

The Committees on Arms Export Controls

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From: The Rt Hon Sir John Stanley MP, Chairman

7 November 2012

The Rt Hon William Hague MP
Secretary of State for Foreign & Commonwealth Affairs
Foreign & Commonwealth Office
Whitehall
London SW1A 2AH



The Committees on Arms Export Controls (CAEC) wish to have the Government's answers to the following points and questions arising from the Government's Response (Cm 8441) to the Committees' 2012 Report (HC 419-I and HC 419-II) published on 13 July 2012.

Please could the Government's answers be provided by the close on Friday 7 December.

The Government's United Kingdom Strategic Export Controls Annual Report 2010 (HC 1402)

Paragraph 4 of Cm 8441 and paragraph 10 of HC 419-I

- i) The Government has not responded in specific terms to the Committees' recommendation that in future Annual Reports the Government should publish Case Studies of licence applications that are of genuine policy difficulty. Please could it do so in its reply to this letter.
- ii) The Government's acceptance of the Committees' recommendation that it should include in its Strategic Export Controls Annual Report the information submitted by the UK Government for the EU's Annual Report of exports of military technology and equipment is qualified by "if publication deadlines will allow". Will the Government agree to remove this qualification? The Committees understand that this may mean that in a particular year the Government publishes in its Strategic Export Controls Annual Report

two UK returns for the EU's Annual Report and in another year none. However, the Committees wish to have the Government make public in its consecutive Strategic Export Controls Annual Reports its complete year-by-year returns for the EU Annual Report, and likewise, its annual returns for the UN Register of Conventional Arms.

The Committees' Report of 2010-11 (HC 686)
Paragraph 5 of Cm 8441 and paragraph 15 of HC 419-I

The Committees have no current difficulties in identifying the information from the Government they wish to make publicly available. The Committees' policy, as demonstrated in their 2012 Report (HC 419-I and HC 419-II), is in principle to make all information received from the Government publicly available unless classified by the Government.

EU end-use control of exported military goods
Paragraph 12 of Cm 8441 and paragraph 48 of HC 419-I

What are the specific "legal risks" that the Government believes would arise from amending UK legislation to implement a national military end-use control, and why does the Government consider that such legislation "would likely be ineffective in practice"?

Torture end-use control and end-use control of goods used for capital punishment
Paragraph 13 of Cm 8441 and paragraph 55 of HC 419-I

- i) Will the Government provide the CAEC with a copy of its submission for the EU Commission's review of the Torture Regulation when submitted?
- ii) In the light of its Response, will the Government in its submission for the EU Commission's review of the Torture Regulation propose that the EU works on the basis of list-based controls as opposed to end-use controls in the area of torture/capital punishment goods?

Re-export controls and undertakings

Paragraph 14 of Cm 8441 and paragraph 58 of HC 419-I

Will the Government inform the Committees promptly if it receives information that controlled goods which previously had UK Government export licence approval may have subsequently been re-exported for undesirable uses or to undesirable destinations?

Licensed production overseas

Paragraph 15 of Cm 8441 and paragraph 60 of HC 419-I

Will the Government inform the Committees promptly if it receives information that breaches of UK arms export control policies may have occurred as a result of export of UK-designed goods from licensed production facilities overseas?

The Consolidated Criteria

Paragraph 16 of Cm 8441 and paragraph 65 of HC 419-I

By what date does the Government expect to provide the Committees with its updated wording of the Consolidated and UK National Arms Export Licensing Criteria ("The Consolidated Criteria")?

Review of the Export Control Organisation (ECO)

Paragraph 19 of Cm 8441 and paragraph 84 of HC 419-I

The Committees recommended that the Government in its Response to the Committees' Report sets out what specific aspects of the ECO's performance it is reviewing, what conclusions it has reached in respect of each aspect being reviewed and what specific actions it is taking as a result. The Government has not provided this information to the Committees in its Response. Please could it do so in its reply to this letter.

Enforcement

Paragraph 23 of Cm 8441 and paragraph 105 of HC 419-I

- i) In the verification of Standard Individual Export Licences (SIELs) carried out at the UK border by the Border Force working with HMRC, in the last year for which figures are available, in how many cases has it been found that the licence is not being used correctly?
- ii) In the ECO's audit of SIELs where the licence authorises electronic transfers of software or technology, in the last year for which figures are available, in how many cases has the ECO audit found non-compliance, and how many such audits did ECO undertake in the same period?
- iii) In how many of the 134 cases of the Government's seizures in 2010-11 of military equipment, dual-use goods or goods subject to sanctions did the seizures occur as a result of deliberate illegal activity intended to evade UK export controls, and why have none of these cases so far been referred to the Crown Prosecution Service?
- iv) What are the specific "changing dynamics of legitimate international trade and passenger movements" that are creating significant challenges to effective enforcement of the Government's arms export control legislation?

Crown Dependencies

Paragraph 25 of Cm 8441 and paragraph 117 of HC 419-I

In their Report the Committees stated: "The Committees conclude that the MS Thor Liberty incident revealed how ships registered in the Crown Dependencies could provide a means whereby shipments of arms could occur that would be in breach of UK Strategic Export Controls if carried out by a vessel registered in the UK" (Paragraph 117 of HC 419-I). The Government's statement in its Response that the Committees had concluded "that a shipment of arms on board a UK registered vessel would necessarily be a breach of UK Strategic Export Controls" (Cm 8441 paragraph 25) is therefore incorrect.

International Development

Paragraph 29 of Cm 8441 and paragraph 127 of HC 419-I

By what date does the government expect to inform the Committees of the outcome of the Department for International Development's consideration of its role in the UK's arms export control system?

UK/US Defence Trade Cooperation Treaty

Paragraph 30 of Cm 8441 and paragraph 132 of HC 419-I

Has the Government now decided to insert into all open export licences a provision requiring the exporter to report periodically on transactions undertaken under these licences when used in accordance with the terms of the UK/US Defence Trade Cooperation Treaty? If so, what will be the frequency of this periodic reporting requirement, and when and where will the Government be publishing this information?

UK-France Defence and Security Co-operation Treaty

Paragraph 32 of Cm 8441 and paragraph 139 of HC 419-I

Has the Government now decided to insert into all open export licences a provision requiring the exporter to report periodically on transactions undertaken under these licences when used in accordance with the terms of the UK-France Defence and Security Co-operation Treaty? If so, what will be the frequency of this periodic reporting requirement, and when and where will the Government be publishing this information?

The Intra-Community Transfer (ICT) Directive on arms transfers within the EU

Paragraph 33 of Cm 8441 and paragraph 143 of HC 419-I

The Government has not responded to the Committees' recommendation that it reports back to the Committees on any breaches of the EU Code of Conduct on Arms Exports as a result of the Intra-Community Transfer (ICT) Directive on arms transfers within the EU. Please could it do so in its reply to this letter.

Arms Trade Treaty (ATT)

Paragraph 36 of Cm 8441 and paragraph 165 of HC 419-I

Is it the Government's policy to secure approval by the UN General Assembly of the Arms Trade Treaty text, as finalised in New York in July, and, if so, by what date?

Sub-strategic and tactical nuclear weapons

Paragraph 37 of Cm 8441 and paragraph 168 of HC 419-I

Does the Government consider that the US Government's plans to deploy a new generation of sub-strategic nuclear weapons in Europe will help or hinder a further reduction in short range nuclear weapons assigned to NATO in the context of reciprocal steps by Russia?

Fissile Material Cut-off Treaty

Paragraph 38 of Cm 8441 and paragraph 172 of HC 419-I

Given that a Fissile Material Cut-off Treaty looks no more likely to be successfully negotiated at the deadlocked Conference on Disarmament in Geneva in the foreseeable future than it has since negotiations started because of the consensus principle, why does the Government consider it is preferable to have no Fissile Material Cut-off Treaty at all rather than one drafted and approved by the majority of UN members in New York?

The National Counter-Proliferation Strategy for 2012-2015

Paragraph 39a) of Cm 8441 and Paragraph 174 of HC 419-I

In the light of the Government's response that "The delivery and success of any conference [on a Middle East Weapons of Mass Destruction (WMD) Free Zone] will require the engagement and agreement of all the states of the region", what is the Government's judgement of the willingness of

- a) Iran, and
- b) Israel

to engage in such a conference?

Paragraph 39b) of Cm 8441 and Paragraph 174 of HC 419-I

- i) Which international body does the Government wish to see taking responsibility for oversight of the Biological and Toxins Weapons Convention (BTWC)?
- ii) By what date does the Government expect the new EU Council Decision in support of the BTWC to be adopted?

Paragraph 39c) of Cm 8441 and Paragraph 174 of HC 419-I

- i) Has a reference to Annex A of Cm 8441 been omitted?
- ii) What is the total amount of:
 - a) funds committed and
 - b) funds spentby the UK as its contribution to the Global Partnership against the spread of weapons and materials of mass destruction?
- iii) What is the total amount of
 - a) funds committed and
 - b) funds spentby each of the other countries contributing to the Global Partnership?
- iv) What steps are the Government taking to publicise to members of both Houses of Parliament and generally the scale and the details of the contribution of successive British Governments to the Global Partnership?

Paragraph 39d) of cm 8441 and Paragraph 174 of HC 419-I

Which countries, who are “major technology exporters”, are not yet members of:

- a) The Australia Group,
- b) The Missile Technology Control Regime
- c) The Nuclear Suppliers Group, and
- d) The Wassenaar Arrangement,

and what specific steps is the Government taking in the case of each of those countries to try to achieve its membership of the relevant Group, Regime and Arrangement?

Overseas Security and Justice Assistance (OSJA) Human Rights Guidance
Paragraph 41 of Cm 8441 and Paragraph 181 of HC 419-I

- i) What is the outcome of the Government's "full consideration" of the Committees' recommendation that the requirement on officials in the current Guidance merely to consult the Consolidated Arms Export Licensing Criteria if military or security equipment is being exported in an Overseas Security and Justice Assistance Programme should be replaced by a requirement to adhere strictly to the Licensing Criteria and procedures? If the outcome is still not yet known, the Committees wish to be informed of the Government's decision on this recommendation as soon as it is made.
- ii) By what date does the Government expect its review of its Overseas Security and Justice Assistance (OSJA) Human Rights Guidance will be completed? The Committees wish to be informed of the outcome of the review as soon as this is known.

Surveillance technology and equipment
Paragraph 42 of Cm 8441 and Paragraph 183 of HC 419-I

- i) Why has the Government still to decide on what changes it will make to UK export control legislation and procedures to prevent surveillance technology and equipment being exported from the UK to repressive regimes who may use this technology and equipment to suppress human rights?
- ii) By what date does the Government expect to update the Committee on the outcome of its discussions with the EU on preventing such exports from EU Member States generally?

Export of Tasers

Paragraph 43 of Cm 8441 and Paragraph 185 of HC419-I

Will the Government confirm that it will report breaches of export control in relation to Tasers, and on the enforcement action taken, in the next UK Strategic Export Controls Annual Report following any breach, stating in each case to where the Tasers in question were exported or were due to be exported?

The Government's Arab Spring arms export policy review

Paragraph 46 of Cm 8441 and Paragraph 207 of HC419-I

- i) The Committee's conclusion that whilst the Government's introduction of a new licence suspension mechanism is welcome, this is not sufficient to ensure that arms exported from the UK are not used for internal repression overseas because in many, if not most cases, the arms will have left the UK before suspension occurs is not, as claimed by the Government, "based on a misunderstanding about how the mechanism will work".
- ii) For what reasons are the Government, in accordance with its stated policy of transparency on arms exports, not making public its revised risk categorisation?

Arms export licence revocations

Paragraph 48 of Cm 8441 and Paragraph 213 of HC419-I

What arms export licence revocations has the Government made worldwide since those listed in Cm 8079, and will the Government list those revocations under the same headings as in Cm 8079?

Countries of Concern

Bahrain

Paragraph 49 of Cm 8441 and Paragraph 222 of HC419-I

Does the Government remain satisfied that none of the extant UK arms export licenses to Bahrain contravenes its stated policy on arms exports and internal repression as set out in Paragraph 191 of the Committees' 2012 Report?

Egypt

Paragraph 50 of Cm 8441 and Paragraph 228 of HC419-I

Does the Government remain satisfied that none of the extant UK arms export licences to Egypt contravenes its stated policy on arms exports and internal repression as set out in paragraph 191 of the Committees' 2012 Report?

Libya

Paragraph 51 of Cm 8441 and paragraph 233 of HC419-I

Does the Government remain satisfied that none of the extant UK arms export licences to Libya contravenes its stated policy on arms exports and internal repression as set out in Paragraph 191 of the Committees' 2012 Report?

Saudi Arabia

Paragraph 52 of Cm 8441 and Paragraph 239 of HC419-I

- i) Does the Government remain satisfied that none of the extant UK arms export licences to Saudi Arabia contravenes its stated policy on arms exports and internal repression as set out in Paragraph 191 of the Committees' 2012 Report?
- ii) Does the Government apply the same stated policy on arms exports and internal repression as set out in Paragraph 191 of the Committees' 2012 Report to Saudi Arabia as to the other states in the region?

Syria

Paragraph 53 of Cm 8441 and Paragraph 244 of HC419-I

Does the Government remain satisfied that none of the extant UK arms export licences to Syria contravenes its stated policy on arms exports and internal repression as set out in Paragraph 191 of the Committees' 2012 Report?

Tunisia

Paragraph 54 of Cm 8441 and Paragraph 249 of HC419-I

Does the Government remain satisfied that none of the extant UK arms export licences to Tunisia contravenes its stated policy on arms exports and internal repression as set out in Paragraph 191 of the Committees' 2012 Report?

Yemen

Paragraph 55 of Cm 8441 and Paragraph 255 of HC419-I

Does the Government remain satisfied that none of the extant UK arms export licences to Yemen contravenes its stated policy on arms exports and internal repression as set out in Paragraph 191 of the Committees' 2012 Report?

Argentina

Paragraph 56 of Cm 8441 and Paragraph 258 of HC419-I

- i) What was the date of approval of each of the 37 export licences for military goods to Argentina that have now been revoked?
- ii) In which of the 37 cases of revocation had the military goods left the UK before the licence was revoked?
- iii) Why in each of the 37 cases of revocation was an export licence approved in the first place?
- iv) Why in each of the 37 cases of revocation was the export licence not revoked earlier?
- v) Does the Government remain satisfied that none of the extant UK arms export licences to Argentina, as detailed in Annex B of the Government's

Response (Cm 8441), contravenes either the UK's Consolidated Criteria for arms exports or the Criteria in the EU Council Common Position on Arms Exports?

- vi) Why is the Government not lobbying the other Governments who export arms to Argentina to make the same change of policy as that announced by the British Government?
- vii) Which of the Criteria numbered 1 to 8 in the UK's Consolidated National Criteria for arms exports, and which of the Criteria numbered 1 to 8 in the EU's Common Position on arms exports, did the Government consider would be breached if it failed to revoke the 37 arms export licences to Argentina in question?
- viii) Which countries are continuing to export to Argentina those military goods for which the UK Government has revoked 37 extant export licences?

China

Paragraph 57 of Cm 8441 and Paragraph 265 of HC419-I

Is the Government satisfied that none of the extant UK arms export licenses to China contravene:

- a) The EU Arms Embargo on China, or
- b) The Government's stated policy on UK arms exports and internal repression as set out in Paragraph 191 of the Committees' 2012 Report?

Extension of the Review to authoritarian regimes and to countries of concern worldwide

Paragraph 58 of Cm 8441 and Paragraph 270 of HC419-I

- i) The Committees recommended that "the Government extends its arms export policy review from countries in the Middle East and North Africa to authoritarian regimes and countries of human rights concern worldwide". The Government's single quotation from the Foreign Secretary's Oral Evidence to the Committees on 7 February 2012 in its Response is selective and therefore misleading. The Foreign Secretary's

complete Oral Evidence in relation to this recommendation was as follows:

Chair: Foreign Secretary, we are going to move on to an important recommendation which we made in our last report, in which we recommended that you should extend your review of arms export policy to authoritarian regimes worldwide.

Q134 Chris White: Secretary of State, extending that, we were just thinking it should not just be the Middle East and North Africa, it should be to authoritarian regimes worldwide. Why was this recommendation not implemented?

Mr Hague: Our review covers our global policy—covers the whole thing, whatever the nature of the regime. Of course, it is events in the Middle East and North Africa that have given rise to it. But this is a change to our procedures overall, including authoritarian regimes. As the Chairman has pointed out, such issues can arise in other countries as well. So for the purposes of this policy, we are not only concerned with authoritarian regimes. The change in procedures that I have announced and that Vince Cable has been talking about, are changes in procedures globally.

Q135 Chair: Yes, Foreign Secretary, but that does not answer the particular question that the Committees have put to you. It is one thing to look at the global application of the results of your review. We put a different recommendation to you, that you should extend your review to authoritarian regimes worldwide. Why did you not accept that recommendation?

Mr Hague: For this reason, Mr Chairman, this is a worldwide review. It is about our policy towards all regimes of any kind. If you are saying should we have had a particular study of authoritarian regimes—

Q136 Chair: That was the recommendation of this Committee. We asked you to extend your review not just to authoritarian countries in North Africa and the Middle East, but to authoritarian countries worldwide. That was our recommendation, and you chose not to accept it.

Mr Hague: Yes, because it was not confined to the Middle East. If we implement thoroughly, as we certainly intend to do, the changes in procedures that I talked about earlier—more systematic reporting of human rights risks, using a wider range of information, more systematic use of predictive tools and the requirement of end-use monitoring by overseas posts—it will capture what is going on in authoritarian regimes, as well as the rest of the world.

So, of course they are included; what is going on all over the world is included in these changes of procedures.

Q137 Chair: The Committees understand that the outcome of the review is going to be applied globally by the Government, but the issue that the Committees put to you was that you should extend your review to authoritarian regimes worldwide—authoritarian regimes in Africa, in Asia and conceivably in one or two countries in South America—and ask yourselves the same questions that you have posed to yourselves on North Africa and the Middle East: do all the extant export licences that we have granted to these authoritarian regimes still comply with criteria 2 and 3? You have not done that. Why not?

Mr Hague: It is a global review. I go back to the same answer. Really you are saying that there should be a bigger change in policy.

Q138 Chair: No, we are saying that there should have been a bigger change in the geographical scope of the review that you carried out.

Mr Hague: I am saying that there is no limit to its geographical scope. Every kind of regime and every kind of country is captured in this review. Clearly, we do not have a meeting of minds here, and I have not seen any other country where we should change our policy and revoke the licences, because the circumstances have not changed. We focused the review on practical change, and I have adopted all the recommendations of the review. I think I see what the Committee is getting at, but we chose to do it in a different way. I did not agree with the recommendation of the Committee.

- ii) In the light of the Government's Response, will the Government now accept the Committee's recommendation and extend its arms export policy review from countries in the Middle East and North Africa to authoritarian regimes and countries of human rights concern worldwide?
- iii) Is the Government satisfied that none of the extant UK arms export licences worldwide, in addition to those to the countries specifically referred to above, contravenes:
 - a) The Government's stated policy on UK arms exports and internal repression as set out in Paragraph 191 of the Committees' 2012 Report, or

b) either the UK's Consolidated Criteria for arms exports or the Criteria in the EU Council Common Position on arms exports?

I am copying this letter to the Secretary of State for Business, Innovation and Skills, the Secretary of State for Defence, and the Secretary of State for International Development.

Yours ever
John

