'semi-automatic launchers that use compressed air to expel several types of projectiles, to stop targets on impact and/or mark them with irritating substances or colour that make them easy to trace'.

¹³⁶ Conseil d'Etat, Arrêt n° 212.559 du 7 avril 2010, p. 3. Minister Demotte stated the value of the order was €12.8 million, in 'FN-Libre: Demotte justifie l'autorisation wallonne', *La Libre*, 26 May 2010.

In April 2009, FN Herstal approached a member of the Walloon Minister President's Cabinet and handed over a file with complementary information that lead the afore-mentioned advisory commission to reconsider the matter. According to the record of the commission's deliberations, it considered the steps that the Libyan authorities had taken to cut ties with terrorist groups, the warm welcome Colonel Gaddafi had been seen to receive in France in December 2007, and the observation that the US had resumed diplomatic ties with Libya.¹³⁷ Apparently, the Commission failed to note the resumed ties had not led the US to authorise military exports to Libya. It did take into account that export authorities in EU countries had recently denied licences for exporting SALW to Libya because they had deemed the risk of diversion too high. The commission had no difficulty to recognise grounds for that last risk assessment, as the UN sanctions monitoring committee on Sudan had reported the presence of Belgian SALW and large calibre ammunition in that country, of a type Belgium exported to Libya decades ago.¹³⁸ However, as no proof had been found that the Libyan authorities were directly involved in such re-exports, the commission decided to downplay the risk that newly imported Belgian arms might be diverted into conflict zones. It also underlined the dissimilarity between the deal for 130,000 assault rifles for which UK arms control authorities had refused a brokering licence, and the deal for which its advice was being sought that concerned a replacement of arms that the Libyan police had been using since pre-embargo times. The commission also appeared impressed by the assurance given by FN Herstal that these new arms come marked in such way as to be traceable at all times.¹³⁹ Alarms would go off – so to speak – if these new FN arms were to be spotted in another country, a possibility presented as a deterrent to re-exports. But no such alarms would go off if Libya were to re-

¹³⁷ Conseil d'Etat, Arrêt n° 212.559 of 7 April 2010. This piece of legislation sources most information presented in this and the next paragraph.

¹³⁸ The presence of this Belgian ammunition is mentioned in a report issued in November 2008 (S/2008/649) by the group of experts that was instated by UNSC Resolution 1591 on Sudan.

¹³⁹ Conseil d'Etat, Arrêt n° 212.559 of 7 April 2010. This document informs this and the next paragraph.

export the arms that replaced the new acquisitions from Belgium. There is no evidence a suggestion was made to the Libyan recipient to destroy those replaced arms, nor did Belgian authorities announce action to help avoid diversion of the replaced arms. In its final deliberation, as many members of the advisory commission approved of the deal as disapproved of it, no conclusive advice was offered.

Early in June 2009, on the eve of local elections, Walloon authorities were alerted that Libya was considering withdrawing from the contract if they stalled the decision on the export licences any longer.¹⁴⁰ Spokesmen for the defence industry reminded them a Libyan withdrawal could put hundreds of jobs on the line at FN Herstal and potentially affect other Walloon companies. In earlier communications, the €11.5 million deal for FN Herstal had already been presented as a door opener to more contracts with Libya, that would potentially be worth more than €100 million.¹⁴¹ The communication did not go unnoticed to the Fédération Syndicale des Métallurgistes FGTB, the local socialist union for metalworkers. The union strongly encouraged Wallonia's Minister President Rudy Demotte to sign the export licences, which he did on 8 June 2009.

The Minister appeared aware that the dire straits of the Walloon economy and its need for industrial contracts could not trump a field of red flags that the advisory commission had raised. He however disagreed with the commission's assessment regarding the intended users of the arms, and the risk these might divert the arms to Sudan and other conflict areas. According to the Minister, the arms were 'intégralement destinés au 32e Bataillon des forces dédiées de l'armée qui est affectée à la protection des convois d'aides humanitaires'.¹⁴² He saw no ground to mistrust that user, as the Brigade is designated to protecting a corridor for humanitarian aid through

¹⁴⁰ Luc Mampaey, 'Une vente d'armes à la Libye serait un soutien implicite à la répression et aux détournements', GRIP note d'analyse, 2 June 2009.

¹⁴¹ Philippe Lawson, 'Contat à enjeux multiples', *La Libre*, 18 April 2009.

¹⁴² FN-Libre: Demotte justifie l'autorisation wallonne', *La Libre*, 26 May 2010.

which the World Food Programme supplied refugee camps in Chad and South Darfur. The Minister appeared unaware that same 32nd Brigade had been linked to a procurement programme that British and American diplomats had associated with suspicious movements of large quantities of small arms, which they took to entail a substantial risk of SALW diversion to Sudan and other conflict areas.

The elite brigade may have been designated to protect the corridor from the Port of Benghazi to Al Kufrah in the southernmost part of Libya, and few would oppose feeding refugees in camps or making life easier for those who protect humanitarian convoys on route to those camps. However, it is remarkable that the Walloon Minister President presented an elite brigade of the Libyan army as the future user of anti-riot guns and specialty arms that Libya sought to procure for its police. The 32nd Brigade, for its part, would be unlikely to deploy riot control equipment on missions that stood a serious risk of ambush, nor could such narrowly defined end-use cover all possible future use of the guns. Refugee camps are, by definition, temporary as is the need to supply camps with humanitarian aid and protect the corridors for these humanitarian convoys. These considerations undermine the credibility of the claim that Belgium was exporting to Libya arms that were 'indispensable for humanitarian missions', as Minister Demotte had stated.

A few weeks after the Walloon Government issued the export licences, the Belgian federal *Conseil d'Etat* put the licences on hold,¹⁴³ acting upon complaints filed by the *Ligue des droits de l'homme* and the *Coordination nationale d'action pour la paix et la démocratie*. These civil society groups had raised concern about repression in Libya and the possibility that the SALW sold by FN Herstal would make matters more problematic. In order to proceed quickly, the *Conseil d'Etat* raised technical objections to the fact that the Walloon Government had issued the licences just prior to elections, when its decisions could no longer be controlled by their regional Parliament that had already resigned. In this way,

the *Conseil d'Etat* bought time to prepare for a more fundamental decision on the political implications of the deal with Libya, which would eventually lead that Counsel to cancel the licences in April 2010.¹⁴⁴

By then, the incoming Walloon Government had already issued a new series of licences that allowed FN Herstal to export the SALW to Libya. The repetition of the licence issuing procedure actually caused the licences and their value to be counted twice in the Government's report to the Walloon Parliament.¹⁴⁵ There is no evidence that Parliament questioned the steps taken by the Walloon Government that bypassed the proceedings in the *Conseil d'Etat*. Neither the amount nor the value of the arms FN Herstal actually delivered to Libya have been reported, but evidence that the deliveries took place is recognised in the deployment of some of these arms during the Libyan uprising in 2011. In some press photos, blue boxes with FN303 imprints are seen in ransacked arsenals, and others show rebel fighters holding FN 50 submachine guns and FN2000 assault rifles with grenade launcher and silencer.¹⁴⁶ There is no evidence these particular arms from FN Herstal have been passed on to conflicting parties in Darfur or Al Qaeda cells in the wider region. What is beyond doubt however, is FN Herstal arms have been diverted within Libya.

A Maltese connection

FN Herstal was not the only European manufacturer supplying specialty SALW to the Libyan Government prior to the uprising. A transfer from Italy to Libya of

¹⁴⁰ Conseil d'Etat, Arrêt n° 212.559 of 7 April 2010.

¹⁴¹ Rapport Annuel 2009 of the Walloon Government, Parliament, pp. 70-71.

¹⁴² A large collection of pictures was reproduced with 'Décryptage de l'armement libyen', *Le Monde diplomatique*, 29 June 2011. A Belgian FN FN2000 is recognized on picture n°25 with the caption 'A Libyan rebel fighter shows a weapon with a grenade launcher attachment which he said was taken from forces loyal to Libyan leader Muammar Qaddafi at Misrata's western front line, some 25 km (16 miles) from the city center, on June 7, 2011' (Reuters/Zohra Bensemra). Similar pictures are available from <http://the-trigger.tumblr.com>.

7,500 revolvers and semi-loading pistols, as well as 659 rifles and carbines was reported to have taken place in 2009, according to the UN Register on Conventional Arms, which brought the deal the attention of Italian bloggers.¹⁴⁷ Surprisingly, no corresponding export was recorded in the EU Annual Report on 2009, at least not in the rows that this particular report devoted to Italian exports for Libya. In that same Annual Report, however, another EU Member State stands out as Libya's prime supplier of small arms: Malta reported the approval four ML1 licences and deliveries to Libya with a total worth of €79,689,691.

In the run-up to the Libyan uprising, such figures did not go unnoticed. On 22 February 2011, an article was published detailing the Maltese trade figures. When asked for comments, the Government in La Valette replied Malta had not really exported anything to Libya: merely issued four transit licences to allow the shipment of over €79 million worth of Italian arms through Maltese waters.¹⁴⁸ It is puzzling why Malta reported these licences as EU Member States are not required to report transit licences. The national report to the Italian Parliament could have reported these exports but did not and Italian civil servants from various ministries denied any knowledge of Italian exports in 2009 to Libya worth €79 million. The Italian Defence Minister, Ignazio La Russa, also denied knowledge of any such transaction.¹⁴⁹ The Maltese authorities however were equally adamant, stating they had received confirmation from the Italian embassy in Tripoli that arms were being legally shipped from Italy to Libya. As neither that Italian embassy nor the Maltese authorities were willing to reveal more details on the case, it remained unclear what type of arms had been transferred, where

¹⁴⁷ Giorgio Beretta, 'Ma quante armi esporta l'Italia?' *Golfo e Giornale della scienza*, 10 December 2010, en ligne à [¹⁴⁸ Andrew Retman, 'Libya replete with EU arms as Gaddafi massacres protesters', EuObserver.com, 22 February 2011.](http://Federico Santopinto, 'Le conti del commercio delle armi per l'UE - Un casus belli', Brussels: GRIP, June 2011.</p>
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¹⁴⁹ Kurt Sanseone, 'Malta exported €79m in small arms to Libya', *The Times of Malta*, 23 February 2011.

exactly these arms had come from, whether these were destined to one single or to multiple clients in Libya, and which authority had approved the relevant export licences – if export licences had been approved at all.

In Italy, meanwhile, many eyes had turned to Fabrica D'Armi Pietro Beretta, the country's most prominent small arms manufacturer. In a statement published on its website on 24 February 2011, the company stated it had NOT sold €79 million worth of arms to Libya and underlined the Beretta company had always respected Italian and European laws. The company did not say how much its sales to Libya were worth, nor did it reveal the identity of its client.

The mystery unravelled further, when the Maltese shipping agent admitted to having made a typing error when processing that shipment.¹⁵⁶ The value of the cargo was corrected to have amounted to €7.9 million, ten times less than what Malta had – ‘unnecessarily’ – reported to Brussels.¹⁵⁷ In order to determine whether these €7.9 million related to the export that Italy had reported to the UN Register, the Italian NGOs *La Tavola per la Pace* and *Rete Italiana per il Disarmo* took their cues from an Italian law from 1975 that created a category of firearms deemed to be ‘non-military’, and that stipulates that exports of such ‘non-military firearms’ must be authorised by local prefects that, in turn, are overseen by the Italian Ministry of Interior Affairs.¹⁵⁸

The prefect of Brescia, where the Beretta company is located, admitted to having authorised the sale of 11,000 ‘non-military firearms’ to Libya in 2009. The Italian Ministry of Interior Affairs that oversaw the matter had been presented with a Libyan end-user certificate, but its civil servants had not shared that information with their colleagues in charge of arms

export controls at the Ministries of Defence and Foreign Affairs. Consequently, the arms were not accounted for in the Italian national report that fed into the EU Annual Report on 2009, even though they were reported in the Italian entry to the UN Register on Conventional Arms.

The transfer was eventually revealed to have consisted of arms that are perfectly apt for military use. The shipment contained 7,500 semi-automatic Beretta CX4 Storm pistols, 1,900 semi-automatic Beretta CX4 Storm rifles and 1,800 M4 Super 90 shotguns manufactured by Benelli and are reportedly the type of shotgun favoured by the US Marines. At the Libyan end, the arms were received by Colonel Abdelsalam Abdel Mohamed El Daimi, director of the Armament Department of Libya’s Temporary People’s Committee for Defence, that is its Ministry of Defence.

Cluster munitions

Over €2 million worth of munitions in the ML3 category were exported to Libya from 2004 to 2008. In that same period €18 million worth of goods categorised as ML4, that is bombs and rockets, were authorised for export to Libya. These included exports from Spain.

According to their national report and reporting to COARM, Spanish authorities issued a licence for ML4 goods to Libya in 2006, for five cluster munitions for demonstration.¹⁵⁹ This led to two more licences being approved for the transfer of a total of 1,050 cluster munitions in December 2007. These cluster munitions were delivered in March 2008, at a value of €3,839,215.¹⁶⁰

151 Ivan Camilleri, ‘Maltese mistake unveils serious accountability problems’, *The Times*, 4 March 2011.

152 In 2003 and 2004, Malta also reported licences and deliveries for Libya – then still under embargo. Presumably these were transit licences as well. The Annual Reports on these trade years identifies the licenced goods as ML6, armoured vehicles and components. No information is available as to the (EU) origin of these transit shipments.

153 Law 110 of 1975.

The licence applicant was the Spanish company Instalaza SA, the equipment in question were MAT-120 cluster munitions, which are fired by a 120mm mortar and contain 21 submunitions each.¹⁶¹ The delivery system carries the submunitions up to a range of 5,500 to 6,800 metres, opening in mid-air to release these over a wide area. The submunition in the MAT-120 is considered dual-purpose because it has both antipersonnel and antimalaterial effects. Upon exploding on contact with an object, each submunition disintegrates into high-velocity fragments lethal to people and releases a slug of molten metal to penetrate armoured vehicles.¹⁶²

The first documented use in combat of this type of cluster munition occurred on the night of 14 April 2011 when Human Rights Watch observed at least three cluster munitions explode over the residential el-Shawahda neighborhood of the port city of Misrata.¹⁶³ Researchers inspected the remnants of the weapon and interviewed witnesses to two other apparent cluster munition strikes. The markings on submunitions and carrier projectile remnants indicated Instalaza SA produced these in 2007.¹⁶⁴ The residential area of Misrata where the cluster munitions strike was witnessed was on the rebel side approximately one kilometre from the front line with government forces.¹⁶⁵ The shelling of civilians with mortars and rockets was said to be the most pressing problem to surgeons working in Misrata operation theatres.¹⁶⁶

The legal angle of this deployment is intriguing. The mortars were deployed by troops loyal to the Gaddafi regime that was not party to the Convention on Cluster Munitions (also known as the ‘Oslo Convention’), whereby States agree to end use, stockpiling and transfer of cluster bombs. The country

that transferred the mortars to Libya in March 2008, by comparison, was an active party in the negotiations that resulted in the Convention on Cluster Munitions. Spain participated in these negotiations from their launch in Oslo in February 2007, the three international diplomatic conferences to develop the Convention text, and the formal negotiations in Dublin during May 2008.¹⁶⁷ The Spanish positions and statements during these negotiations however reveal that Spain sought exclusions from prohibition for a particular type of cluster munitions, namely the MAT 120 that is produced by Instalaza,¹⁶⁸ and which is described as a cluster munition with ‘self-safe’ mechanisms. The Spanish negotiators defined such mechanism as a ‘combined self-destruction and self-deactivation mechanism, or other type of mechanism with a similar effect, that guarantees that a cluster munition remnant will become an inert explosive remnant in any case and will not detonate accidentally’.¹⁶⁹ The Spanish proposal for that exclusion was not accepted, and Spain joined the consensus that led to the convention text to be adopted in Dublin in May 2008. Before the signing of the Convention in Oslo, on 3 December 2008, Spain’s Defence Minister Carme Chacón announced Spain would destroy all its cluster bombs in the following seven months. Spain also ordered the shutdown of the weapon’s production. Despite this, Instalaza still shows the mortar on its website,¹⁷⁰ and is claiming almost €40 million from the Spanish government in compensation for future orders lost since Spain became a Party to the Oslo Convention.¹⁷¹

Spain ratified the Oslo Convention on 17 June 2009, one of 15 EU Member States to do so. Sweden and 3 other EU members have signed but not yet ratified the Oslo Treaty. Finland has neither ratified nor even signed the Convention: Finland’s state-owned Patria

156 <http://www.instalaza.es/eng/productos2.html>

157 Human Rights Watch, Fact Sheet Cluster Munition Use in Libya, 27 June 2011.

158 Human Rights Watch, Libya: Cluster Munitions Strike Misrata, 15 April 2011.

159 Human Rights Watch, Fact Sheet Cluster Munition Use in Libya, 27 June 2011.

160 CJ Chivers, ‘Qaddafi Troops Fire Cluster Bombs Into Civilian Areas’, *The New York Times*, 15 April 2011.

161 Ben Farmer, ‘Misrata doctor counts the cost of Gaddafi’s cluster bombs’, *Telegraph*, 6 April 2011.

162 Landmine and cluster munition monitor 2009, entry on ‘Spain’.

163 Human Rights Watch, Libya: Cluster Munitions Strike Misrata, 15 April 2011.

164 Proposal by Spain for the Amendment of Article 2, Dublin Diplomatic Conference on Cluster Munitions, 19 May 2008, www.clustermunitionsdublin.org.

165 <http://www.instalaza.es/eng/productos2.html>

166 David Ing, ‘Instalaza seeks damages over cluster weapon losses’, *Janes Defence Weekly*, 18 May 2011.

company actually ran its own cluster munitions programme in collaboration with the Spanish Instalaza company. The Finnish programme was stopped in 2009, and is not believed to have given rise to exports, least of all to Libya.¹⁶²

Anti-tank missiles

Libyan Government arsenals were found to contain Milan F2 anti-tank missiles, packed in cases with German imprints and with serial numbers and markings indicating these were maintained and upgraded to German technical standards as late as 1989, 1991 and 1992.¹⁶³ And yet government and industry in Germany denied having exported them to Libya.

The presence in Libya of newer anti-tank missiles with parts made in Germany is easier to explain. Recent photographs taken in Libya depict Milan F3 missiles produced in 2010. Such missiles contain German warheads and launchers but are assembled in France at MBDA, a subsidiary of EADS. In a reply to an interpellation in Parliament, the French Prime Minister recognised France had delivered Milan missiles to Libya prior to the Uprising.¹⁶⁴ These exports are likely to have been covered under the ML4 category that listed licences worth €9.7 million from France to Libya in 2008.¹⁶⁵ Even if the missiles’ warheads are made in Germany, German authorities would not necessarily have been notified about their delivery to places such as Libya. French authorities generally issue end-user certificates for goods for incorporation that do not identify the end-user. German arms trade statistics, in turn, report the warhead export as a licence to

a trusted member of NATO and EU Member State, France in this case, or may report such transfer under the lump sum of Sammelauftragnehmungen (roughly an equivalent to General Project Licences). This arrangement keeps the German Government in its comfort zone, where it can in all truth say it is unable to identify the recipients and potential users of missiles that contain German warheads and launchers. Qatar is easily identified among MENA countries to which France delivered these Milan anti-tank weapons.

Embargoed again

On 26 February 2011, the UN Security Council adopted Resolution 1970, which concerns ‘restrictive measures in view of the situation in Libya’, most notably in §9, which calls for measures to prevent arms being delivered to Libya, whether directly or indirectly. The EU followed suit on 2 March in adopting Council Regulation (EU) 204/2011 ‘concerning restrictive measures in view of the situation in Libya’. On 17 March 2011, the UN additionally adopted Resolution 1973, calling for measures to protect the civilian population in Libya.

Weeks before the UN and EU Council embargoes were put in place, authorities in France had already blocked French arms exports to Libya, on credible information that the Libyan armed forces were involved in repressive acts against civilians.¹⁶⁶ Also UK authorities had begun revoking licences that had been issued for exports to Libya in the first months of 2011, they also refused all new licence applications for that destination on the ground of criterion 1, and revoked 46 outstanding licences, that the UK Export Control Organisation described as command communications control and intelligence equipment, body armour, crowd control ammunition, tear gas,

irritant ammunition and ammunition for wall and door breaching projectile launchers.¹⁶⁷

By September 2011, a spokesman for UK authorities confirmed that it had received assurances from the Libyan National Transitional Council that it intended to honour existing British contracts.¹⁶⁸ The new authorities in Libya have also appeared willing to re-continue pending deliveries, such as of a €300 million border control contract with Selex Sistemi Integrati, a subsidiary of the Italian Finmeccanica conglomerate.¹⁶⁹ ‘We have no reason to believe [contracts] will be modified’, Finmeccanica’s CEO said.¹⁷⁰ The former Gaddafi Government held a 2% stake in Finmeccanica, which has been transferred to the National Transitional Council (NTC), lessening the likelihood that Finmeccanica loses orders.¹⁷¹

The embargo and the ensuing – temporary – closing of licensed trade with Libya did not stop some EU countries transferring weapons to rebel fighters in Libya. At the height of the fighting the French military air-dropped ‘light weapons and ammunition to Berber tribal fighters in the Nafusa mountains region, to enable the anti-Gaddafi rebels to protect civilians in the region’.¹⁷² The French armed forces denied they also air-dropped Milan anti-tank missiles.¹⁷³ And yet, anti-Gaddafi groups were seen to use such arms, which they were assumed to have obtained through Qatar. Qatari Government officials were candid about transfers in support of Libyan rebels, but did not reveal whether the Milans were supplied from Qatar’s armed forces own stocks or were bought by

the Qatari directly from France for delivery to the Libyans.¹⁷⁴

Qatari military advisers were also seen to provide rebel forces basic training in the use of these missiles.¹⁷⁵ The Qatari may not have been their only instructors. At a desert camp south of Benghazi, a small number of Italian military special forces were reportedly instructing anti-Gaddafi rebels in the use of anti-tank missiles,¹⁷⁶ which would have been supplied from Italy.¹⁷⁷ A prosecutor’s investigation into the transfer of the weapons was blocked, as the Italian Government classified the details surrounding its involvement as a state secret.¹⁷⁸

French authorities stated their weapons deliveries to Libya were covered under UN Resolution 1973 as they claimed they were acting to protect Libyan civilians. However French MPs filed written questions indicating they had not been consulted or informed about these deliveries and questioned whether the UN had approved of such actions.¹⁷⁹ Russian authorities believed the deliveries of weapons to Libyan rebels to have gone beyond the remit of UN Security Council Resolutions 1970 and 1973, and also NATO Secretary General Anders Fogh Rasmussen stated that the deliveries had circumvented the arms embargo.¹⁸⁰

162 Ian Black, ‘Libyan rebels receiving anti-tank weapons from Qatar’, *The Guardian*, 14 April 2011.

163 Portia Walker, ‘Qatari military advisers on the ground helping Libyan rebels get into shape’, *The Washington Post*, 13 May 2011.

164 Gianandrea Galani, ‘Il governo pone il segreto di Stato sulle armi ex sovietiche per i ribelli libici’, *Il Sole 24 Ore*, 20 July 2011.

165 For a reconstruction of how these weapons were transferred from a bunker on an island near Sardinia, Le Figaro website dalbergere au conflit, *Afréconomie*, 29 September 2011.

166 Giampiero Cocco, et al., ‘Segreto di Stato sull’arsenale di Zintan e Nuovo Sardinia’, 19 July 2011, p3; Civil Society groups wrote an open letter to President Giorgio Napolitano demanding he explain the order or what looks like a violation of the latest embargo on Libya.

167 French MPs filed written interrogations about this matter from July 2011 onwards. The *Journal Officiel* has not yet published the Defence and Foreign Affairs Ministers’ replies.

168 Valentina Pop, ‘Libya weapons deals raise questions about Gaddafi aftermath’, *EU Observer*, 6 September 2011.

167 Jarmo Pykälä, ‘Libyan cluster munitions do not trace back to Finland’, *Investigative story SafeGuide Finland*, 12 August 2011; and ‘Libyan rypälepommjeet ehtivät Suomesta’, *Kansan Uutiset Weekly*, 12 August 2011.

168 Deutscher Bundestag, Drucksache 17/656, p.28 and Deutscher Bundestag, Drucksache 17/6995, p.14-15.

169 *Journal Officiel*, 26 June 2011, p. 8074 recording the reply to parliamentary question n° 101568 from MP Jean-Jacques Candelier, *Journal Officiel*, 8 March 2011, p.2118.

170 Reported in EU Council’s 11th Annual Report, C265/160. The missiles have probably been delivered under contract 20/2008 to Purchase Department Ben Gasir in Tripoli.

171 *Journal Officiel*, 26 June 2011, p. 8074 recording the reply to parliamentary question n° 101568 from MP Jean-Jacques Candelier, *Journal Officiel*, 8 March 2011, p.2118.

172 Department for Business Innovation and Skills – Export Control Organisation, ‘Strategic Export Controls Country Pivot Report 1st January 2011 - 31st March 2011’ (generated on 12 August 2011).

173 Tom Kington, ‘French U.K. Firms Seek Sales in Libya’, *Defense News*, 29 August 2011.

174 Guy Anderson, ‘Finmeccanica eyes millions of dollars from revised Libyan deals’, *Jane’s Defence Weekly*, 31 August 2011.

175 Op. cit. Tom Kington, 29 August 2011.

176 Ibid.

177 Statement accredited to a senior spokesman for the French military, in ‘France criticizes supplying weapons to Libyan rebels’, *The Post (Ireland)*, 3 July 2011.

178 Ibid.

Even if the arms transfers may not strictly violate the combined UN Resolutions on Libya, there is no doubt that they violate the letter of the corresponding Council Regulation (EU) 204/2011. They are also in breach of a legally binding proscription in the EU Joint Action on SALW to only supply to states.¹⁸⁶ Finally, these actions may well create precedents that will eventually undermine global commitment to embargoes and cause the EU to lose the lead in getting the international community to agree on an Arms Trade Treaty.¹⁸⁷

Conclusions

Libya's position as a destination for EU-supplied arms is unique. A long-term EU arms embargo was ended in 2004, though Libya remained a highly problematic recipient in terms of human rights, diversion and other concerns. Over the next few years, the Gaddafi regime became an increasingly respectable client of defence industries in EU Member States. Then with the Arab Spring, which in Libya manifested itself as full-blown civil war, Libya was once more placed under embargo.

During the non-embargoed interregnum, authorities in EU countries did not completely ignore all the problems in Libya—some licence applications were refused throughout the non-embargoed period, and EU Member States' licensing authorities repeatedly felt the need to explain export policy to Libya in terms of the relevance of the transferred equipment to meeting security needs, whereby Libya was depicted as a partner to help stem the inflow of migrants from Sub-Saharan Africa to the EU. Nevertheless, the direction of travel was very clear, with Libya becoming a more 'promising destination as time went on. That focus did not preclude some exports of entirely military goods, and some security equipment was diverted to military use during the Uprising, and after.

EU Member States were seen to make selective use of open-source information that documented cases of Libyan diversion of SALW, such as to Darfur. Such information was taken into account when refusing a brokering licence for assault rifles from Ukraine and prosecuting Italian nationals involved in brokering yet another arms deals with Libya. And yet, taking advantage of the loophole whereby in Italy 'non-military firearms' may be exported on the back of local rather than national authorisation, Italian manufacturers were able to 'legally' sell SALW to Libya on approval from the prefecture of Brescia, completely bypassing national export control authorities. The second transfer of SALW recorded in this section is an exemplary case of how the provisions of the Common Position were being followed—including COARM consultation—that occurred in Belgium, where subnational authorities have a say in export decisions. The Walloon regional government

¹⁸⁶ Joint Action of 17 December 1998 adopted with the intention to make a contribution to combating the destabilising accumulation and spread of SALW (1999/034/CFSP).

¹⁸⁷ This interpretation is proposed by SIPRI researcher Pieter Wexman, in 'Wapenembargo tegen Libië was eerst erg duidelijk - Hoezo embargo?', *De Pers* (online), 6 September 2011.

took a political decision to approve a sale of various types of small arms to Libya on the basis of perceived Walloon economic interests, despite the hesitation of an advisory commission, public outcry over human rights violations in Libya and a ruling of the federal Belgian *Conseil D'Etat*. This decision would probably have been questioned more effectively by a national Parliament, which we might expect to take Belgian national interests and obligations more seriously. Walloon legislators, on the other hand, appeared to have been disproportionately swayed by the presumed economic benefits the deal and promised follow-up sales would deliver to the region.

This analysis of exports to Libya was also seen to indicate compliance with the EU arms control system is a far more encompassing matter than referring to the Common Position Criteria and the User's Guide. The case of a transfer of cluster munitions to Libya shows serious problems with harmonisation among EU Member States' take on the admissibility of such transfers. One branch of the Spanish Government approved the export, while parts of the same government and other EU States prepared to sign a Convention to contain the transfer of cluster munitions.

The role of certain EU Member States in supplying arms into Libya once the new embargo was in place will merit further investigation. Longer-term economic and geopolitical calculations appear to have driven some EU governments to become involved in supplying arms to the anti-Gaddafi forces, despite the fact that these appeared to breach an embargo that had only so recently been agreed with the strong support and in some cases leadership of EU Member States. Not enough is yet in the public domain for detailed analysis, but at first glance EU Member States have questions to answer about the legality and wisdom of certain decisions, as well as the way in which those decisions were made.

'Civilian vehicles that can be militarised' and the EU arms embargo on Sudan

The long-running conflict in the Darfur region of western Sudan has, over the years, received considerable international attention. Throughout the conflict there have been numerous efforts to restore peace, but so far none has managed to satisfy all parties to the conflict and fighting has always resumed. Peace negotiations convened in early 2009 in Doha led in July 2011 to the signing of the Doha Peace Agreement by the Government of Sudan, the Liberation and Justice Movement (LJM) and the Abdul-Wahid Mohamed Nu faction of the Sudan Liberation Army (SLA), but not by other combatant groups. Fighting and widespread human rights violations have continued throughout 2011,¹⁸⁸ although due to other high-profile events occurring in North Africa this has not received the level of attention of previous years.

As part of the response to the conflict, both the EU and the broader international community have imposed arms embargoes. The EU embargo, which dates from 1994, prohibits EU Member States from supplying arms, munitions and military equipment to any entity in Sudan.¹⁸⁹ The scope of this embargo was expanded in January 2004 to include a ban on technical, financial, brokering, transport, and other assistance relating to military activities and equipment.¹⁹⁰

UN Security Council resolution 1556 (2004) imposed an arms embargo on "all non-governmental entities and individuals, including the Janjaweed, operating in the states of North Darfur, South Darfur and West Darfur."¹⁹¹ One year later the embargo was extended to include "all the parties to the N'djamena Ceasefire Agreement and any other belligerents in the states of North Darfur, South Darfur and West Darfur."¹⁹² This permits the Government of Sudan to receive arms through Khartoum or Port Sudan, but not to transfer them directly into Darfur. Should the GoS wish to move military equipment into Darfur it must seek prior approval from the UN Sanctions Committee.¹⁹³

Despite these embargoes, all sides of the Darfur conflict continue to acquire weapons and related material. The UN Security Council's Panel of Experts on the Sudan has reported frequently on arms acquisitions by the Darfur insurgents and on the Government of Sudan's efforts to supply military material to counterinsurgency militias and units of the Sudanese armed forces in Darfur, all without the necessary permission of the Sanctions Committee of the Security Council.

While EU Member States appear for the most part to have respected the embargo, there have been certain areas where they have adopted a more ambiguous stance. In 2010 in *Rhetoric or restraint*, civil society drew attention to the role played by EU companies in facilitating clandestine shipments of tanks and

related equipment to Southern Sudan.¹⁹⁴ More questions have now arisen with regard to the use of European-manufactured trucks in the Darfur region, and more specifically trucks the manufacturer describe as "véhicules civils militarisables", i.e. civilian vehicles that can be militarised.

All armed actors in the conflict use vehicles to transport combatants through the vast Darfur deserts. Japanese Toyota (Landcruiser) pick-up trucks are the vehicles most commonly spotted in the region. Often they are mounted with machineguns, and as such are an important assault instrument. Furthermore, a wide array of military trucks or civilian trucks modified for military purposes are being used in Darfur, e.g. anti-aircraft guns are mounted on a variety of trucks to function as support and/or attack vehicles. Some of these trucks are European models, assembled by a local company: GIAD Automotive Industry Company.

Involvement of Renault

A 2008 Channel 4 documentary on Darfur included images of GIAD manufactured Renault Midium trucks in use by the GoS-backed Janjaweed.¹⁹⁵ There have also been reports that recently as August 2011 similar trucks were transporting arms and ammunition on the border with South Sudan.¹⁹⁶ These are the same trucks that have been presented by Renault Trucks Défense as "véhicules civils militarisables", produced under licence in Sudan by GIAD.

The foundations for the GIAD industrial complex ("GIAD Industrial City") were laid in March 1997. The complex is a partnership between Sudan Master Technology Engineering Co. Ltd (76 per cent) and the Military Industry Corporation of Sudan (24 per cent).¹⁹⁷ GIAD Industrial City, an industrial complex 50 kilometres south of Khartoum, was officially inaugurated on 26 October 2000. The holding company GIAD Automotive Industry Company has seven subsidiaries: GIAD Motors Co., GIAD Trucks Co., GIAD Tractors and Agricultural Equipment Co., GIAD Furniture and Medical Appliances Co., GIAD Autoservices Co., GIAD Press and Metal Forming Co., and GIAD Paints Co.¹⁹⁸ GIAD Trucks Co. markets and assembles trucks under licence from the German MAN Group and the French Renault Trucks,¹⁹⁹ a Volvo subsidiary. One of the models manufactured by GIAD is the Midium 210.13 4x4.²⁰⁰ On 25 June 2008 GIAD, responding to a request for information from the International Peace Information Service (IPIS vzw), stated that the "GIAD MIDUM 210.13 4x4 truck is a French origin, we manufacture and we have authorization from the parent company". Adding "[t] is a powerful truck used in several areas. We are now exporting to some countries".²⁰¹

When Renault Trucks was questioned by the UN Expert Panel on Sudan in 2009 on its business links with GIAD, Renault replied that its "contracts comply with the rules preventing embargo violation and that it has no formal contract with GIAD".²⁰² But in 2008, when contacted by IPIS, Renault gave a slightly different answer: "We sale [sic] our civilian range of construction trucks: 6x4 and 4x4 to GIAD TRUCK CO. who sale [sic] them locally to their own

¹⁸⁸ Amnesty International Report 2011: The State of the World's Human Rights. Amnesty International, 13 May 2011, POL 10/001/2011; Henry J., *Darfur in the shadows: The Sudanese government's ongoing attacks on civilians and human rights*, Human Rights Watch, June 2011.

¹⁸⁹ Council Decision on the Common Position defined on the basis of Article J.2 of the Treaty concerning the imposition of an embargo on arms, munitions and military equipment on Sudan 94/165/CFSP, 15 March 1994. The embargo covers weapons designed to kill or injure, including ammunition, on-planting and weapons platforms and ancillary equipment. It also covers spare parts, repairs, maintenance and transfer of military technology.

¹⁹⁰ EU Council Common Position 2004/31/CFSP, 9 January 2004.

¹⁹¹ UN Security Council Resolution 1556 (2004), S/RES/1556 (2004), 97-8.

¹⁹² UN Security Council Resolution 1591 (2005) S/RES/1591 (2005), 57.

¹⁹³ Peter Danckaert, *Sudan – Arms Embargoes of the European Union and the UN Security Council*, IPIS [for Amnesty International-IS (internal document)], 26 April 2007; Peter Danckaert, *Darfur Arms Embargo Explained*, IPIS [for Amnesty International-IS (internal document)], 30 August 2007.

¹⁹⁴ An Vranckx (ed.) *Rhetoric or restraint? Trade in military equipment under the EU transfer control system*, Gent: Academia Press, 2010.

¹⁹⁵ 'Sudan: Meet the Janjaweed', Channel 4, 14 March 2008.

¹⁹⁶ 'When some scorn responsibility', Sudan Vision, 29 September 2011.

¹⁹⁷ Renault Trucks à EYROSATORY 2004, *Renault Trucks Défense press release*, 17 June 2004; See also army-technology.com, "The Renault Trucks Defense logistics vehicles range derived from the civil range, insures the logistics transportation of charges from 3t to 20t (trucks) and from 19t to 60t (tractors): Midium 4x4, Kerax 4x4, Kerax 6x6, and Kerax 8x8".

¹⁹⁸ GIAD 2005 Annual Report, 15 February 2006: p. 5.

¹⁹⁹ GIAD Automotive Industry Company – A Legacy of Perpetual Civilization, GIAD Automotive Company brochure, undated: p. 6. See also www.giadauto.com.

²⁰⁰ Communication GIAD Trucks with IPIS, 15 May 2008 (e-mail); www.giadtrucks.com.

²⁰¹ Ibid.

²⁰² Communication GIAD Trucks with IPIS, 25 June 2008 (e-mail). We have not been able to ascertain to which countries these trucks are exported.

²⁰³ UN Security Council, Report of the Panel of Experts established pursuant to resolution 1591 (2005) concerning the Sudan, S/2009/562, 29 October 2009, 5167.

Customers including mostly: private and public CONSTRUCTION COMPANIES; private and public TRANSPORT COMPANIES, private and public INDUSTRIAL SECTORS, government DEPARTMENTS and MINISTRIES, since 1999.²⁰⁴

Although at first sight it seems that Renault denied that GIAD manufactured the Renault trucks, Renault ended their communication to IPIS by stating: "we will still be there [Sudan] to assemble our trucks at GIAD".²⁰⁵ The chassis numbers (Vehicle Identification Number) of trucks assembled by GIAD start with CKD, while trucks manufactured in France start with VF6. CKD stands for completely knocked down, a specific form of technology transfer. The vehicles are cased and shipped in pieces, to be assembled in Sudan.²⁰⁶ What is certain from the communication is that since 1998, GIAD has sold Renault trucks to Sudanese government departments and ministries, although Renault itself was "not in contact for trucks or spare parts with the local Ministry of Defence".²⁰⁷

The argument that the Renault Midlum belongs to the civilian range of construction trucks merits further investigation. The Renault Midlum, Kerax, etc. trucks have been advertised by Renault Trucks Defense as "véhicules civils militarisables".²⁰⁸ In a press release for the Eurosatory 2004 defence exhibition, Renault stated "[t]his range [Midlum] launched in

2000 is aimed primarily at the civilian and military market".²⁰⁹

Renault has acknowledged that trucks are used for military purposes in Sudan. In 2008, in correspondence with IPIS, Renault confirmed that "in Sudan there are trucks used for peace, some for war, and many others (thank [sic] God) for the benefit of the populations [sic]."²¹⁰ Therefore Renault Trucks asks the question: "what are we suppose[d] to do in this Country?" Their reply: "stop part and training back-up [sic] to GIAD and jeopardise the UN and Red Cross [International Committee of the Red Cross (ICRC)] logistics [and missions] [or] go-on with our general purpose truck range, like in any other 75 countries we export it to, without being able to control completely the exact end-users identity and morality [sic]."²¹¹ In a letter from September 2011, Renault added "We do not control the end use of our trucks, but we tell our customer that we are committed to comply with the regulations issued by the international community and that the vehicles supplied, whatever their configuration (built-up or knocked down) are civilian trucks only. We therefore ask our customer not to modify, adapt or transform any of the civilian vehicles supplied by us and related parts in view to have them used for military applications".²¹²

Renault goes on to claim that in Sudan the Red Cross and the UN are using the services of a GIAD subsidiary to service these Renault trucks: "Renault Trucks and its Service network, including AEW Co. [Advanced Engineering Works Co., the authorised

204 Communication Renault Trucks Defense with IPIS, 30 June 2008 (e-mail), emphasis in the original.

205 Communication Renault Trucks Defense with IPIS, 30 June 2008 (e-mail).

206 Communication Renault Trucks Defense with IPIS, 26 August 2011 (e-mail).

207 Communication Renault Trucks Defense with IPIS, 30 June 2008 (e-mail).

208 Renault Trucks à EUROSATORY 2004, Renault Trucks Defense presentation, 7 July 2004, www.renault-trucks.com, "The Renault Trucks Defense Logistics vehicles range, derived from the civil range, insures the logistics transportation of charges from 3t to 20t (trucks) and from 19t to 60t (tractors); Midlum 4x4, Kerax 4x4, Kerax 6x6, and Kerax 8x8".

209 In regard of the Midlum truck Renault writes: "La gamme de distribution de moyen tonnage Renault Midlum a été conçue pour être l'outil polyvalent répondant et notam[er] capable de couvrir les besoins de 6 à 16 tonnes, et même 18 t de PTAC. Cette gamme lancée en 2000 vise avant tout une clientèle aussi bien civile que militaire exigeant un véhicule d'une fiabilité à toute épreuve, facile à conduire, à exploiter et à entretenir". Renault Trucks à EUROSATORY 2004", Renault Trucks Defense press release, 17 June 2004.

210 Communication Renault Trucks Defense with IPIS, 30 June 2008 (e-mail). Emphasis as in the original.

211 *Ibid.*

212 Renault Trucks spokesman Bernard Lancelot on quote by Christina Zander in "Volvo's Renault Trucks under scrutiny over Sudan exports", Dow Jones Newswires, 28 September 2011.

Renault trucks after-sales distributor for Sudan to supply spare parts and services] of the GIAD group, is providing precious field service in Juba and Darfour to both Red Cross and UN".²¹³

In correspondence with IPIS, in July 2011, the ICRC stated: "The ICRC delegation in Sudan is not outsourcing the service and maintenance of its trucks. The vehicles are being serviced by our in-house team of mechanics (...). The company you mentioned is our local agent for guarantee repair issues. That means that in case of a breakdown covered by a warranty this company repairs the trucks for free. In addition, we occasionally buy spare parts from them whenever we do not have urgently required spare parts in our stock. The amount spent for spare parts since January 1st 2011 until today amounts to (...) roughly US\$500".²¹⁴

Renault appears to be attempting to justify supplying vehicles for use by the Sudanese military and pro-government militias in Darfur on the grounds that it also supplies and services vehicles used by the ICRC and the UN. Regardless over the doubts raised by ICRC regarding vehicle servicing, such a justification is specious.

However, there is no evidence to suggest that Renault is operating illegally. Rather, it is functioning within a regulatory framework established and managed by states. The more fundamental concern relates to whether the existing framework is appropriate.

IPIS asked Renault,²¹⁵ the French Ministry of Foreign Affairs (MFA) and French Customs,²¹⁶ if an export licence was applied for and issued. The MFA responded that these trucks are neither on the military list nor on the dual-use list, so Renault was not obliged to apply for a licence. They added, however, that they are open to discuss the issue and might take additional information into consideration to possibly put the

213 Communication with French Ministry of Foreign Affairs, August 2011 (telephone).

214 Direct quote from communication with Renault Trucks Defense, 30 August 2011 (email).

215 Council Regulation (EC) No 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (Recast), 5 May 2009.

216 Ibid.

217 Communication with French Customs, 30 August 2011 (email).

French authorities felt that the transfer of the Renault vehicles failed the "article 4.2 test", they could if they so chose have controlled those transfers under article 8.

In light of the correspondence referred to above, it would seem that Renault had explicit knowledge that their vehicles were being used in a military capacity. Even without this explicit knowledge, both the role of GIAD and the marketing of the Renault trucks as dual-use items, "véhicules civils militarisables", pointed toward a risk of military end-use.

This then raises questions about the care exercised by both the manufacturer and the licensing authorities. Renault should have shared all relevant information with the French Government. At the same time the authorities should not be expecting manufacturers to take all the initiative; they should be actively involved in the process of gathering and evaluating relevant information and alerting companies to their responsibilities, not least in cases of embargoed destinations.

In this context, it is reasonable to expect the French Government to have been aware of Renault's exports and the risk that the CKD kits to Sudan could be for military use. The authorities should then have investigated whether any adaptations to these vehicles would have resulted in them as being classed as military items *per se*. Given the many instances where the Sudanese authorities have converted formerly civilian vehicles for military use, for example through attaching machine-guns or anti-aircraft guns, anything less on the part of the authorities raises due-diligence concerns.

In the circumstances, it would seem apt for the authorities to consider:

- the likelihood that CKD kits would post-export be converted into vehicles classified as military;
- the steps that should be taken to clarify the final classification of the vehicles, and their use;
- how Renault should be reminded of its legal responsibilities, and the information that should be requested from the company regarding the possible end-use of the vehicles.

Related to these considerations, if the French authorities undertook the relevant assessments, what did they reveal? If determinations were made that the vehicles would not be classed as military but were for military use, was consideration given to applying article 8 of the Dual-use Regulation?

Whatever the answers to these questions, the military use of Renault trucks in the Sudan is certainly against at least the spirit of the EU embargo. If all the rules were not followed, steps need to be taken to ensure they are observed in future. If all the rules were followed, this would suggest that the rules need to be tightened or amended.

This is not just an issue in Sudan. Renault trucks are also assembled in Iran by Saipa Co. and Arya Diesel Motor Co. According to Jane's Military Vehicles and Logistics, the Arya-assembled Kerax range of heavy-duty civilian trucks can be "militarised to varying degrees to suit specific operator requirements".²²² Jane's has also noted that "the Kerax range (...) replaced all earlier military vehicles produced by Renault".²²³ Iran is subject to both EU and UN embargoes.²²⁴ This suggests that the case with GIAD in Sudan is not a one-off, but may reflect a wider, systemic problem.

Involvement of MAN

As well as Renault, German-headquartered company MAN Truck & Bus AG has been involved in supplying trucks that can be militarised to the Sudanese Government. However the behaviour if MAN upon being confronted with evidence regarding the

military use of its products was markedly different that of Renault.

Early in 2006, Sudan placed an order for 2,700 MAN M2000 trucks, model LE16.220 4x4 BB. According to Jane's Military Vehicles and Logistics, the M2000 trucks are based on commercial MAN designs, but militarised as required to suit customer requirements.²²⁵ The UN Panel of Experts on Sudan disclosed in its 2009 report that it had identified a MAN truck mounted with an anti-aircraft gun, deployed by the Sudanese armed forces in Darfur. MAN clarified in writing to the Panel that it had signed a contract with GIAD in 2005 and had delivered three consignments in 2006 and 2007. These post-UN-embargo deliveries concerned assembly kits for civilian MAN trucks of the model L90/M2000. MAN, however, stated it had never authorised the militarisation of its trucks, and that it had not been informed by GIAD about this. Since MAN learned about the military use of their dual-use equipment in Darfur, the company has taken the formal decision to halt all business with its Sudanese partners. Consequently no more transactions have taken place with GIAD since the April 2007 delivery of 790 L90/M2000 trucks.²²⁶

Conclusion

The unlicenced delivery of completely knocked-down (CKD) kits as "véhicules civils militarisables" (i.e. civilian vehicles that can be militarised) to Sudanese company GIAD for assembly in Sudan, a country under an arms embargo, raises serious questions about the efficacy of the EU transfer control system. These deliveries are definitely against the spirit of EU Member States' intentions; they may also fall foul of the EU Dual-use Regulation. If this is the case, then it would seem that in this instance not enough has been done to implement existing obligations. If this does not contravene the Dual-use Regulation (and, following from that, the EU embargo), it would suggest the system itself must be changed to capture this type of activity in future. This case also suggests that governments and companies may need to do more, or be obliged to do more, in terms of due-diligence when considering the likely risk that dual-use equipment transferred will be put to military use.

222 Jane's Military Vehicles and Logistics 2008-2009, 29th Edition, Jane's Information Group, p. 461-462.

223 *Ibid.* p. 462.

224 UN Security Council Resolution S/RES/1742, 24 March 2007; UN Security Council Resolution S/RES/1929, 9 June 2010; and EU Council Decision concerning restrictive measures against Iran and repealing Common Position 2007/140/C/CFSP 26 July 2010. The EU embargo covers "arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, para-military equipment and spare parts for such arms and related materiel, as well as equipment which might be used for internal repression".

225 Jane's Military Vehicles and Logistics 2008-2009, 29th Edition, Jane's Information Group, p. 462.

226 UN Security Council, Report of the Panel of Experts established pursuant to resolution 1591 (2005) concerning the Sudan, S/2009/562, 29 October 2009, § 165-171, 203.

ANNEX: Criteria of the Common Position

1. Criterion One: Respect for the international obligations and commitments of Member States, in particular the sanctions adopted by the UN Security Council or the European Union, agreements on non-proliferation and other subjects, as well as other international obligations. An export licence shall be denied if approval would be inconsistent with, *inter alia*:

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

2. Criterion Two: Respect for human rights in the country of final destination as well as respect by that country of international humanitarian law.

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

- a deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used for internal repression;
- b exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the military technology or equipment, to countries where serious violations of human rights have been established by the competent bodies of the United Nations, by the European Union or by the Council of Europe;

For these purposes, technology or equipment which might be used for internal repression will include, *inter*

alii, 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.

