



## Arms Exports to Israel

Standard Note: SN/IA/4931

Last updated: 13 January 2009

Author: Claire Taylor

Section International Affairs and Defence Section

---

The UK has no arms embargo on Israel and as such licences for the export of military goods are granted in accordance with the criteria set down in the Consolidated EU and National Arms Export Licensing Criteria.

However, the export of arms to Israel continues to be criticised, with allegations that such equipment is used for internal repression and risks undermining regional stability.

This note briefly examines the UK's arms export policy with respect to Israel, the value of the military goods that the UK has exported over the last ten years and provides a comparison to the United States, which accounts for 94% of all arms exports to Israel, and the other EU Member States.

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

## Contents

<b>1</b>	<b>Brief Guide to Arms Export Policy</b>	<b>2</b>
1.1	The Consolidated EU and National Arms Export Licensing Criteria	3
1.2	Incorporation Policy	6
1.3	UK Policy Toward Israel	9
<b>2</b>	<b>Value of UK Arms exports to Israel</b>	<b>13</b>
<b>3</b>	<b>International Comparisons</b>	<b>14</b>
3.1	European Union	14
3.2	United States	15

### 1 Brief Guide to Arms Export Policy

The UK acts in accordance with three sets of internationally agreed criteria governing the export of conventional arms and military equipment:

1. [The Guidelines for Conventional Arms Transfers agreed by the Permanent Five Members of the UN Security Council and other UN Security Council Resolutions](#)
2. [The Principles Governing Arms Transfers agreed by the Forum for Security Co-operation of the Conference for Security and Co-operation in Europe.](#)<sup>1</sup>
3. The EU Code of Conduct on Arms Exports (see below)

In addition there are several national export restrictions, applying to all countries, which the British Government has imposed as a result of the UK being a signatory to a number of international arms control treaties and agreements including the Non-Proliferation Treaty, and domestic legislation such as the *Landmines Act 1998*. As a member of the European Union, there are also a number of EC Regulations relating to exports that are directly applicable to the UK. These overall restrictions include export restrictions on all anti-personnel landmines and their component parts, nuclear material to countries other than recognised nuclear weapons states and the EC Regulation on Torture which came into force on 30 July 2006. The UK also implements various measures relating to the activities of terrorist organisations.

A full list of restrictions is available on the Foreign and Commonwealth Office website:

<http://www.fco.gov.uk/en/business-trade/export-controls-sanctions>

All applications to export arms and other goods controlled for strategic reasons are considered on a case-by-case basis against the Consolidated EU and national arms export licensing criteria.

---

<sup>1</sup> The Conference for Security and Co-operation in Europe is now the Organisation for Security and Co-operation in Europe (OSCE)

## 1.1 The Consolidated EU and National Arms Export Licensing Criteria

On 26 October 2000 the Government implemented the *Consolidated EU and National Arms Export Licensing Criteria*, which brought together the UK's national export licensing criteria with those of the EU Code of Conduct on Arms Exports.<sup>2</sup> All applications to export arms and other strategically controlled goods that appear on the UK's *Consolidated List of Strategic Military and Dual-Use Items that Require Export Authorisation*<sup>3</sup> are considered on a case-by-case basis against these criteria. This obligation is set down under section 9, clause 8 of the *Export Control Act 2002*.

Those criteria were summarised by the Government in 2000 as follows:

An export licence will not be issued if the arguments for doing so are outweighed by the need to comply with the UK's international obligations and commitments, by concern that the goods might be used for internal repression or international aggression, by the risks to regional stability or by other considerations as described in the criteria:

- 1) Respect for the UK's international commitments, in particular sanctions decreed by the UN Security Council and those decreed by the European Community, agreements on non-proliferation and other subjects, as well as other international obligations.
- 2) The respect of human rights and fundamental freedoms in the country of final destination.
- 3) The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts.
- 4) Preservation of regional peace, security and stability.
- 5) The national security of the UK, of territories whose external relations are the UK's responsibility, and of allies, EU Member States and other friendly countries.
- 6) The behaviour of the buyer country with regard to the international community, as regards in particular to its attitude to terrorism, the nature of its alliances and respect for international law.
- 7) The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions.
- 8) The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources.<sup>4</sup>

However, in December 2008 the EU Council of Ministers agreed a Common Position (2008/944/CFSP) amending and replacing the EU Code of Conduct, now referred to as "The Rules Governing the Control of Exports of Military Technology and Equipment". Building upon the original Code, the new rules incorporate measures that increase the scope of the code to include brokering, intangible technology transfers and licensed production in third countries, in addition to the current items subject to the export regime (article 1). It also expands and strengthens the criteria against which export licences are assessed and

---

<sup>2</sup> The Consolidated Criteria take into account the UK's obligations under the aforementioned international criteria.

<sup>3</sup> The Consolidated List is available online at: <http://www.berr.gov.uk/files/file49410.pdf>

<sup>4</sup> *Strategic Export Controls Annual Report 2000* p.344-5

importantly makes its provisions legally binding on EU Member States.<sup>5</sup> However, the licensing of defence exports will still remain at the discretion of Member States and the provisions of the Common Position will not prevent EU Member States from adopting more restrictive national policies should they so wish (article 3).

Under article 14 of that Common Position, its provisions take legal effect on the date of its adoption, i.e. 8 December 2008. Therefore the UK's consolidated criteria will have to be amended to reflect these changes.

The new criteria as set down in Article 2 of that Common Position state:

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 alia*, technology or equipment where there is evidence of the use of this or similar technology or equipment for internal repression by the proposed end-user, or where there is reason to believe that the technology or equipment will be diverted from its stated end-use or end-user and used for internal repression. In line with Article 1 of this Common Position, the nature of the technology or equipment will be considered carefully, particularly if it is intended for internal

---

<sup>5</sup> The original EU Code of Conduct was voluntary

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.<sup>6</sup>

## 1.2 Incorporation Policy

On 8 July 2002 the Government also introduced a number of additional factors for consideration when assessing arms export licences, commonly referred to as the

---

<sup>6</sup> Council Common Position, 2008/944/CFSP, 8 December 2008, a copy is available online at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:335:0099:0103:EN:PDF>

'incorporation policy'. In a Statement to the House, the then Foreign Secretary, Jack Straw, stated:

In recent years there have been far reaching changes in the defence industry in the United Kingdom, the rest of Europe and the United States. Against the background of the end of the Cold War and the resulting reduction in defence budgets world wide, the defence industry has been subject to massive rationalisation. One consequence of this change is that increasingly defence goods are manufactured from components sourced in several different countries. This restructuring of the defence industry presents new challenges for the Government's approach to export licensing. Many export licence applications are for goods which are to be incorporated in defence equipment in a second country, which thereafter may be exported to a third country. The Consolidated EU and National Arms Export Licensing Criteria set out in a statement by my right hon. Friend the Member for Neath (Mr. Hain), *Official Report*, column 199–203W on 26 October 2000, make clear that they "will not be applied mechanistically" to decisions on export licence applications, but rather "on a case-by-case basis, using judgment and common sense". The criteria do not provide specific guidance on what approach should be adopted in these "incorporation" cases. Other EU and NATO member states face the same rapidly changing environment for their defence industries as the UK. Enquiries by Her Majesty's Government suggest, however, that while as yet there is no common policy in such cases, many of our European partners recognise the need to adopt a special approach towards cases involving incorporation for onward export. After very careful consideration, Her Majesty's Government has, therefore, decided that it is necessary to set out how it will in future approach licence applications for goods where it is understood that the goods are to be incorporated into products for onward export. The Government will continue to assess such applications on a case by case basis against the Consolidated Criteria, while at the same time having regard to, inter alia, the following factors:

- (a) the export control policies and effectiveness of the export control system of the incorporating country;
- (b) the importance of the UK's defence and security relationship with the incorporating country;
- (c) the materiality and significance of the UK-origin goods in relation to the goods into which they are to be incorporated, and in relation to any end-use of the finished products which might give rise to concern;
- (d) the ease with which the UK-origin goods, or significant parts of them, could be removed from the goods into which they are to be incorporated; and
- (e) the standing of the entity to which the goods are to be exported.

Against this background the Government has considered its response to a number of applications for the export of parts, subsystems and components to the USA for incorporation into equipment eventually destined for other countries. These include Head Up Display units (HUDs) for incorporation in F-16 aircraft scheduled for delivery to Israel in 2003. The UK content in F-16s is less than 1 per cent. in value, but the supply of HUDs is part of a long-standing collaboration in this US programme. Any interruption to the supply of these components would have serious implications for the UK's defence relations with the United States.

The Government continues to be seriously concerned about the situation in Israel and the Occupied Territories. There has to be a break to the cycle of violence, which has brought so much misery to both peoples, and a resumption of the peace process. We

are working closely with partners including the US to reduce the level of tension and to bring about a sustainable and peaceful settlement through negotiation.

The United States Government maintains a strong and effective export licensing system. The Quadripartite Committee has noted that the United States' conventional arms transfer policy "does not appear to differ in any important way from the EU Code or the UK national criteria. In some respects it is an improvement" (HC 467 xxix 73 (25 July 2000)). Appropriate use of arms exported to Israel by the US is the subject of regular dialogue between the two countries, and when the US has concerns they make these known to the Israelis (as required by Congressional legislation). The State Department has been monitoring Israeli actions carefully and will continue to do so.

At the same time the Government carefully takes into account the importance of maintaining a strong and dynamic defence relationship with the US. This relationship is fundamental to the UK's national security as well as to our ability to play a strong and effective role in the world. The importance of this role has been demonstrated repeatedly in recent months. There are also wider benefits to the UK's national security of maintaining a strong indigenous defence industrial capability.

Taking account of all these considerations, the Government considered that the applications should be approved, and my right hon. Friend the Secretary of State for Trade and Industry has today granted licences for the export of the HUDs, and other equipment to the USA. The Government will apply similar considerations to similar applications in future.<sup>7</sup>

Some Members of Parliament expressed concern at the announcement. The then Liberal Democrat foreign affairs spokesman, Menzies Campbell, called the decision a "rushed and reactive change of policy" that provided the Government with "maximum flexibility and minimum accountability"<sup>8</sup> Alice Mahon criticised the decision, declaring it to be "outrageous, given what is happening in the Middle East."<sup>9</sup> Donald Anderson, the then chairman of the Foreign Affairs Committee, said the amended guidelines should be debated in Parliament.

In its report on *Strategic Export Controls Annual Report 2001, Licensing Policy and Parliamentary Scrutiny* the Quadripartite committee stated:

While we applaud the principle of transparency which led the Government to issue guidelines on incorporation in July 2002, we conclude that the guidelines themselves do little to increase the ability of those outside Government to predict whether particular licence applications are likely to be approved [...]

On incorporation, we conclude that the export of components in collaborative defence manufacturing projects only involves a different balance of considerations from other defence exports because different countries operate different licensing regimes. When considering the question of the export of Head-Up Displays to Israel via the United States, the Government faced a dilemma: it could allow the export and risk undermining national policy, or it could refuse the export and risk undermining the United Kingdom's defence relationship with the United States. The Government was right to attempt to find a solution to this dilemma, and right to be open about its position. But, as we have shown, the Government's solution raises as many issues as it addresses. In our view, it also had a third choice: it could have allowed the export, but attached conditions to its end use. The United States regularly imposes end-use

---

<sup>7</sup> HC Deb 8 July 2002, c650-2w

<sup>8</sup> *Financial Times*, 9 July 2002

<sup>9</sup> *ibid.*

conditions on its defence exports; it does not seem unreasonable that the British Government should do the same.<sup>10</sup>

### 1.3 UK Policy Toward Israel

The UK has no arms embargo on Israel and therefore export licences to this country are granted in accordance with the Consolidated Export Licensing Criteria set out above. Any export licence which is deemed to be in contravention of these criteria is refused. It is worth noting the amended provisions to the EU Code of Conduct (set out above), which were agreed in December 2008, and in particular in relation to internal repression (criterion two and three), security and stability (criterion four) and end-use (criterion seven).

In answer to a parliamentary question in July 2007 the FCO set out the Government's current export policy with regards to Israel:

The UK recognises that all countries, including Israel, have a legitimate right to purchase conventional arms for their defence and security needs. However, UK policy dictates that all licences are assessed on a case by case basis against the Consolidated EU and National Export Licensing Criteria. This takes into account respect for human rights and the preservation of regional peace, security and stability. If there is a clear risk that the equipment will be used in a manner inconsistent with the Consolidated Criteria, a licence will not be approved.<sup>11</sup>

In August 2006 the Quadripartite Select Committee had called on the government to explain its policy on exports to Israel in more detail. However, in a subsequent report published in August 2007 the Committee commented:

In our report last year we recommended that the Government explain its policy on exports to Israel. The policy is that no weapons, equipment or components which could be deployed aggressively in the Occupied Territories will be licensed for export from the UK to Israel. The Government replied:

All applications are considered on a case by case basis against the Consolidated EU and National Export Licensing Criteria. Any licence which we assess is inconsistent with the Criteria will be refused. This includes taking into account Criteria 4, the preservation of peace, security and stability.

335. As we found the Government's reply unenlightening we have pursued the matter further this year [...]

Saferworld pointed out that, despite an escalation in violence in the Middle East in the summer of 2006, the UK Government continued to authorise licences to Israel: SIELs to the value of £15.5 million were granted for *inter alia* armoured all wheel drive vehicles, components for military utility helicopters, components for military training aircraft, components for submarines, components for unmanned air vehicle control equipment, components for air-to-surface missiles, components for airborne electronic warfare equipment and technology for use of combat aircraft; and OIELs were granted for *inter alia* components for combat helicopters and components for electronic warfare equipment. The UK's Human Rights Annual Report for 2006 states: "Progress on improving the human rights situation in Israel and the Occupied Territories has been limited [...] the UK remains concerned about Israel's failure to respect the human rights of Palestinians in the Occupied Territories."

---

<sup>10</sup> Quadripartite committee, *Strategic Export Controls Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny*, HC474, 20 May 2003

<sup>11</sup> HC Deb 23 July 2007, c708W

When we raised exports to Israel the Foreign Secretary said that she believed that "something like 0.1% of Israel's total arms imports comes from the United Kingdom and we have not sold main equipment like tanks or artillery or warships to Israel since 1997, so it seems to me we are visibly taking Criterion 4 into account" and that "we do not sell them anything major [...] precisely because we do take account of Criterion 4, as you would wish us to do".

339. We accept that the percentage of refusals of applications to particular countries depends on the content of the applications made by exporters. But it can also fluctuate as other factors are taken into account by the Government. **We conclude that on the basis of the statistics there is evidence that the licensing policy to Israel may have been tightened up. We conclude that the Government's "case by case" response in explaining decisions to grant or refuse licences is unclear. While the "case by case" approach gives the Government flexibility this appears to allow latitude to adjust policy without the need for public explanation, which is neither transparent nor accountable.**

340. **We recommend again this year that the Government explain its policy on licensing exports to Israel, Jordan or other countries in the Middle East and that it explain whether it has adjusted its policy since 1997 as events in the Occupied Territories and Middle East have unfolded. We further recommend that Government explain how it assesses whether there is a "clear risk" that a proposed export to Israel might be used for internal repression (for the purposes of Criterion 2).**<sup>12</sup>

In its response to that report the Government noted:

The Government's policy on licensing exports to Israel, Jordan and other countries in the Middle East has not changed. All export licence applications are judged on a case-by-case basis against the Consolidated EU and National Arms Export Licensing Criteria.

The case-by-case approach allows flexibility when taking into account prevailing circumstances. The Criteria clearly state the Government's commitment to assess the risk that exports might:

- i) be used for internal repression;
- ii) provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination; or
- iii) be used aggressively against another country.

In assessing licence applications for exports to Israel, Jordan and other countries in the Middle East against the Consolidated Criteria, we take into account events in the Occupied Palestinian Territories and in the Middle East region.

When making an assessment as to whether there is a clear risk that a proposed export to Israel might be used for internal repression, the Government considers the nature of equipment, the stated end-use of the equipment and the end-user. The British Embassy in Tel Aviv offers advice on what the export will be used for and whether the end-user has used this or similar equipment in a manner inconsistent with Criterion 2 in the past. Similarly, the FCO's designated Human Rights and Good Governance Department (the same department that published the *Human Rights Annual Report for*

---

<sup>12</sup> Quadripartite Committee, *Strategic Export Controls: 2007 Review*, HC 117, Session 2006-07

2006 referred to in paragraph 337) provides advice on all export licences where the Government considers human rights concerns might apply.<sup>13</sup>

The government's policy on arms exports to Israel was reiterated by the Foreign Secretary, David Miliband, in his statement on the situation in Gaza on 12 January 2009:

The hon. Gentleman raised an important question in respect of the arms embargo, and I want to confirm that our position remains exactly as described. No arms exports are granted where there is a clear risk that those arms could be used for internal repression or external aggression, and that is surveyed very closely. Also, we have no evidence of any of the exports that he has pointed to being used in this operation. As for some of the allegations that are around—for example, in *The Guardian* on Friday, which the hon. Gentleman did not repeat, but it might help the House if I make this point clear—there is no truth in the suggestion that those exports are used by the IDF or are being used by the IDF in this operation. I assure him that the criteria that we use remain very strict, and they were recently examined in judicial review to confirm the way that they operate.<sup>14</sup>

Concerns over the export of arms to Israel have, however, continued to be expressed in the House. EDM 400, tabled on 12 January 2009, states:

That this House is appalled that the Foreign and Commonwealth Office has been licensing increasing arms sales to Israel; registers with extreme disapproval that in the first three months of 2008 Britain exported nearly £19 million worth of weapons to Israel, compared to £7.5 million in the whole of 2007; requests the Government to state the value of British arms sold to Israel from April to December 2008; further requests the Government to list the types of weapons sold to Israel; calls on the Government to halt delivery of further weapons; and urges the Government to investigate whether any of the weapons exported to Israel during 2008 have been used in the attacks on Palestinian civilians in the Gaza Strip.<sup>15</sup>

#### *Judicial Review – October/November 2008*

In October 2007 a High Court challenge was launched against the government challenging the legality of granting export licences for the sale of arms to Israel “without providing adequate reasons to explain how the licence applications were assessed as satisfying relevant decision making criteria on human rights”.<sup>16</sup> That case was dismissed by the Court which argued that the UK Parliament, through the Quadripartite Committee, already exercised a sufficient level of oversight over arms-export licensing, making the claim unnecessary.

The Court of Appeal subsequently found there to be strategic questions with regard to High Court's dismissal of the claim and in February 2008 granted an appeal for Judicial Review. Public Interest Lawyers, representing the Appellant commented:

It is critically important that the Government follow their own criteria which requires them to be assured that arms exports will not be used against Palestinian civilians. The Government refuses to say how they have met that test, yet these decisions may be a matter of life-and-death for Palestinian civilians. If the phrase ‘open government’ is to mean anything, decisions to allow arms exports to Israel must be reasoned before the

---

<sup>13</sup> Quadripartite Committee, *Strategic Export Controls: 2007 Review: Government Response*, Cm 7260, November 2007

<sup>14</sup> HC Deb 12 January 2009, c29

<sup>15</sup> EDM 400, Session 2008-09

<sup>16</sup> “Palestinian goes to court to challenge arms sales to Israel”, *The Guardian*, 10 October 2007

public. This is but one aspect of a wider state responsibility that the UK state has for human rights violations perpetrated by the Israeli government in the Occupied Palestinian Territories.<sup>17</sup>

That appeal was heard on 21-22 October 2008. In his judgement of 25 November 2008 the Hon Mr Justice Collins dismissed the appeal stating:

To succeed in this claim for judicial review the claimant needs to persuade the court to extend the circumstances in which public authorities may be under a public law duty to publish reasons for administrative decisions made under statutory power. In my judgment, Collins J correctly concluded, in his judgment of 19<sup>th</sup> November 2007 that the claim must fail. I would uphold his decision substantially for the reasons which he gave and dismiss this appeal. I reach this conclusion in short because I am not persuaded that the duty for which it is necessary for the claimant to contend is a duty which the law should impose; and because, more narrowly, the facts of the case do not, in my view, sustain a duty to give reasons such as is contended for.

More specifically he commented:

In my judgment, as I have indicated, the judge reached the right conclusion for the right reasons. Indeed in my view this claim fails for reasons which are cumulatively more compelling than those in these two paragraphs of the judge's judgment. The compelling reasons are, I think, as follows:

1) the 2002 Act and the 2003 Order themselves contain provision for giving reasons to an applicant for a licence whose application is refused, a requirement for an annual report to Parliament and a power for proportionate disclosure of information. This structure shows that Parliament considered what information should be given and to whom, and argues against a wide common law obligation.

2) the 2002 Act is in fact administered with the additional voluntary publication of quarterly reports and assiduous scrutiny by the Select Committee. There is in practice a high degree of openness and public accountability which suggests little necessity for a common law duty. The fact that on occasions the Select Committee expressed the view that the information provided by the Government was less than complete does not detract from this.

3) the subject matter is generally sensitive, such that unguarded publication is likely to be on occasions damaging. Parliamentary scrutiny, with a possibility of receiving information in closed session, is thus to be seen as preferable.

4) the existence of the Freedom of Information Act argues against the parallel existence of a common law duty for the reasons I have indicated.

5) as I have also indicated, the formulation of a sufficiently confined and principled common law duty, which is not simply a cocktail of the particular facts relied on, eluded Mr Fordham.

6) the problem of definition is compounded because the claimant, having conceded that the licences of which he initially complained were lawfully issued in accordance with the Consolidated Criteria, now has no more than a nominal interest in the proceedings. This strips the case for finding a common law duty to give reasons of a number of the considerations which otherwise might militate in favour of so finding. Admittedly he conceded the original case when reasons were given. But an obligation to give reasons after the event when, it is accepted, the export in question cannot be

---

<sup>17</sup> <http://www.publicinterestlawyers.co.uk/general/news.php?id=91>

stopped, does not enable him or anyone to challenge effectively the decision for which reasons are sought.

For these reasons, I would dismiss this appeal.<sup>18</sup>

A copy of Mr Justice Collins' judgement is available online through the British and Irish Legal Information Institute (ref: 2008 EWCA Civ 1311).

## 2 Value of UK Arms exports to Israel

Details of the UK's military exports to Israel are outlined in the *Strategic Export Controls Annual Reports* which are published each July, and in the Quarterly Reports which are currently available for the first half of 2008. Information on licences that have been refused also forms part of these reports.

In 2007 the UK approved 224 Standard Individual Export Licences (SIEL) to Israel worth £10.5m, of which 78 licences worth £3m were SIEL for Incorporation. The licences covered a wide range of items on the military list, most notably military communications equipment; components for radar, missiles, unmanned aerial vehicles and thermal imaging equipment; and some vintage military vehicles.<sup>19</sup>

In previous years licences to the following value have been approved:

Year	Number of SIEL (inc. incorporation)	Value (£m)
2006	164	16.5
2005	113	23.5
2004	119	12
2003	180	11.5
2002	161	10
2001	277	22.5
2000	191	12.5
1999	190	11.5
1998	221	Not provided

Between 1 January and 31 March 2008 62 SIEL at a combined value of £20.3m were approved, including 16 SIEL for incorporation worth £455,000. Items included air guns; components for airborne electronic equipment, combat aircraft, military communications and

---

<sup>18</sup> The Queen on the Application of Hasan and The Secretary of State for Trade and Industry, [2008] EWCA Civ 1311, 25 November 2008

<sup>19</sup> A more detailed list is available in the Strategic Export Controls Annual report

electronic warfare; and general military aircraft components. During that same period seven licence applications were also refused.

Copies of the SEC reports dating back to 1998 are available online at:

<http://www.fco.gov.uk/en/about-the-fco/publications/publications/annual-reports/export-controls1>

### **3 International Comparisons**

According to the Stockholm International Peace Research Institute's Yearbook 2008, between 2003 and 2007 Israel was the world's sixth largest recipient of major conventional arms transfers. During that same period the US accounted for 94% of those exports.<sup>20</sup> France and Germany, as well as the UK, account for a small percentage of those arms transfers

#### **3.1 European Union**

Every December the Official Journal of the European Union publishes the *Annual Report on the EU Code of Conduct*, which sets out the value of arms exports, by destination, from each of the EU Member States in the previous calendar year.

In 2007 EU Member States authorised the export to Israel of €200m of items on the EU Military List. France, Germany and Romania were the top three exporters approving licences valued at €126m, €28m and €17m respectively.<sup>21</sup>

Those reports can be accessed online for the following years:

2007:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:300:0001:0374:EN:PDF>

2006:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:253:0001:0332:EN:PDF>

2005:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2006:250:0001:0346:EN:PDF>

2004:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2005:328:0001:0288:EN:PDF>

2003:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2004:316:0001:0215:EN:PDF>

2002:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:320:0001:0042:EN:PDF>

2001:

---

<sup>20</sup> SIPRI Yearbook 2008, p.319 and 321

<sup>21</sup> "Arms exports to Israel from EU worth €200m", *EU Observer*, 7 January 2009

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2002:319:0001:0045:EN:PDF>

2000:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2001:351:0001:0009:EN:PDF>

1999:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52000XG1229:EN:HTML>

1998:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51999XG1103:EN:HTML>

### **3.2 United States**

The terms upon which US military equipment is supplied to Israel are set down in a number of classified agreements which were signed in the 1970s. End-use monitoring of defence good and services exported under such agreements is regulated by section 2785 of the *Arms Export Control Act*. Under that section the US administration is obliged to undertake end-use monitoring and report to Congress accordingly.

According to the SIPRI Arms Transfer project, between 1997 and 2007 the US accounted for following sales of major weapons to Israel, with a contract value of \$6.6bn:

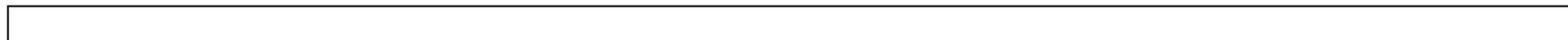
## Transfers of major conventional weapons: sorted by supplier. Deals with deliveries or orders made for year range 1997 to 2007

**Note:** The 'No. delivered/produced' and the 'Year(s) of deliveries' columns refer to all deliveries since the beginning of the contract. Deals in which the recipient was involved in the production of the weapon system are listed separately. The 'Comments' column includes publicly reported information on the value of the deal. Information on the sources and methods used in the collection of the data, and explanations of the conventions, abbreviations and acronyms, can be found at URL <<http://armstrade.sipri.org/>>. The SIPRI Arms Transfers Database is continuously updated as new information becomes available.

**Source:** SIPRI Arms Transfers Database

**Information generated:** 13 January 2009

Supplier/ recipient (R) or licensor (L)	No. ordered	Weapon designation	Weapon description	Year of order/ licence	Year(s) of deliveries	No. delivered/ produced	Comments
<b>USA</b>							
<b>R: Israel</b>	(1500)	AVDS-1790	Diesel engine (AV)	(1975)	1979-2003	(1500)	For some 1280 Merkava-1/2/3 tanks produced in Israel and for modernization of M-60 tanks to MAGACH-7C; AVDS-1790-5A, AVDS-1790-6A and AVDS-1790-9AR version
	6	Mk-15 Phalanx	CIWS	(1986)	1987-1998	(6)	For 4 new and modernization of 2 Saar-4.5 (Hetz) Class FAC
	(48)	RGM-84 Harpoon	Anti-ship missile	(1989)	1994-1997	(48)	For Saar-5 Type (Eilat Class) corvettes
	21	F-15E Strike Eagle	Fighter/bomber ac	1994	1998-1999	21	\$1.76-2 b deal (financed by US 'FMF' aid; offsets \$1 b); F-15I version; Israeli designation Ra'am
	(250)	AGM-114K HELLFIRE	Anti-tank missile	1995	1998-1999	(250)	\$45 m deal
	(16)	Bell-209/AH-1E	Combat helicopter	1995	1996-1997	(16)	Ex-US; aid; no. could be between 8 and 28
	4	F-15E Strike Eagle	Fighter/bomber ac	1995	1999	4	\$253 m deal; F-15I version; Israeli designation Ra'am



(58)	M-270 MLRS 227mm	MRL	1995	1995-1999	(58)	
15	S-70/UH-60L Blackhawk	Helicopter	1997	1998	15	\$110 m deal; S-70A-50 Peace Hawk version; Israeli designation Yanshuf-2
64	AIM-120B AMRAAM	BVRAAM	1998	1998-2001	(64)	Deal worth \$28 m
(30)	AN/AAQ-13 LANTIRN	Aircraft EI/Op system	(1998)	2000-2001	(30)	For F-15I combat aircraft
(30)	AN/AAQ-14 LANTIRN	Aircraft radar	(1998)	2000-2001	(30)	For F-15I combat aircraft
16	RGM-84 Harpoon	Anti-ship missile	(1998)	2001-2002	(16)	\$26 m deal
42	AIM-120B AMRAAM	BVRAAM	1999	2001-2002	(42)	
(5)	King Air-200/C12	Light transport ac	1999	2000	(5)	B200T version; Israeli designation Zufit-2; incl for EW and ELINT/SIGINT
160	MIM-72C Chaparral	SAM	1999	1999	160	Ex-US; aid; MIM-72E version
(480)	AGM-114L HELLFIRE	Anti-tank missile	(2000)	2005-2006	(480)	AGM-114L3 version; for AH-64D helicopters
1	Boeing-707	Transport aircraft	2000	2001	1	Second-hand; modernized and modified to tanker aircraft after delivery
(12)	AH-64D Apache	Combat helicopter	2001	2005-2006	(12)	\$509 m deal (financed by US 'FMF' aid); incl 3 Israeli AH-64A rebuilt to AH-64D; Israeli designation Sharaf
(48)	AIM-120C AMRAAM	BVRAAM	2001	2003-2004	(48)	
(30)	Bell-209/AH-1F	Combat helicopter	(2001)	2002-2005	(30)	Ex-US; aid
3	Gulfstream-5	Transport aircraft	2001	2005-2007	3	\$174-206 m deal (partly financed by US 'FMF' aid); G-550 version; modified in Israel to G-550 SEMA Shavit ELINT aircraft; delivery 2005-2007
8	King Air-200/C12	Light transport ac	2001	2002-2003	(8)	B200CT version; modified in Israel for SIGINT; Israeli designation Zufit-3
40	Popeye-1	ASM	2001	2002-2003	(40)	\$31 m deal; AGM-142F-1/2 versions; designed by Israel but produced in and bought from USA to use US 'FMF' aid
24	S-70/UH-60L Blackhawk	Helicopter	2001	2002	24	\$212 m deal; S-70A-55 version; Israeli designation Yanshuf-3
(400)	BGM-71F TOW-2B	Anti-tank missile	2002	2003-2004	(400)	Part of \$52 m deal; TOW-2A/TOW-2B version
2030	BGM-71 TOW	Anti-tank missile	2002	2003-2004	(2030)	\$80 m deal; TOW-2A version
6	King Air-200/C12	Light transport ac	2002	2003	(6)	B200CT version; for training; Israeli designation Zufit-5
(54)	M-106	Self-propelled mortar	(2002)	2002	54	Probably ex-US; possibly incl some M-113 APCs

	120	M-1114 ECV	APC/ISV	(2002)	2003-2004	(120)	For use in West Bank and Gaza Strip Palestinian areas
	15	M-113	APC	2002	2003	(15)	Ex-US; aid; XM-981 version
	(2)	Gulfstream-5	Transport aircraft	2003	2007	2	Part of \$473 m deal (partly financed by US 'FMF' aid); G-550 version; modified in Israel to Aitam AEW aircraft
	(200)	AGM-114K HELLFIRE	Anti-tank missile	(2004)	2006	(200)	Part of \$50 m deal; AGM-114K and AGM-114M version
	6	AH-64D Apache	Combat helicopter	2004	2006	(6)	\$200 m deal; Israeli designation Saraf; Israeli AH-64A rebuilt to AH-64D
	18	Bonanza	Light aircraft	2004	2004-2005	(18)	\$11 m deal; option on 6 more
	(5000)	JDAM	Guided bomb	2004	2005-2007	(1840)	
	(42)	Bell-209/AH-1F	Combat helicopter	(2005)	2006	(42)	Ex-US; aid
	100	GBU-28	Guided bomb	2005	2006	(100)	
	200	AIM-120C AMRAAM	BVRAAM	(2007)			Contract not yet signed
	500	AIM-9L/M Sidewinder	SRAAM	(2007)			Contract not yet signed; AIM-9M version
	30	RGM-84 Harpoon	Anti-ship missile	(2007)			RGM-84L version
<b>L:</b>	50	F-16I	FGA aircraft	1999	2004-2006	50	\$2.5 b 'Peace Marble-5 Phase-1' deal (financed by US 'FMF' aid; offsets 25% incl production of components in Israel); Israeli designation Suefa
	52	F-16I	FGA aircraft	2001	2006-2007	(35)	\$2 b 'Peace Marble-5 Phase-2' deal (incl \$1.3 b for aircraft and \$300 m for engines; offsets \$800 m incl production of components in Israel); Israeli designation Suefa; delivery 2006-2009