

Evading European controls on arms transfers – means and methods

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1. Laws and regulations

All arms exports are licensed by the governments of EU Member states, according to their national legislation. In addition, EU member states are required to follow UN arms embargoes, and have agreed several means of harmonising their laws and practices at a European level.

EU arms embargoes

In addition to UN Security Council mandated arms embargoes, the EU has also independently initiated arms embargoes (as have other regional organisations, such as the Organisation for Security and Cooperation in Europe (OSCE) and the Organisation of American States (OAS)).

The first such EU arms embargo was established in 1989: after the People's Liberation Army bloodily suppressed demonstrators at Tiananmen Square, the Council of Ministers declared an arms embargo as part of the sanctions directed at China. (There has been no UN arms embargo on China).

The implementation of the EU arms embargo on China has been somewhat haphazard. At the time there was no common position on exactly what equipment should be covered by such an embargo. Therefore, each member state was left to reach its own interpretation of what equipment should be covered by the embargo. Some states have therefore licensed exports of military equipment to China.

Since 1989, there have been attempts both to harmonise European approaches to arms embargoes, and make them much more specific. In particular, the 1991 EU Common Embargo List provided a broad description of the types of equipment that should be covered by EU embargoes. Furthermore, the Common Positions that declare an embargo are now very detailed. For example, the 2005 embargo on Uzbekistan was eight pages long and contained a detailed list of equipment that may be used for internal repression.

There is some overlap between EU and UN Security Council arms embargoes. This is, in general, because the EU has imposed an embargo long before the UN. For example, the EU embargoed Zaire / Democratic Republic of Congo in 1993. Despite the long running civil war which was said to have resulted in millions of deaths the UN did not embargo the country until 2003. As the EU arms embargo was not rescinded after the UN embargo was imposed, EU member states are subject to both the EU and UN embargoes.

UN arms embargoes

Under the UN Charter, the UN Security Council is responsible for maintaining international peace. One of its tools is to impose sanctions, including arms embargoes, on particular countries or groups (such as al Qaeda).

All UN member states are bound to respect and implement a UN Security Council arms embargo. For many European states, this means referring to the embargo in domestic legislation. Furthermore, UN arms embargoes have frequently been implemented via EU Common Positions (using a similar procedure to EU arms embargoes).

Code of Conduct

Agreed in 1997, the EU Code of Conduct has the status of a political agreement under the auspices of the Common Foreign and Security Policy. However, it may be upgraded to the status of a Common Position. The heart of the Code is eight criteria, which include references to armed conflict, human rights, development and the risk of diversion, which governments should refer to when making export licensing decisions.

In addition, the Code created a common system of licence denials designed to avoid undercutting (the practice of one state taking advantage of another's licence denial). Governments notify each other of licence refusals and any government intending to license a subsequent transfer of 'essentially identical' equipment should consult with the government that originally issued the licence refusal. Every year the Council of the European Union issues an annual report on the Code of Conduct via the EU Working Group on Conventional Arms, COARM (the body responsible for overseeing the Code of Conduct).

EU Joint Action on small arms and light weapons

The Joint Action includes a commitment by member states to 'contribute to end destabilizing accumulations of small arms'. This commitment was to be carried out by ensuring that all countries only imported sufficient small arms and light weapons consistent with their legitimate security needs; would only supply military style small arms to governments; and would combat illicit arms trafficking.

2. Methods by which these regulations have been subverted

Unauthorised re-export

Export licences frequently require that the company state the end-user (or final recipient) of the material in question. Furthermore, it is common for governments to demand End-User Certificates from importing countries which both confirm the end-user and require that the exporting government be consulted if the importer wishes to sell the equipment to a third party. However, it is important to note that many EU governments regard fellow EU and/or NATO members as being 'safe' customers and so do not generally demand End-User Certificates from each other.

However, even when they are issued, end-user certificates are generally not monitored, neither are assurances made during the export licensing process. Therefore it is possible that arms exported in good faith to one country may be re-exported to another. This is problematic if the ultimate end-user is a government, for example, engaged in gross violations of human rights, support of terrorism, or has policies inimical to the interests of EU member states.

This may take place within the EU, as well as with extra-EU states. For example, Amnesty International highlighted practices, since ceased, by Slovakia which was involved in routinely issuing Slovakian End-User Certificates to domestic companies without checking either whether the equipment was required, or even imported. There were no checks to ensure that exports supposedly licensed on the basis of Slovakian end-use were not actually being sent to third countries. The Slovakian official who stopped this practice stated that "It was sick. It was a kind of concealed re-export trade, under which if the arms ended up in another country than the one on the certificate [Slovakia], we would get all the blame. [...] Whether the risk was worth it, given the often very questionable economic benefits for Slovakia is very, very debatable."¹

Slovakian produced weapons have also been implicated in unauthorised re-export. A UN panel of experts investigating violations of the UN embargo on Liberia reported on the diversion of Slovakian assault rifles. The weapons had originally been sent to Uganda, but the Ugandan authorities wanted them to be returned to Slovakia, as they did not meet the correct technical specifications. However, 1000 Kalashnikovs were, in fact, sent from Uganda, via an Egyptian broker, to Liberia (in violation of the UN arms embargo).²

¹ Quoted in Amnesty International. 2004. *Undermining Global Security: the European Union's arms exports*. London: Amnesty International. p 82

² See United Nations Security Council. 2001. *Report of the Panel of Experts pursuant to Security Council resolution 1343 (2001), paragraph 19, concerning Liberia*. New York: United Nations. Paras 174-188.

Undercutting

The consultation procedures found in the Code of Conduct are supposed to reduce undercutting (see above). Hitherto there have been no systematic studies on how prevalent undercutting may be. Perhaps the only indication was a 2004 statement in the UK parliament by Andrew Landesman, a senior Foreign Office official, in which he stated that he believed every year there were about 15 cases of undercutting across the board; moreover, the Foreign Secretary Jack Straw admitted that the UK was responsible for five of them.³

There is some evidence of undercutting. In 2002 Germany refused an export licence for assault rifles to Nepal (presumably because of the government's poor human rights record). Later that year Belgium granted a licence to export light machine guns to Nepal. The affair generated considerable controversy in Belgium.⁴

Wilful violation by governments

EU governments have been involved in the deliberate violation of arms embargoes. Perhaps the clearest case took place when the UK private military company Sandline arranged the delivery of 2,500 assault rifles, 180 rocket launchers, 50 machine guns and ammunition to Sierra Leone. The arms were delivered to forces loyal to ex-president Kabbah, who had recently been ousted in a coup. Unfortunately Sierra Leone was, at that time, subject to a UN arms embargo.

UK customs authorities launched a criminal investigation (violation of a UN embargo was also a breach of UK domestic legislation). However, the investigation revealed that the UK Foreign Office had been fully consulted before the deal and had given its blessing. This government complicity ensured that the head of Sandline was not prosecuted, despite his company being in clear breach of UK law.⁵

Diversion in transit

On some occasions, weapons have been diverted by illicit traffickers between leaving the exporter's territory, and their arrival at the country which was

³ See HMSO. 2004. *Minutes of evidence. Oral evidence Taken before the Quadripartite Committee on Wednesday 25 February 2004*. London: MHSO. Questions 20 – 39.

⁴ For more information see Marsh, Nicholas and Aaron Karp. 2003. 'Insights and Mysteries: Global Small Arms Transfers' in Krause and Bachelor eds. *Small Arms Survey 2003*. Oxford: Oxford University Press.

⁵ See also Marsh, Nicholas. 2002. 'Two Sides of the Same Coin? The Legal and Illegal Trade in Small Arms'. *Brown Journal of World Affairs*. IX:1.

licensed to import them. In such examples of diversion it is often difficult to establish exactly who is responsible for the weapons not reaching their supposed destination.

For example, in 2001 the Czech Republic licensed the export of arms from the Ceska Zbrojovka company to the ministry of defence of Georgia. The weapons were loaded onto a Ukrainian plane which then flew to Burgas in Bulgaria. There it was detained after it attempted to change its flight plans to go to Eritrea. At the time Ethiopia and Eritrea were at war, and the two countries were subject to a UN arms embargo.⁶

Similarly, in 1999 Poland admitted that twenty Soviet era T-55 tanks that it had sold to Yemen had been diverted en route to Sudan.⁷ Despite being supplied with contracts and End-User Certificates by the Yemeni authorities, the arms, apparently, never reached Yemeni territory. When news of the diversion came to light, Poland cancelled the export of a remaining 30 tanks and pledged to tighten its export control regime.

Licensed production

One means by which companies could evade controls is through the licensing of production rights to companies located outside the EU. Production licences are often not controlled as strictly as direct exports, and when production has been set up in another country, it is very difficult to control whom the weapons could then be exported to.

One example that has raised some concern was an announcement in 2004 that Steyr Mannlicher, an Austrian company, had signed an agreement with a Malaysian company to transfer the manufacture of Steyr Mannlicher assault rifles to Malaysia. The announcement stated that once production had been set up the weapons would be aggressively marketed from Malaysia.⁸ However, reported contractual difficulties with the Malaysian company have led Steyr Mannlicher to seek a partner in India instead.⁹

It is though quite common for components still to be sourced from the EU, even if production of the finished weapon may be located abroad. It may therefore be possible to control such deals through rigorous regulation of the trade in, and re-exports of, components.

⁶ See CT1 Television (Prague). 2001. *Czech diplomat says Georgia acknowledges ownership of disputed arms shipment*. FBIS translated excerpt of the broadcast.

⁷ See Human Rights Watch. 2003. *Sudan, Oil, and Human Rights*. New York: Human Rights Watch. pp 354-5

⁸ AFP. *Austria to shift assault rifle Steyr production to Malaysia*. 12 April 2004.

⁹ Private correspondence with Roy Isbister, Saferworld.

Differing interpretations of the Code of Conduct

In a similar vein to the risk of undercutting, it is also highly likely that various EU member states have very differing interpretations of the Code of Conduct. Such differing interpretations erode the rationale of the Code – to harmonise the EU approach to export licensing.

For example, after the introduction of a regional moratorium on the import of small arms and ammunition by the Economic Community of West African States (ECOWAS) in 1998, transfers of small calibre ammunition from the UK dwindled to almost nothing by 2001. However, during the period 2000 to 2004 transfers from Spain increased dramatically. While this may not technically be a case of undercutting (the UK reported one licence refusal for ammunition in 2001, but there is insufficient information to determine the calibre) it is a sign that the UK and Spain took very different approaches to export licensing to Ghana.

Such differing interpretations, while being less dramatic than embargo violations, are of the greatest importance. The vast majority of the billions of Euros worth of arms exported from EU member states are governed by the Code of Conduct. Therefore the strict and uniform enforcement of the Code of Conduct is the most important contributor to the development of a harmonised EU approach to arms export licensing.

Mis-identifying weapons

When crossing borders arms can be deliberately described as other equipment. This deliberate falsification of records could be designed to avoid customs controls, in the hope that officials will not check transfers of apparently 'non military' equipment.

One method has been to define military assault rifles as being hunting guns. For example, in April 2004 it was reported that Italian authorities had impounded a Turkish ship, named the Aleko Konstantinov which was bound from the Romanian port of Constanta, and was found to contain 6 000 Kalashnikov rifles, 11 sub-machineguns, bayonets and ammunition clips. The Kalashnikovs had originally been exported by the Bulgarian firm Arsenal. Italian customs authorities were suspicious as the weapons had been described as being 'hunting rifles', with an end user in Paraguay.¹⁰

After the affair was reported in the press, there ensued a public spat between Bulgaria, Turkey, Italy and Romania concerning who was responsible for the

¹⁰See Bucharest Radio Romania. 2004 *Actualitati Italian Police Seize Turkish Ship Carrying Weapons From Romania to US*. 20 April; and BBC Monitoring Service. 2004. *Romanian Official Says Arms Seized in Italy "Not Illegal Shipment"* 20 April.

guns, and whether it was, or was not, legitimate to describe the arms as being hunting rifles.

Furthermore, researchers have noted that in other regions mis-identification can be a deliberate policy. For example, some have found that rather than report its exports of military firearms, the Brazilian authorities deliberately identified them as being sporting guns (HS930320 and HS 930330).¹¹

¹¹ See Dreyfus, Lessing and Purcena. 2004. 'A indústria brasileira de armas leves e de pequeno porte: produção legal e comércio', in Fernandes, Rubem César eds. *Brasil: as armas e as vítimas*. Rio de Janeiro: 7 Letras/ISER. pp 64-125

Appendix 1: countries refused export licenses 1997-2004

The UK, Netherlands and Germany provide some information on the destinations that have been refused small arms export licences. These decisions provide an indication on the implementation of the EU Code of Conduct. They are:

Andorra; Argentina; Bangladesh; Bahrain; Bangladesh; Bulgaria; Burma; Chad; Chile; China [PRC]; Colombia; Costa Rica; Croatia; Cyprus; Dominican Republic; Ecuador; Egypt; El Salvador; Eritrea; Estonia; Georgia; Guatemala; Guyana; Honduras; India; Indonesia; Iran; Israel; Jamaica; Jordan; Kazakhstan; Kenya; Kuwait; Latvia; Lebanon; Macedonia; Malawi; Mauritius; Mexico; Moldova; Namibia; Nepal; Pakistan; Paraguay; Philippines; Russia; Saudi Arabia; Singapore; Slovakia; South Africa; Sri Lanka; Sudan; Surinam; Syria; Taiwan [ROC]; Tajikistan; Thailand; Tunisia; Turkey; Uganda; Ukraine; United Arab Emirates; Venezuela; Yemen; Yugoslavia / Serbia & Montenegro; Zambia; Zimbabwe.

Appendix 2: arms embargoes in force 15 February 2006

The table below shows the countries covered by arms embargoes, additional arms embargoes are also in force against Al-Qaida and the Taliban. Readers should note that UN arms embargoes are implemented via EU Common Positions.

Countries covered by arms embargoes		
UN Arms embargo	EU arms embargo	OSCE arms embargo
		Armenia
		Azerbaijan
	Bosnia and Herzegovina*	
	Burma/Myanmar	
	China	
DR Congo	DR Congo	
Cote d'Ivoire		
Haiti		
Iraq**		
Liberia		
Rwanda ***		
Sierra Leone****		
Somalia		
Sudan	Sudan	
	Zimbabwe	

* The EU arms embargo on Bosnia and Herzegovina is due to be lifted on 6 March 2006.

** Exemptions have been granted to allow the supply of weapons to the Iraqi government and coalition troops.

*** The embargo on Rwanda also covers neighbouring states if the equipment is destined for Rwanda.

**** Does not apply to the government of Sierra Leone.