

## **EU Arms Export Criteria Implementation: widely diverging interpretations**

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Good afternoon and thank you very much for inviting me here at this panel on such an important issue as Criteria Implementation. This is of course an old and recurring theme that has been the core of many arms control debates.

Already back in 1975, when the foundation was laid of Dutch arms export control policy, the then government stated that a peace policy prevailed over strictly commercial interests and that especially exports to politically sensitive regions were very carefully judged. A few years later the Dutch government approved the sale of two submarines to Taiwan, a highly controversial agreement – partly to keep Dutch shipbuilding industry alive - with indeed severe political repercussions.

Again during the 1990s when the current set of eight criteria were developed, discussions on the divergence between words on paper and arms export realities were at the core. Scepticism prevailed with me - and others - whether the 1998 Code of Conduct would really make a big difference as to where arms exports would be allowed to.

Yes, it may have been very beneficial for countries who had little or no experience with arms control, and yes it has improved communication between member states.

There were high hopes with some that it would contribute to fewer examples of the extremely unscrupulous government-backed dealing like those infamous examples around the Iran-Iraq war of the 1980's, or shortly before the wars in Central Africa in the mid-1990's started. All such dirty deals should have become a remnant of the past. Should.

Maybe there has changed a little bit indeed, but I doubt whether that has much to do with criteria implementation. Rather I would say this is a consequence of a more significant change: around reporting. With the current level of transparency in quite a few countries the most dubious deals are likely to cause a lot of unwanted media attention and therefore may have increased the level of restraint in the decision-making process.

Whatever way, transparency has made it way more easier for researchers to evaluate export licences after they have been granted.

And that is where I come to my point here: till today - more than eleven years after the CoC was agreed upon and almost twenty years after the criteria were set up – and despite a 112 pages long User's Guide that is on every arms control official's desk – still implementation varies widely between member states.

While fortunately we do see cases come along where certain member states take a quite firm, albeit sometimes symbolic, stand for specific destinations, at least an equally large number of countries will still allow arms exports to the same countries.

However, taking a look at the annual data as presented in the consolidated EU report, it is hard to find member states that do not export to countries of concern. Countries where use in human rights abuse use, or use in internal or external conflict is a real and likely risk, or to poor, developing countries where high military expenditure clearly goes at a cost of social-economic development.

Let me give a few examples of recent significant export licences to four deeply problematic export destinations: Libya, Israel, Pakistan and Sri Lanka.

**Libya:** As its self-elected leader Khadaffi gave up its embryonic clandestine nuclear programme a few years ago and paid compensation to relatives of victims of state-sponsored terrorism, these steps were seen by a number of countries as a turning point, key to revive diplomatic and military ties. Also from a migration policy point of view the EU was keen to include Libya in their expanding cooperation programmes with North African states. So the EU arms embargo was lifted. Meanwhile the internal human rights situation has not improved at all. Free voices risk their lives and migrants that are forced to return from Europe to Libya end up in camps under appalling conditions.

Ever since the Libyan embargo was lifted, especially the major arms exporting countries have made major efforts to get a piece of the lucrative arms market opening up. The number of export licences has more than tripled from 56 in 2007 to 181 in 2008, with the aggregate value growing from 108 to 250 million euro; much more can be expected for 2009, as a number of significant deals have been closed recently. The number of supplying countries went from 8 to 13, with especially France, Italy and the UK leading.

At least in Belgium and the UK controversies emerged about the government's position.

**Israel:** The security situation vis-à-vis the Palestinians is clear for many years. Despite recent large-scale military operations and an obvious dominance of its military forces, most recently shown in Operation Cast Lead in Gaza, Israel continues to have easy access to EU-origin military equipment. While a few countries have exercised real restraint, still 18 countries granted 833 export licences to Israel in 2008, worth 162 million euro. France, the UK, Germany and Romania are the main exporters.

As Amnesty International and other organisations have called for an arms embargo, I am curious to see what effect Cast Lead has had on the member states' governments and the arms export value they have allowed to go to Israel in 2009.

**Pakistan:**

Despite successive military coups, longstanding rivalry with India - including a nuclear capability - and most recently heavy fighting along the Afghan border in Waziristan, Pakistan is a major export destination, in fact the main of the four examples I mention here. In 2008 685 million euro worth of export licences were granted, with France, Austria and Germany as leading EU countries.

Then finally, **Sri Lanka:**

This spring the Sri Lankan armed forces launched a major offensive meant to wipe out the Tamil insurgency and to regain control over Tamil area. With thousands of people dead and over a hundred thousand still locked up in camps, the Sri Lankan government has shown its brutal force against a significant minority in the country.

Despite the long-standing conflict, and the build-up towards this year's offensive, in 2008 EU countries still granted export licences worth 32 million euro, eight times more than the 4 million in 2007, with the Czech Republic, the UK and Spain dominating. Czech Republic e.g. exported 20,000 rifles via the port of Rotterdam to Sri Lanka.

How on earth can this be justified with the EU arms export criteria?

The standard government answer you get to the question why licences have been granted to this and this destination, is almost always either or all of the following arguments:

- a) “We carefully apply the criteria to licence applications on a case-by-case basis – and don’t underestimate this: uncommon applications – be it because of destination, quantities or type of weapons - always receive intense scrutiny”; or:
- b) “You don’t know how many pre-licence applications – which never become known as official denials - we reject in the earliest stage”; or c:
- c) referring to article 51 of the UN Charter that says that every country has got the right to defend itself against external aggression.

To conclude, the key question then of course is: where is the dividing line?

In most cases it is not a lack of arms, but rather unwillingness of recipient countries to seek an end to conflicts through diplomacy, good governance or otherwise without military means. We have clearly seen the disastrous consequences of the use of military force in Gaza, Sri Lanka and Pakistan. And with regards to human rights abuse: why would you be so eager to sell arms to a notorious dictator?

Sadly, in my view, too often too many countries continue to put economic and other gains before a real ethical foreign policy. At least I fail to see how the four destinations I have mentioned here can be significant recipients of EU arms if you take your own criteria seriously.

In June 2008 a number of people who are here contributed to a Saferworld-led report called ‘Good Conduct?’ – evaluating 10 years Code of Conduct. Still one of its key recommendations stands unchanged: that member states should implement the criteria to reflect the spirit and intent of the Code of Conduct and should exercise more restraint.

Therefore I am of course especially interested to receive insights from the officials here who might want to comment on what I have just said.

Thank you very much for your attention.